

## From Jay Sekulow and Liberty, Life, and Family Publications

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The following is our constitutional rights **here in the USA** to witness our faith on the streets and other places.

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### **What laws protect my right to take the Gospel to the streets?**

When you give away Gospel tracts in public places -- streets, sidewalks and parks -- you are engaged in a form of speech and publication protected by the United States Constitution and civil rights laws. When you speak with someone about the Gospel while in a public place, you enjoy constitutional protection.

The laws of this nation and of your state, which protect other forms of speech and press, protect your rights to evangelize. As American citizens, we are protected by the United States Constitution from government interference with our right of free speech. Also, the Constitutions of every state in our country include guarantees of free speech, which are at least as protective of free speech as the American Constitution. Some state constitutions (including California and New Jersey) are more protective of speech than the First Amendment.

The First Amendment to the United States Constitution says: "Congress shall make no law . . . abridging the freedom of speech . . ." The Fourteenth Amendment says: "nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

The Supreme Court has ruled that these two parts of the Constitution severely limit the power of federal, state, and local governments to interfere with speech activities on sidewalks, streets and in parks.

### **When I have handed out Gospel literature in the past, police have stopped me and told me that soliciting is not allowed. Am I soliciting when I share the Gospel?**

No! Giving away free Gospel tracts and talking to people about salvation are not the same thing as soliciting. The Supreme Court recently decided a case involving the difference between soliciting and leafletting. In the *Kokinda* case, the Supreme Court permitted the postal service to enforce a rule against asking (soliciting) for donations on postal property. In that case, political activists were asking for donations while standing on a sidewalk leading from the post office building to the post office parking lot.

However, the court suggested that it would reject a rule that banned free distribution of literature on such properties. Discussing the difference, the Court said,

As residents of metropolitan areas know from daily experience, confrontation by a person asking for money disrupts passage and is more intrusive and intimidating than an encounter with a person giving out information. One need not ponder the contents of a leaflet or pamphlet in order mechanically to take it out of someone's hand, but one must listen, comprehend, decide and act in order to respond to a solicitation. [FN1]

In the *ISKCON, Inc. v. Lee* and *Lee v. ISKCON, Inc* cases, the Supreme Court considered a restriction on leafletting and another restriction on solicitation of donations in airport terminals operated by the Port Authority of New York and New Jersey. The Court concluded that, despite the fact that the airport terminals were nonpublic forums, a regulation barring the distribution of free literature in the terminals was unreasonable and unconstitutional. The Court also held that solicitation is separate from literature distribution and can thereby be banned, even though literature distribution cannot be banned.

ISKCON together with *Kokinda* reinforce the concept that solicitation and the distribution of literature are separate. While a city official may, in some instances, not allow solicitation, such a regulation may not be broadened to include literature distribution.

As long as you are giving away your literature for free, and you aren't panhandling for donations, you are engaging in the most protected form of speech. That does not mean that you will never have problems. Although it is often just an excuse for stopping street evangelism, this is one of the objections to leafletting we hear about most frequently. It often takes a strongly worded letter to attorneys for the city or county involved to resolve the problem.

### **Where can I go to hand out Gospel tracts to the public?**

You can go to any publicly owned street, sidewalk or park. In legal terms, streets, sidewalks and parks are "traditional public forums." That means that these are the places people traditionally relate to public speeches or leafletting; we are accustomed to the presence of newspaper boxes and paperboys on public sidewalks; we expect the candidates in an upcoming election to hold their rallies at the park; and we assume that when some group is unhappy about something they are likely to march down a nearby street. None of these activities surprise us. Why? Because streets, sidewalks and parks are traditionally connected to our history and experience of free speech activities.

Sometimes a city official will get confused about these "traditional public forums." For example, in *Frisby v. Schultz* (487 U.S. 474) the Supreme Court rejected a Wisconsin city's argument that the streets and sidewalks of a residential area were not the sort of "traditional public forums" that the Court had held were generally open to free speech and activities. In that case, the Court showed that it was no longer acceptable for governments to make such arguments because, in the Court's view, a street is a street. The Court noted that the kinds of regulations that would be permissible varied with the nature of the streets at issue. For example, a rule against parades between sunset and

sunrise on residential streets serves a valid purpose of protecting the peace of a neighborhood during a time when most residents are resting. A rule against a noisy activity on a hospital street or on a street near a school during school hours are other examples of reasonable rules.

