

Case study #1



Case Study #1 The American Civil Liberties Union of Utah, on behalf of the Main Street Church, has filed a complaint against Brigham City's "Free Speech Zone" Ordinance. The suit claims that the city's ordinance violates the rights granted to all U. S. citizens by both the state of Utah's and the United State's constitutions. According to the ordinance, a city permit is required for essentially any type of expression in a public forum; this is inclusive of all city parks, streets and sidewalks. Additionally, civil and criminal penalties have been implemented within the ordinance for those that fail to comply with the city's regulations. This issue has raised concern throughout the city because those unaware of the need of a city permit may be held accountable for actions believed to be protected by the First Amendment. The Main Street Church planned on passing out religious pamphlets to the public during the Open House of the Brigham City Latter day Saints Temple. The religious-themed literature made comparisons between the beliefs of the Main Street Church and those of the LDS Temple. The church was banned from circulating their pamphlets on the two public sidewalks most trafficked by those going and coming from the LDS Temple. Additionally, the Main Street Church has also moved for a temporary restraining order to prohibit the city from further restriction of the church's rights to assembly, free speech, and free exercise of religion in a traditional public forum. The ACLU of Utah believes that the rights provided by the First Amendment are prohibited in Brigham City until the city provides a permit allowing an individual to implement these rights. However, the process of granting such a permit is at the discretion of the city's police chief, attorney and administrator. In the question of whether or not the city ordinance is unconstitutional, one must examine if prior restraint was used by city

administrators based on the content of the message being shared in a traditional public forum. In the case of *Hague v. CIO*, Justice Roberts wrote: “Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens” 307 U. S. 496 (1939). This definition of a traditional public forum still remains constant, and describes the environment in which the Main Street Church attempted to circulate religious-themed literature. Brigham City administrators attempted to remain content-neutral while issuing permits for “Free Speech Zones”; meaning that the content of the message being shared has no bearing whatsoever as to whether or not a permit is granted to an organization. In the case of *Simon and Schuster v. Crime Victims Board*, it was found that the New York Son of Sam law, which prevented convicted criminals from profiting from books published about their crimes violated the First Amendment. It was found to be unconstitutional to censor an individual based on the content of their publication 502 U. S. 105 (1991). If a publication or group of people are censored, or not given the right to free speech, there’s a possibility that a “gag law” of some sort may be in place. In *Near v. Minnesota*, Jay Near published a scandal sheet that attacked local officials associated with gangsters. The publication was considered a nuisance and anyone affiliated with the publication or circulation of the periodical could be prevented from further maintaining or committing the said nuisance. However, the Court held that the statutory scheme constituted a prior restraint, and

consequently was invalid under the First Amendment 283 U. S. 697 (1931). In *Saig v. City of Dearborn* a group of Christians was banned from circulating religious-themed literature on the sidewalks directly adjacent to an Arab International Festival. It was found that the defendants violated Saieg’s First Amendment right to freedom of speech since the leafleting restriction was not a reasonable time, place, and manner restriction. The case of *Lovell v. City of Griffin* disassembled a permit system that applied to the distribution of circulars, handbills or literature of any kind. The ruling established that circulated literature of any kind is necessarily embraced by the First Amendment 303 U. S. 444 (1938). The time, place, and manner in which and individual or organization expresses their First Amendment rights plays a key role in whether or not an organization is granted a permit. For example, a city will not issue a permit to protest through a residential neighborhood at 10 PM on a Tuesday evening because many residents may be sleeping. In *Thomas v. Chicago Park District*, The Windy City Hemp Development Board applied for several permits to hold rallies advocating the legalization of marijuana; although some were approved, others were denied. The Board filed suit on the basis that it’s First Amendment rights were being violated. However, the Court reached the conclusion that the failure of the Chicago Park District to issue a permit was not based on subject-matter censorship, but rather content-neutral time, place, and manner regulation of the use of a public forum; making the ordinance constitutional 534 U. S. 316 (2002). It can be established that the area in which the Main Street Church wished to circulate their religious--themed literature is a traditional public forum according to Justice Roberts’ definition. Accordingly, the rights provided by the First Amendment to the U. S. Constitution allow the religious group to do

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so. But Brigham City maintains that a “ Free Speech Zone” must first be established, which may lead one to believe that the city does not condone of free speech without a city permit. The Main Street Church attempted to apply for a permit to establish such a zone, but was informed that they would not be allowed to circulate religious materials on the two most trafficked blocks of the LDS Temple. Although Brigham City officials failed to state the reasoning for the ban from these two sidewalks, the Main Street Church was compelled to file for a temporary restraining order to prevent further restrictions from the city. Consequently, this action raises questions in regards to whether the content of the message being communicated played a role in the ban from the city’s sidewalks. In the case of *Simon and Schuster v. Crime Victims Board* it had been determined that First Amendment rights cannot be suspended based upon the content of the message being shared. Therefore, city administrators cannot limit the areas in which members of the Main Street Church passed out their pamphlets because their views differ with those of the LDS Temple. Failing to allow individuals to circulate these religious materials may also be considered prior restraint: government prohibition of speech prior to publication or active audience. This was seen in *Near v. Minnesota* in which it was deemed unconstitutional for a government entity to restrict the publication of a local periodical. The same rules can be applied to this Brigham City case. The city cannot regulate the message communicated to the public because that in itself would be yet another form of censorship and infringe on an individual’s First Amendment rights. The case of *Saig v. City of Dearborn* closely resembles the suit filed by the ACLU of Utah. Once again a religious group was not allowed to pass out pamphlets in specific areas regarding different

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perspectives on religion in a traditional public forum. Instead, they were permitted to circulate materials in regions not associated with the Arab International Festival. The court ruled that limiting the areas upon which individuals can implement their First Amendment rights is unconstitutional. The circulated literature, itself, was also found to be protected by the First Amendment in the course of *Lovell v. City of Griffin*. Once again, any decision made by Brigham City officials based solely on the message in the pamphlets would be unconstitutional. Time, place, and manner restrictions don't necessarily provide the city with a concrete reason to ban members of the Main Street Church from the two busy sidewalks. In a press release Jim Catlin, Pastor of the Main Street Church addressed the issue. " If Main Street Church were to access those sidewalks during the Open House, we would not impede the flow of pedestrian traffic, nor would we attempt to force anyone to take any of our literature...Main Street Church vehemently opposes the hate speech and perverse actions that some groups have used to badger, mistreat and disrespect the Mormon people. However, we do believe we have the right to express our beliefs to the public on public sidewalks. "

Therefore, if the time, place, and manner in which pamphlets will be provided to the general public cause no issues, the city cannot deny the Main Street Church a permit on the basis of these grounds. In conclusion, the Brigham City Ordinance regarding " Free Speech Zones" is unconstitutional. Not only does it attempt to control the reach of an organizations message through prior restraint and the content of the message. But more importantly it leads one to assume that no free speech whatsoever is permitted within the limits of Brigham City without the approval city officials. Additionally, these officials failed to provide an explanation as to why the Main Street

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Church failed to receive a permit to respectfully share their beliefs at the appropriate time, place and manner.