

Murdock v Penn
U.S. Supreme Court

319 U.S. 105 (1943)

MURDOCK

v.

COMMONWEALTH OF PENNSYLVANIA
and seven other cases, including
JONES v. CITY OF OPELIKA, 319 U.S. 105 (1943)

Nos. 480-487.

Argued March 10, 11, 1943.

Decided May 3, 1943.

[319 U.S. 105, 106] Mr. Hayden C. Covington, of Brooklyn, N.Y., for petitioners.

Mr. Fred B. Trescher, of Greensburg, Pa., for respondent.

Mr. Justice DOUGLAS delivered the opinion of the Court.

The City of Jeannette, Pennsylvania, has an ordinance, some forty years old, which provides in part:

'That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefore the following sums according to the time for which said license shall be granted.

'For one day \$1.50, for one week seven dollars (\$7.00), for two weeks twelve dollars (\$12.00), for three weeks twenty dollars (\$20.00), provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.'

Petitioners are 'Jehovah's Witnesses'. They went about from door to door in the City of Jeannette distributing literature and soliciting people to 'purchase' certain religious books and pamphlets, all published by the [319 U.S. 105, 107] Watch Tower Bible & Tract Society.^[1] The 'price' of the books was twenty-five cents each, the 'price' of the pamphlets five cents each.^[2] In connection with these activities petitioners used a phonograph^[3] on which they played a record expounding certain of their views on

religion. None of them obtained a license under the ordinance. Before they were arrested each had made 'sales' of books. There was evidence that it was their practice in making these solicitations to request a 'contribution' of twenty-five cents each for the books and five cents each for the pamphlets but to accept lesser sums or even to donate the volumes in case an interested person was without funds. In the present case some donations of pamphlets were made when books were purchased. Petitioners were convicted and fined for violation of the ordinance. Their judgments of conviction were sustained by the Superior Court of Pennsylvania, 149 Pa.Super. 175, 27 A.2d 666, against their contention that the ordinance deprived them of the freedom of speech, press, and religion guaranteed by the First Amendment. Petitions for leave to appeal to the Supreme Court of Pennsylvania were denied. The cases are here on petitions for writs of certiorari which we granted along with the petitions for rehearing of *Jones v. Opelika*, [316 U.S. 584](#), 62 S.Ct. 1231, 141 A.L.R. 514, and its companion cases. [[319 U.S. 105, 108](#)] The First Amendment, which the Fourteenth makes applicable to the states, declares that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press' It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional. Yet the license tax imposed by this ordinance is in substance just that.

Petitioners spread their interpretations of the Bible and their religious beliefs largely through the hand distribution of literature by full or part time workers.^[4] They claim to follow the example of Paul, teaching 'publicly, and from house to house.' Acts 20:20. They take literally the mandate of the Scriptures, 'Go ye into all the world, and preach the gospel to every creature.' Mark 16:15. In doing so they believe that they are obeying a commandment of God.

The hand distribution of religious tracts is an age-old form of missionary evangelism – as old as the history of printing presses.^[5] It has been a potent force in various religious movements down through the years.^[6] This form of evangelism is utilized today on a large scale by various religious sects whose colporteurs carry the Gospel to thousands [[319 U.S. 105, 109](#)] upon thousands of homes and seek through personal visitations to win adherents to their faith.^[7] It is more than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.

The integrity of this conduct or behavior as a religious practice has not been challenged. Nor do we have presented any question as to the sincerity of petitioners in their religious beliefs and practices, however misguided they may be thought to be. Moreover, we do not intimate or suggest in respecting their sincerity that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment. *Reynolds v. United States*, [[319 U.S. 105, 110](#)] *United States*, [98 U.S. 145, 161](#), 167 S., and *Davis v.*

Beason, [133 U.S. 333](#), 10 S.Ct. 299, denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate. **We only hold that spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox types.** The manner in which it is practiced at times gives rise to special problems with which the police power of the states is competent to deal. See for example Cox v. New Hampshire [312 U.S. 569](#), 61 S.Ct. 762, 133 A.L.R. 1396, and Chaplinsky v. New Hampshire, [315 U.S. 568](#), 62 S.Ct. 766. But that merely illustrates that the rights with which we are dealing are not absolutes. Schneider v. State, [308 U.S. 147, 160](#), 161 S., 60 S.Ct. 146, 150. We are concerned, however, in these cases merely with one narrow issue. There is presented for decision no question whatsoever concerning punishment for any alleged unlawful acts during the solicitation. Nor is there involved here any question as to the validity of a registration system for colporteurs and other solicitors. The cases present a single issue – the constitutionality of an ordinance which as construed and applied requires religious colporteurs to pay a license tax as a condition to the pursuit of their activities.