You are not limited to streets, parks and sidewalks for tract distribution. Courts have found many other places to be appropriate. Airport terminals and bus and train stations have all been found by courts to be appropriate locations for leafletting. The walkways and sidewalks surrounding government-owned coliseums and stadiums are also appropriate. Many tourist attractions around the country are appropriate locations, as well. For example, the walkways and paths surrounding the Washington Monument and the Vietnam Veterans Memorial are protected.

**When witnessing, sometimes I am on a sidewalk in front of a business. I have had police officers tell me that I must move away from a business or that I must keep moving or I will be "loitering." Is this right?**

No! "Loitering" means that you have no legitimate purpose or business for being in a certain place. But your evangelism activities are a legitimate purpose for standing on a sidewalk. Of course, if you try standing in the middle of the street, you may run into a different problem. (But that problem is obstructing the flow of traffic, not "loitering.") The loitering charge, when made against a street evangelist who is actively preaching the Gospel, is invalid.

Of course, you don't have the right to barricade a sidewalk, allowing only those who will take a tract to pass. Your right to use the sidewalks, streets and parks is not a license to make them unusable for others. Besides, how effective will your preaching be if you anger those around you by treating them rudely or blocking their way?

**I don't live in the town where I want to hand out Gospel tracts and preach on the streets. Police tell me that I don't have the same rights when visiting a town or state away from home. Is the right?**

You are not limited to the streets, sidewalks and parks in your town. Many cases which we have brought involve visitors from other towns or other states. The constitutional rule is that state and local governments cannot treat visitors from out of town or another state differently than local residents.

**I want to get started witnessing to the Good News of the Gospel. What should I do?**

First, devote time to prayer and prayerful preparation.

Next, select a target. You may choose some particular place because of the opportunity to reach many people -- outside a sports stadium or near an historic monument. You may have a target group in mind. For example, if your burden is for young people, you will want to select locations where young people pass by or gather.

If the location you choose is not a nice, simple sidewalk location, you should speak to the appropriate authority to discover what rules have been adopted to govern your activities. (This does not mean that you must always accept, like the Ten Commandments, a rule barring leafletting.) Check with a county clerk, the police department, the security office at the stadium or similar offices. This will let you know what to expect when you witness.

Of course, if you are in a public place and are stopped from distributing free Gospel literature, do not assume that it was correct for you to be stopped. Too many Supreme Court cases have been decided against governments on these matters to assume that government is always right. Many seemingly hopeless cases in which leafletters ultimately fight will cause many government units to change policies.

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### **Lamb's Chapel and the Use of Public Facilities**

The victory obtained in the Lamb's Chapel case marked an important turning point for Christians obtaining access to the marketplace of ideas. In a unanimous decision, the Court held that religious organizations confronting contemporary issues from a religious perspective cannot be excluded from access to government property available to other groups. No longer can Christians be treated as second-class citizens.

#### **What is the Lamb's Chapel case?**

The facts in the Lamb's Chapel case were straightforward. An evangelical church desired to rent a school facility for an evening showing of a film series produced by Dr. James Dobson's Focus on the Family ministry. The film series, entitled "Turn Your Heart Toward Home," dealt with contemporary family issues from a biblical perspective. The church's request for use was denied by school administrators because it was "church related." Although the school facilities were available to community groups for social, civic, and recreational purposes, the rules and regulations specifically prohibited any religious use. The Supreme Court ruled against this prohibition, stating that the religious exclusion was unconstitutional.

#### **What is the impact of the Lamb's Chapel case?**

In many cities and counties throughout the United States, local school facilities are the town halls of the community. Access to these town halls is essential for Christians who want to have issues addressed from their perspective. Although many in a community may not feel comfortable going to a church to hear a presentation on a contemporary issue, people do feel at ease attending meetings held in community facilities such as school auditoriums and civic centers. The impact of the Lamb's Chapel case is significant. Every government agency, from school boards to city councils, that has access policies in place for its properties must now allow Christians to utilize those facilities as well. We must take advantage of this new openness in the marketplace the Lamb's Chapel case has created.

