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CONSTITUTIONAL LAW-DUE PROCESS-FREEDOM OF SPEECH-LIMITATIONS ON THE Used OF SOUND AMPLIFICATION DEVICES

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CONSTITUTIONAL LAW—DUE PROCESS—FREEDOM OF SPEECH—LIMITATIONS ON THE USE OF SOUND AMPLIFICATION DEVICES—Appellant, a minister of Jehovah's Witnesses, used, without a permit, sound equipment mounted on his truck to amplify lectures on religious subjects. He was convicted in a police court for violating a municipal ordinance of Lockport, New York, which prohibited the use of sound amplification devices without the permission of the chief of police. The ordinance provided no standards for the guidance of the local officer in the issuance of the permit. The conviction was affirmed by the county court and by the appellate court.[1] On appeal, *held*, reversed, four justices dissenting. The ordinance violated the due process clause of the Fourteenth Amendment by establishing a previous restraint on the right of free speech. *Saia v. New York*, 334 U.S. 558, 68 S.Ct. 1148 (1948).

The protection accorded to freedom of speech under the Fourteenth Amendment includes distribution of papers, handbills and magazines,[2] noncommercial canvassing from house to house,[3] the ringing of doorbells to distribute noncommercial literature,[4] and the playing in the street of religious phonograph records.[5] The principal case further extends this protection to include the use of loud speakers, as the majority of the Court [6] believed such devices to be a necessary means of communication under modern conditions of public speech.[7] Laws permitting discretionary or arbitrary action by licensing officials as a prerequisite to exercising the freedoms of speech, press, and religion are unconstitutional,[8] for such previous restraint would institute a system of license and

[1] People v. Saia, 297 N.Y. 659, 76 N.E. (2d) 323 (1947).
[2] Lovell v. City of Griffin, 303 U.S. 444, 58 S.Ct. 666 (1938).
[3] Schneider v. New Jersey, 308 U.S. 147, 60 S.Ct. 146 (1939).
[4] Martin v. Struthers, 319 U.S. 141, 63 S.Ct. 862 (1943).
[5] Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900 (1940).
[6] Chief Justice Vinson, Justices Douglas, Black, Murphy and Rutledge.
[7] Justice Douglas stated, "The sound truck has become an accepted method of political campaigning. It is the way people are reached." Principal case at 561.
[8] Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900 (1940). (Ordinance which required permit from local official to distribute religious matter held void);

censorship in its clearest form.[9] Justice Douglas, speaking for the majority, applied this rule to the ordinance in the principal case.[10] The dissenting judges[11] believed the question was one of municipal regulation of a potential nuisance, rather than regulation of free speech.[12] It is well settled that state regulation of liberty which is reasonable in relation to its subject matter, and which is adopted to interests of the community, does not deny due process.[13] Justice Frankfurter, in his dissent, reasoned that it does not violate the right of free speech to let a public official determine what is in effect a nuisance merely because he might outrageously misuse such authority, for judicial remedies are available for such abuses of authority.[14] Although the result of the principal case seems correct, considering the broad language of the ordinance, clearly some regulation is needed. The public should be protected from undue intrusion and annoyance. An ordinance completely prohibiting the use of sound amplification devices for noncommercial purposes[15] would probably be void as infringing upon the exercise of free speech.[16] There does not appear to be grave and immediate danger to interests the state may lawfully protect.[17] Although the exact type of ordinance the court would accept is not too clear, the tenor

Lovell v. City of Griffin, 303 U.S. 444, 58 S.Ct. 666 (1938) (ordinance which requires permit from local official to distribute literature held void); Hague v. C.I.O., 307 U.S. 496, 59 S.Ct. 954 (1939) (ordinance which requires a license from a local official to hold public assembly held void).

[9] Lovell v. City of Griffin, 303 U.S. 444, 58 S.Ct. 666 (1938).

[10] Justice Douglas stated: "He stands athwart the channels of communication as an obstruction which can be removed only after criminal trial and conviction and lengthy appeal. A more effective previous restraint is difficult to imagine." Principal case at 561.

[11] Justice Frankfurter, joined by Justices Reed and Burton, with Justice Jackson writing a separate dissent.

[12] Justice Frankfurter stated: "To the founding fathers it would hardly seem a proof of progress in the development of our democracy that the blare of sound trucks must be treated as a necessary medium in the deliberative process." Principal case at 565. Justice Jackson reasoned that this was not a free speech issue but was really a question of regulating or prohibiting the irresponsible introduction of sound equipment. Principal case at 567.

[13] West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S.Ct. 578 (1937).

[14] Principal case at 562. But consider Justice Robert's statement: ". . . the availability of judicial remedy for abuses in a system of licensing still leaves that system one of previous restraint, which in the field of free speech and press we have held inadmissible." Cantwell v. Connecticut, 310 U.S. 296 at 306, 60 S.Ct. 900 (1940).

[15] To the effect that ordinances prohibiting the use of loud speaker trucks for commercial purposes are valid, see Brachey v. Maupin, 277 Ky. 467, 126 S.W. (2d) 881 (1939); Maupin v. Louisville, 284 Ky. 195, 144 S.W. (2d) 237 (1940).

[16] Jamison v. Texas, 318 U.S. 413, 63 S.Ct. 669 (1943) (an ordinance prohibiting the dissemination of handbills on the public streets held void). But state courts hold ordinances prohibiting the use of loud speakers valid. See Kovacs v. Cooper, 135 N.J.L. 584, 52 A. (2d) 806 (1947); Hamilton v. City of Montrose, 109 Colo. 228, 124 P. (2d) 757 (1942).

[17] West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178 (1943).

of the principal case is that the ordinance giving authority to a local official to issue permits will have to be narrowly drawn to regulate the hours and places of use, the volume of sound, and other local considerations.[18] Such an ordinance makes the local officer's function ministerial in nature. Another possibility would be a narrowly drawn ordinance regulating the time, place and volume and requiring no permit at all, thereby eliminating any exercise of discretion by a local official. Either of the above ordinances would be regulatory and objective and would remove any danger of previous restraint such as confronted the court in the principal case.

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[18] Principal case at 560. See also Cox v. New Hampshire, 312 U.S. 569, 61 S.Ct. 762 (1941).