The alleged justification for the exaction of this license tax is the fact that the religious literature is distributed with a solicitation of funds. Thus it was stated in Jones v. Opelika, supra, 316 U.S. at page 597, 62 S.Ct. at page 1239, 141 A.L.R. 514, that when a religious sect uses 'ordinary commercial methods of sales of articles to raise propaganda funds', it is proper for the state to charge 'reasonable fees for the privilege of canvassing'. Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital. As we stated only the other day in Jamison v. Texas, [318 U.S. 413](#), 63 S.Ct. 669, 672, 87 L. Ed. --, 'The state can prohibit the use of the street for [\[319 U.S. 105, 111\]](#) the distribution of purely commercial leaflets, even though such leaflets may have 'a civil appeal, or a moral platitude' appended. Valentine v. Chrestensen, [316 U.S. 52, 55](#), 62 S.Ct. 920, 922. **They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes.'** But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. As we have said, the problem of drawing

the line between a purely commercial activity and a religious one will at times be difficult. On this record it plainly cannot be said that petitioners were engaged in a commercial rather than a religious venture. It is a distortion of the facts of record to describe their activities as the occupation of selling books and pamphlets. And the Pennsylvania court did not rest the judgments of conviction on that basis, though it did find [319 U.S. 105, 112] that petitioners 'sold' the literature. The Supreme Court of Iowa in *State v. Mead*, 230 Iowa 1217, 300 N.W. 523, 524, described the selling activities of members of this same sect as 'merely incidental and collateral' to their 'main object which was to preach and publicize the doctrines of their order.' And see *State v. Meredith*, 197 S.C. 351, 15 S.E. 2d 678; *People v. Barber*, 289 N.Y. 378, 385-386, 46 N.E.2d 329. That accurately summarizes the present record.

We do not mean to say that religious groups and the press are free from all financial burdens of government. See *Grosjean v. American Press Co.*, [297 U.S. 233, 250](#), 56 S.Ct. 444, 449. We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed by the City of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. [The power to tax the exercise of a privilege is the power to control or suppress its enjoyment.](#) *Magnano Co. v. Hamilton*, [292 U.S. 40, 44](#), 45 S., 54 S.Ct. 599, 601, and cases cited. Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation.

It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant [319 U.S. 105, 113] if it does not do so. But that is to disregard the nature of this tax. **It is a license tax – a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the federal constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce** (*McGoldrick v. Berwind-White Co.*, [309 U.S. 33](#), 56-58, 60 S.Ct. 388, 397, 398, 128 A.L.R. 876), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory. *Id.*, 309 U.S. at page 47, 60 S.Ct. at page 392, 128 A.L.R. 876 and cases cited. A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. **The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down.** *Lovell v. Griffin*, [303 U.S. 444](#), 58 S.Ct. 666;

Schneider v. State, supra; Cantwell v. Connecticut, 310 U.S. 296, 306, 60 S.Ct. 900, 904, 128 A.L.R. 1352; Largent v. Texas, 318 U.S. 418, 63 S.Ct. 667, 87 L.Ed. --; Jamison v. Texas, supra. It was for that reason that the dissenting opinions in Jones v. Opelika, supra, stressed the nature of this type of tax. 316 U.S. at pages 607-609, 620, 623, 62 S.Ct. at pages 1243, 1244, 1250, 1251, 141 A.L.R. 514. In that case, as in the present ones, we have something very different from a registration system under which those going from house to house are required to give their names, addresses and other marks of identification to the authorities. In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee [319 U.S. 105, 114] imposed as a regulatory measure to defray the expenses of policing the activities in question.^[8] It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax. As stated by the Supreme Court of Illinois in a case involving this same sect and an ordinance similar to the present one, a person cannot be compelled 'to purchase, through a license fee or a license tax, the privilege freely granted by the constitution.'^[9] Blue Island v. Kozul, 379 Ill. 511, 519, 41 N.E.2d 515, 519. So it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. **On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment.**