### **Does Lamb's Chapel only apply to churches?**

No. Although the particular case before the Supreme Court involved the Lamb's Chapel church, now other community groups that want to address issues from a Christian perspective also have access to government facilities that are open to the public for use. For instance, in Mobile, Alabama, an evangelistic ministry known as "Strike Force International" is now entitled to have an evangelistic crusade at the public school in Alabama because of an access policy that had to be modified in light of Lamb's Chapel. Evangelistic events can now take place in school facilities in the evening as well as in city halls or other government facilities open to general use.

### **Does Lamb's Chapel only apply to school facilities?**

No. The decision in Lamb's Chapel applies to any government facility, whether a town hall, civic center, or city hall, that is open to the general public for social, civic, or recreational uses. We have found that most cities across America have access policies to local government buildings for community use. We have also found that most of these cities specifically prohibit religious groups from utilizing these facilities. This religious exclusion is unconstitutional in light of the Lamb's Chapel decision.

### **What topics can be discussed when using government facilities?**

In Lamb's Chapel, the Supreme Court specifically noted that the purpose of the James Dobson film series was to address contemporary family issues from a Christian perspective. But the decision goes much further. Family issues, baccalaureate services for students, evangelistic events, and discussion of contemporary Christian issues can now take place in government facilities because of the decision in Lamb's Chapel. No longer can the excuse of church/state separation be utilized to prohibit Christians from obtaining access to this new marketplace for the presentation of ideas.

### **What about policies that still prohibit use of government facilities by Christians?**

It is time for Christians to go on the offensive and have our voices heard. This will require utilizing the rights that we just obtained from the Supreme Court decision. Unfortunately, many cities are slow to change, and there are still hundreds of policies on the books throughout the United States which specifically prohibit religious groups from utilizing government facilities that are open to the community at large. At The American Center for Law and Justice, we have undertaken a project to have these laws removed and modified so they conform with Lamb's Chapel.

The procedure to gain access to a public facility is straightforward. First, if you decide you are going to utilize facilities, you must fill out an application form that is available at the seat of the local city government. Be forthright in the application, and state specifically what purpose you are going to utilize the facilities for. If the policy still prohibits religious uses, ask the city administrators if they are familiar with the Lamb's Chapel case. If they are not, we would be happy to send a letter on your behalf to clarify

for the city government what the decision in the Supreme Court means. If you continue to have problems gaining access, we have sent demand letters -- letters which state the law and inform the city officials what they must do to comply with the law -- to city officials in order to obtain access. Generally, the demand letter resolves the situation. However, if we find that the demand letter is being ignored and your rights are still being denied, we can then proceed immediately to federal court and obtain an injunction, which will require the city officials to allow you to utilize the facilities under their control.

We have already seen the fruit from the decision in Lamb's Chapel. As I said, in Alabama the Lamb's Chapel decision made it possible for an evangelistic event for teenagers to proceed in a local school facility. In Wisconsin, an organization that wanted to present a six-part series on the Christian heritage of our nation was also allowed to meet after the Lamb's Chapel decisions came down. By utilizing government facilities and inviting the public to attend meetings where our view is presented, we gain access to an important arena and marketplace where ideas compete for minds and hearts. This is where we need to be, carrying Christianity into the fray where it can go head-to-head with other world views and demonstrate its intellectual and practical superiority.

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### **Picketing and Demonstrating**

The following questions address the right to demonstrate in the specific context of the abortion industry. Other citizen-activist groups can apply the principles discussed (for example, as they consider expressing their opposition to the sales and distribution of pornographic materials). A prominent example of such citizen outcry outside the abortion context was the national wave of public protests against the theatrical release of the movie "The Last Temptation of Christ."

The city where we live has an abortion business in it. Our local right-to-life group has developed a public information campaign to make our community aware of the nature of that business. As part of our campaign, we will be going to the public streets and sidewalks near the abortion business to express our opposition to abortion and to share life-giving alternatives to abortion with the business patrons. We have a few questions about this plan:

### **May we express our opposition to abortion and offer alternatives to it by going personally to the public areas around the business's locale?**

Yes. You may express your views about abortion while in the vicinity of abortion businesses. There are some important points to bear in mind when engaged in such activities.

Remember that there is a legal difference between the streets, sidewalks and parks of a community, and the private property owned by another citizen. A key difference is that streets, sidewalks and parks, including those located near abortion businesses, have historically been a place where citizens gather to discuss and debate issues of public

importance. The Supreme Court has said that streets, sidewalks and parks "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." [FN3] So, to stay within the bounds of the law, your activities must occur on the publicly owned streets, sidewalks and parks.

Bear in mind that your city council or county commission can regulate, in certain narrow and specific ways, the time, place, and manner of such activities. For example, a city may enforce a rule against obstructing passage on a public sidewalk or against excessive noise. The Supreme Court has said that the right to engage in expressive activities in public places is not an absolute right and that it "must be exercised in . . . peace and good order." [FN4] Because rights to freedom of speech, press, and assembly are supremely precious, even such laws as those barring obstructions or excessive noise are closely reviewed by courts to ensure that "in the guise of regulation" the government does not seek to "abridge or deny" such rights. [FN5]

**We are planning a march around the city block where the abortion business is located. We expect more than 100 participants. When we spoke to the city manager's office, we were told that we had to apply for a permit to engage in this activity. Do we have to obtain a permit?**

Perhaps. As noted above, cities can impose reasonable regulations of time, place and manner on speech activities. The Supreme Court has held that the requirement of a permit for a parade or march can be just such a reasonable regulation of speech. At the same time, the Supreme Court has held that governments which impose a requirement of prior permission have imposed a "prior restraint" on speech. Cities that impose such "prior restraints" bear a heavy burden to justify their use. For example, in one recent case, the Supreme Court struck down a parade permit rule because the rule allowed the city to impose greater costs on marches by persons expressing unpopular views. [FN6]

You should check with the police department or the city manager's office for information on, and a copy of, any ordinance affecting the right to conduct a demonstration or march. If the requirements set out in such ordinances seem burdensome or inappropriate, seek out legal counsel on whether the ordinance is constitutional.

**We also plan to distribute written materials on abortion. We have been told that we are not allowed to solicit in this manner and that we cannot distribute leaflets because of the litter that results. Do we have the right to distribute literature while we are on the public streets and sidewalks?**

Yes. You have the right, in almost every circumstance conceivable, to distribute written materials which express your views on any issue, including abortion. Some misguided bureaucrats may presume that, by calling the distribution of pamphlets "solicitation," they will be able to undermine your right to leaflet. But the Supreme Court has treated leafletting as an activity distinct from solicitation. Leafletting is a well-established model of protected expression. It is a constitutional axiom that distributing written materials in

public is a protected exercise of the rights of freedom of speech and press. [FN7] The Supreme court has said that, unlike other activities such as oral solicitations for money or business, the distribution is an unobtrusive form of communication. [FN8]

If you have experienced evangelistic or political literature distribution, then you know, as do thousands of "residents of metropolitan areas[, that] confrontation by a person asking for money disrupts passage and is more intrusive and intimidating than an encounter with a person giving out information. [FN9] Leafletting is unobtrusive because the recipient "need not ponder the contents of a leaflet or pamphlet in order mechanically to take it out of someone's hand . . . ." [FN10]

Nor may your city justifiably treat leafletting as a crime. Long ago, the Supreme Court declared unconstitutional a city ordinance which prohibited leafletting in order to prevent the problems associated with litter. [FN11] A city's desire to keep the streets clean and the sewers unclogged, the Supreme Court has said, "is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it." [FN12] Rather than silencing those who are exercising the constitutional rights to freedom of speech and of the press, your city must address its fears about litter by punishing those who litter, not those who leaflet.

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### **Organizing National Days of Prayer Rallies**

On the National Day of Prayer, I would like to coordinate a public prayer service on the plaza in front of the county courthouse and government center. I know this area has been used for arts festivals, craft fairs, and political campaign events, among other things. When I requested to use the plaza for an hour-long prayer service, my request was denied. I was told that "separation of church and state" would be violated if prayer were permitted on the county-owned plaza. I have some questions:

### **Will I violate the Establishment Clause of the Constitution if I sponsor a prayer service on the National Day of Prayer on the courthouse plaza?**

No. Unless you are the government or its representative, you cannot violate the Establishment Clause. On its face, the Establishment Clause only restricts the United States Congress from making laws "respecting an Establishment of Religion." The Supreme Court has interpreted another part of the Constitution, the Fourteenth Amendment, to impose the same limitations on state governments which the Establishment Clause imposes on Congress. But the Supreme Court has never held, nor could it sensibly hold, that private persons can violate the Establishment Clause.