The taxes imposed by this ordinance can hardly help but be as severe and telling in their impact on the freedom [319 U.S. 105, 115] of the press and religion as the 'taxes on knowledge' at which the First Amendment was partly aimed. Grosjean v. American Press Co., supra, 297 U.S. at pages 244-249, 56 S.Ct. at pages 446-449. They may indeed operate even more subtly. Itinerant evangelists moving throughout a state or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the suppression of religious minorities will have been found. This method of disseminating religious beliefs can be crushed and closed out by the sheer weight of the toll or tribute which is exacted town by town, village by village. The spread of religious ideas through personal visitations by the literature ministry of numerous religious groups would be stopped.

The fact that the ordinance is 'nondiscriminatory' is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position.

It is claimed, however, that the ultimate question in determining the constitutionality of this license tax is whether the state has given something for which it can ask a return. That principle has wide applicability. *State Tax Commission v. Aldrich*, [316 U.S. 174](#), 62 S.Ct. 1008, 139 A.L.R. 1436, and cases cited. But it is quite irrelevant here. This tax is not a charge for the enjoyment of a privilege or benefit bestowed by the state. **The privilege in question exists apart from state authority. It is guaranteed the people by the federal constitution.**

Considerable emphasis is placed on the kind of literature which petitioners were distributing – its provocative, [\[319 U.S. 105, 116\]](#) abusive, and ill-mannered character and the assault which it makes on our established churches and the cherished faiths of many of us. See *Douglas v. City of Jeannette*, [319 U.S. 157](#), 63 S.Ct. 877, 87 L.Ed. --, concurring opinion, decided this day. But those considerations are no justification for the license tax which the ordinance imposes. **Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights.**

Jehovah's Witnesses are not 'above the law'. But the present ordinance is not directed to the problems with which the police power of the state is free to deal. It does not cover, and petitioners are not charged with, breaches of the peace. They are pursuing their solicitations peacefully and quietly. Petitioners, moreover, are not charged with or prosecuted for the use of language which is obscene, abusive, or which incites retaliation. Cf. *Chaplinsky v. New Hampshire*, supra. Nor do we have here, as we did in *Cox v. New Hampshire*, supra, and *Chaplinsky v. New Hampshire*, supra, state regulation of the streets to protect and insure the safety, comfort, or convenience of the public. Furthermore, the present ordinance is not narrowly drawn to safeguard the people of the community in their homes against the evils of solicitations. See *Cantwell v. Connecticut*, supra, 310 U.S. at 306, 60 S.Ct. at page 904, 128 A.L.R. 1352. As we have said, it is not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community. And the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors. See *Cox v. New Hampshire*, [\[319 U.S. 105, 117\]](#) supra, 312 U.S. at pages 576, 577, 61 S.Ct. at pages 765, 766, 133 A.L.R. 1396. Nor can the present ordinance construed to apply only to solicitation from house to house survive if we assume that it has been.^{[\[10\]](#)} The ordinance is not narrowly drawn to prevent or control abuses or evils arising from that activity. Rather, it sets aside the residential areas as a prohibited zone, entry of which is denied petitioners unless the tax is paid. That restraint and one which is city wide in scope (*Jones v. Opelika*) are different only in degree. Each is an abridgment of freedom of press and a restraint on the free exercise of religion. They stand or fall together.

The judgment in *Jones v. Opelika* has this day been vacated. **Freed from that controlling precedent, we can restore to their high, constitutional position the liberties of itinerant evangelists who disseminate their religious beliefs and the tenets of their faith through distribution of literature.** The judgments are reversed and the causes are remanded to the Pennsylvania Superior Court for proceedings not inconsistent with this opinion.