Moreover, when your county government bars you from using a public place, such as the courthouse plaza, because of the religious nature of your planned activity, your county is violating the Establishment Clause by showing hostility toward religion. If the plaza is open for public use and access, and if the plaza has been used for such things as art

festivals, craft fairs, and political campaign events, then the county is barred from discriminating against your event because of religion.

**In other communities, there isn't an open public space appropriate for the prayer service. Some of these towns have meeting rooms in public libraries or in government office buildings. Can we have access to such public meeting rooms?**

Yes. In June 1993, the Supreme Court held that a New York school district violated the right to freedom of speech of a church and a pastor when it refused their request to use a school auditorium to publicly show a film series on contemporary family issues. [FN13] The school district directly stated that it was the religious nature of the planned activity that led to the denial of permission. The school district argued that its denial of a religious use of the public facilities under its control was necessary to avoid a violation of the Establishment Clause. The Supreme Court held that the school district had engaged in prohibited viewpoint discrimination. Based on the Supreme Court's holding, and assuming in your case that such public meeting rooms are open to citizen use for the purpose of discussing public issues of importance, there is no justifiable basis for excluding an event because of its religious nature.

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### **Rights Regarding Public Nativity Scenes**

So many of the activities during the Christmas season have become completely secularized. Our church would like to help "Keep Christ in Christmas" by erecting a nativity scene in a popular park here in town. Here are some questions we have about this.

**Didn't the Supreme Court rule a few years ago that such nativity displays are unconstitutional?**

No. The Supreme Court has never said that private citizens can be barred from setting up a nativity display, or any other display of a religious nature, in a public park. In the only two cases decided by the Supreme Court, the nativity displays were either owned or maintained and promoted by the government [FN14] In one case, the nativity display, which was part of a larger display with a generally secular theme, was held not to violate the Establishment Clause. [FN15] In the other case, the nativity display, which stood alone, was held to be a violation of the Establishment Clause. [FN16]

**Can the parks department compel us to include such things as snowmen, fairies, Santa Clauses, etc., in order to emphasize secular aspects of the holiday? Can they bar us from including such wholly religious aspects as a sign saying "Keep Christ in Christmas?" Can they prohibit us from singing traditional religious Christmas music? Can they compel us to sing secular songs?**

No. No. No. No. In order to understand the legal issues involved, think of your nativity display as a message to the public. By setting up the creche, you are telling your fellow citizens to "Keep Christ in Christmas." By singing traditional, religious carols, you are showing the public how to "Keep Christ in Christmas."

Viewed in this way, it becomes clear that it is inappropriate and unconstitutional for a government entity to meddle with your message. Fifty years ago, the United States Supreme Court held that a religious adherent could not be compelled to participate in a flag salute if such participation would violate rights of conscience. [FN17] Compelling a flag salute in such circumstances would be a presumption that a government official could prescribe orthodoxy of opinion. But, as the Supreme Court interpreted the Constitution, such a presumption was unconstitutional. The Supreme Court said, "[i]f there is any fixed star in our constitutional constellation, it is that no official high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." [FN18] In like manner, a parks authority official cannot determine for you what kind of expression is appropriate in your private display.

### **Are there any new developments in the law concerning public displays of nativity scenes?**

Yes, it is constitutional when churches, community groups, civic organizations, or private individuals privately display nativity scenes, or other religious symbols, on property which is considered to be open for the use of the public, such as public squares where other displays are permitted.

The Supreme Court recently decided a case that helps clarify the law regarding nativity scenes and other public property displays of religious symbols. [FN19] The Court relied heavily on its decisions in *Lamb's Chapel* and *Mergens* when it held that the Ku Klux Klan had a right to display a cross on public property where other religious and secular symbols were being displayed.

Bolstering the protection of religious speech, the Court stated that "[o]ur precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression." [FN20] The need to reinforce the existing Constitutional protection against hostility, that is often aimed at religious speech, was expressed by the Court when it stated that "[i]ndeed, in Anglo-American history . . . government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince." [FN21] The Court's logic was heavily influenced by the fact that the government was not endorsing the displays because the area was open to all religious and secular symbols representing private expression. [FN22]

Perhaps the most telling comment from the Court discusses the fact that a contrary view "exiles private religious speech to a realm of less-protected expression heretofore inhabited only by sexually explicit displays and commercial speech. It will be a sad day

when this Court casts piety in with pornography, and finds the First Amendment more hospitable to private expletives, than to private prayers. This would be merely bizarre were religious speech simply as protected by the Constitution as other forms of private speech; but it is outright perverse when one considers that private religious expression receives preferential treatment under the Free Exercise Clause. It is no answer to say that the Establishment Clause tempers religious speech. By its terms that Clause applies only to the words and acts of government. It was never meant, and has never been read by this court, to serve as an impediment to purely private religious speech connected to the State only through its occurrence in a public forum." [FN23] Thus, it is unlawful for religious speech or displays to be excluded from public property solely on the basis of the religious nature of that speech or display.

The Plurality concluded with a quick summary stating that "[r]eligious expression cannot violate the Establishment Clause, where it (1) is purely private and (2) occurs in a traditional or designated public forum, publicly announced and open to all on equal terms." [FN24] Therefore, it is constitutional when churches, community groups, civic organizations, or private individuals privately display nativity scenes or other religious symbols on property which is considered to be open for the use of the public, such as public squares where other displays are permitted.

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### **Removing Pornography From Your Community**

Communities have the right to regulate pornography according to local standards. That means they can restrict what is sold, where it is sold, and who is able to buy it. They can even prohibit pornography altogether.

Finding out who is carrying pornography is an important step toward eradicating it. Targeting convenience stores selling adult magazines, video stores renting adult movies, gift stores selling pornographic novelty items, and any other merchant that is selling sexually explicit material can be an effective way of eliminating pornography from a community. What I mean by targeting is the exercise of our First Amendment freedom of speech and freedom of assembly rights so our voices are heard.

Distributing literature, peaceful protests and picketing in objection to the materials sold in the stores are proven techniques for removing pornography. Another way of removing pornography is to stand with a camera in front of stores selling explicit pornographic materials. Many people who frequent these stores do not want their presence documented. You must understand that these particular methods could lead to explosive situations, so never protest or picket alone.

Many groups have organized boycotts through their local churches aimed at merchants selling pornographic materials. Some community activists have gone directly to the city attorney and expressed concern about pornography in the community. City attorneys have several options. First, many cities have ordinances restricting pornography and have simply failed to enforce them. By confronting city attorneys you may find that tough

ordinances are already on the books and can be enforced to prohibit unlawful activity.. Second, if your community lacks ordinances concerning pornography, talk with city council members about drafting appropriate laws. Other cities have done this and have been very successful in regulating and eliminating pornography. Finally, stores that sell pornographic materials can be zoned into certain areas so the materials are inaccessible to children.

National boycotts have also been effective against convenience store chains that stock soft-core pornographic magazines and against companies that advertise objectionable magazines. Do not simply refrain from patronizing these stores and manufacturers; but actually write to them. Let them know that you cannot, in good conscience, spend your money at their outlets unless they break ties with the pornography they are selling.

National boycotts have been effective tools with network television also. Let the networks know, either by letter or phone call, which shows offend you. Those who control what is being seen on the television screen may not be concerned at all about your morals, but they need you and thousands like you as viewers if they expect to keep ratings high enough to draw sufficient advertising dollars.

Those who have thrown off moral restraint have misused the First Amendment's protection of free speech to justify the production and sale of even the most vile and violent pornography to anyone who wants it -- anywhere and at any time. But we do not have to bend to their demands. We can take action to eradicate pornography from our communities. The fight against pornography is really a community fight. By exercising your rights within the guidelines of the First Amendment, your community could be one of those that rises up and halts the flow of filth inside its borders.