REVERSED.

Footnotes

[1] Two religious books – *Salvation and Creation* – were sold. Others were offered in addition to the Bible. The Watch Tower Bible & Tract Society is alleged to be a non-profit charitable corporation.

[2] Petitioners paid three cents each for the pamphlets and, if they devoted only their spare time to the work, twenty cents each for the books. Those devoting full time to the work acquired the books for five cents each. There was evidence that some of the petitioners paid the difference between the sales price and the cost of the books to their local congregations which distributed the literature.

[3] Purchased along with the record from the Watch Tower Bible & Tract Society.

[4] The nature and extent of their activities throughout the world during the years 1939 and 1940 are to be found in the 1941 Yearbook of Jehovah's Witnesses, pp. 62-243.

[5] Palmer, *The Printing Press and the Gospel* (1912).

[6] White, *The Colporteur Evangelist* (1930); *Home Evangelization* (1850); Edwards, *The Romance of the Book* (1932) c. V; 12 *Biblical Repository* (1944) Art. VIII; 16 *The Sunday Magazine* (1887) pp. 43-47; 3 *Meliora* (1861) pp. 311-319; Felice, *Protestants of France* (1853) pp. 53, 513; 3 *D'Aubigne, History of The Reformation* (1849) pp. 103, 152, 436-437; *Report of Colportage in Virginia, North Carolina & South Carolina, American Tract Society* (1855). An early type of colporteur was depicted by John Greenleaf Whittier in his legendary poem, *The Vaudois Teacher*. And see, Wylie, *History of the Waldenses*.

[7] The General Conference of Seventh-Day Adventists who filed a brief *amicus curiae* on the reargument of *Jones v. Opelika* has given us the following data concerning their literature ministry: This denomination has 83 publishing houses throughout the world issuing publications in over 200 languages. Some 9,256 separate publications were issued in 1941. By printed and spoken word the Gospel is carried into 412 countries in 824 languages. 1942 Year Book, p. 287. During December 1941 a total of 1018 colporteurs operated in North America. They delivered during that month \$ 97,997.19

worth of gospel literature and for the whole year of 1941 a total of \$790,610.36 – an average per person of about \$65 per month. Some of these were students and temporary workers. Colporteurs of this denomination receive half of their collections from which they must pay their traveling and living expenses. Colporteurs are specially trained and their qualifications equal those of preachers. In the field each worker is under the supervision of a field missionary secretary to whom a weekly report is made. After fifteen years of continuous service each colporteur is entitled to the same pension as retired ministers. And see Howell, *The Great Advent Movement* (1935), pp. 72-75.

[8] The constitutional difference between such a regulatory measure and a tax on the exercise of a federal right has long been recognized. While a state may not exact a license tax for the privilege of carrying on interstate commerce (*McGoldrick v. Berwind-White Co.*, supra, 309 U.S. at pages 56-58, 60 S.Ct. at pages 397, 398, 128 A.L.R. 876) it may, for example, exact a fee to defray the cost of purely local regulations in spite of the fact that those regulations incidentally affect commerce. 'So long as they do not impede the free flow of commerce and are not made the subject of regulation by Congress, they are not forbidden.' *Clyde-Mallory Lines v. Alabama*, [296 U.S. 261, 267](#), 56 S.Ct. 194, 196, and cases cited. And see *Sough Carolina v. Barnwell Bros., Inc.*, [303 U.S. 177](#), 185-188, 625, 58 S.Ct. 510, 513-515.

[9] That is the view of most state courts which have passed on the question. *McConkey v. Fredericksburg*, 179 Va. 556, 19 S.E.2d 682; *State v. Greaves*, 112 Vt. 222, 22 A.2d 497; *People v. Banks*, 168 Misc. 515, 6 N.Y.S. 2d 41. Contra: *Cook v. Harrison*, 180 Ark. 546, 21 S.W.2d 966.

[10] The Pennsylvania Superior Court stated that the ordinance has been 'enforced' only to prevent petitioners from canvassing 'from door to door and house to house' without a license and not to prevent them from distributing their literature on the streets. 149 Pa.Super. at page 184, 27 A.2d at page 670.