### **What can I do to help stop pornography in my community?**

There are several ways in which you can work to remove pornography from your community. One example of how a community has aggressively fought against pornography is of a local church located in the downtown business district of Rome, Georgia. The First Presbyterian Church of Rome successfully intervened in a battle over a city ordinance which restricts the location of adult entertainment establishments, such as nude dance clubs. The local ordinance prohibits these establishments from opening within 500 feet of churches, schools, and residences. A man hoping to start a nude dance club challenged the ordinance by attempting to start his nude dancing club less than 200 feet from the Church. [FN25] The Church garnered much local support and by intervening made itself a defendant in the suit in order to protect the morals of the community from being debased by such activities as a nude dance club. Rather than staying in the background, the First Presbyterian Church joined the battle on the front lines.

After several months of legal battles, the owner of the proposed nude dance club dismissed his lawsuit against the City of Rome and the First Presbyterian Church. One of the reasons he gave for dropping his lawsuit was that he was not willing to fight against a

local church. The presence of the church was central in the decision of the nude dance club owner. Churches across the country should take notice of the power they have when they stand up for what they believe.

Another way to help stop pornography in your community is to work with local city or county commissioners to enact ordinances that restrict the options given to people setting up sexually oriented businesses, such as nude dance clubs or X-rated theaters.

In order to enact such an ordinance government officials must follow several important procedures. First, it must be remembered that currently a municipality can only limit the areas where this type of speech can occur. [FN26] We cannot enact ordinances that leave no place for these activities, no matter how offensive we may find them. There are several areas of the community that can be kept closed to sexually oriented businesses. Churches, schools, public parks, and residential areas can be set apart in several ways. A local ordinance can establish what is called "set back" provisions. These provisions state that sexually oriented businesses cannot locate within 1,000 feet of a church, a school, a public park, or a residence. A local ordinance could set up specific business zones in which to locate any and all of the sexually oriented businesses.

A city must evaluate the secondary effects of sexually oriented businesses on the community. This does not require that municipalities conduct their own studies. It is enough for municipalities to rely on studies from other cities, as long as those studies are reasonably relied on by the officials enacting the ordinance. [FN27] We currently have a study being prepared which will enable smaller communities to evaluate the secondary effects of sexually oriented businesses.

When these steps are followed, municipalities can enact ordinances to, at the very least, control where these sexually oriented businesses are located. In addition to the above ideas it is possible for municipalities to control the sale of alcohol at sexually oriented businesses. This can be done by enacting ordinances that limit or control the sale of alcohol at sexually oriented businesses such as nude dance clubs.

#### ENDNOTES

1. *United States v. Kokinda*, 497 U.S. 720 (1990).
2. See *Lamb's Chapel v. Center Moriches Union Free School District*, 113 S.Ct. 2141 (1993).
3. *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515 (1939).
4. *Id.*, at 516.
5. *Id.*
6. *Forsythe County, Georgia v. Nationalist Movement*, 112 S.Ct. 2395 (1992), 505 U.S. 123.
7. See, e.g., *Lovell v. City of Griffin*, 303 U.S. 444 (1938).
8. *Kokinda*, 497 U.S. 720, 733-734 (1990).
9. *Id.*, at 734.
10. *Id.*
11. *Schneider v. State*, 308 U.S. 147 (1939).
12. *Id.*, at 162.
13. *Lamb's Chapel*, 113 S.Ct. 2141 (1993), 508 U.S. 384.
14. *Lynch v. Donnelly*, 465 U.S. 668 (1984); *Allegheny County v. American Civil Liberties Union, Greater*

*Pittsburgh Chapter*, 492 U.S. 573 (1989).

15. *Lynch*.

16. *Allegheny County*.

17. *West Virginia v. Barnette*, 319 U.S. 624 (1943).

18. *Id.*, at 642.

19. *Capitol Square Review and Advisory Board v. Pinette*, \_\_\_\_ U.S. \_\_\_\_, 115 S.Ct. 2440, 132 L.Ed.2d 650 (1995).

20. *Id.*, at 2446.

21. *Id.*

22. *Id.*, at 2447.

23. *Id.*, at 2449.

24. *Id.*, at 2450.

25. *The Club Southern Burlesque, Inc. v. The City of Rome, Georgia and the First Presbyterian Church of Rome, Georgia*, Case # 95-CV-2690-3.

26. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 46 (1986).

27. *Id.*, at 51-52.