

KRISHNAS CHALLENGE PARK SERVICE REGS
BANNING SOLICITATION & SALES ON MALL

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The December 1993 NRPA Law Review column entitled "Park Service Noise Regulation Unconstitutionally Applied to War Protest," described a recent federal court decision of *United States v. Doe*, 968 F.2d 86 (D.C.Cir. 1992). In that particular case, a federal regulation which prohibited playing a musical instrument at a higher than prescribed decibel level in a national park" was found unconstitutional as applied to an anti-war demonstration. Similarly, the ISKON decision described herein, provides another recent example of park regulations which infringed upon the exercise First Amendment free speech rights.

As illustrated by the ISKON opinion described below, any governmental regulation of free speech and expressive conduct in public parks must be limited to "narrowly tailored" time, place, and manner restrictions. Specifically, the courts, in determining the constitutionality of a particular regulation, will inquire "whether the restriction burdens more speech than is necessary to further the government's legitimate interests." In addition, the court will consider whether the challenged regulation is content-neutral and whether governmental restrictions on free speech activities "leave open alternative channels for communication of the information."

Since public parks are considered "quintessential" public forums in which to exercise free speech rights guaranteed by the First Amendment, in which "the government's ability to permissibly restrict expressive conduct there is very limited." In this particular instance, the challenged park regulations allowed certain sales and solicitations in connection with the expression of political views, but similar accommodation was denied to plaintiffs' sale of religious beads and music.

HEY MR. TAMBOURINE MAN

In the case of *ISKON of Potomac, INC. v. Ridenour*, 830 F.Supp. 1 (D.C.Dist. 1993), plaintiff International Society of Krishna Consciousness (ISKON) and one of its members (Krishnas) brought an action for an injunction "to permit certain activities on the Mall in Washington, D.C., notwithstanding regulations issued by the National Park Service." The facts of the case were as follows:

Krishna Consciousness is a religion within the theological umbrella of Bhakti Hinduism. Plaintiffs obtained a permit from the Park Service in May 1989 to hold a so-called Krishnafest program on the Mall across from the Air and Space Museum. This program, which may last as long as twenty-one days, includes the public singing of Krishna prayers, the distribution and sale of audiocassettes and prayer beads, and the solicitation of contributions for the support of Krishna activities.

According to the Krishnas, the chanting and prayers and the interactions involved in a request for donations uniquely serve the function of helping the practitioners to become God-conscious. The Krishnas maintain that Krishna beads are similar in function to the rosary beads of Roman Catholics. Hindu music is an integral part of the Hindu religion.

Regulations issued by the Park Service absolutely prohibit "soliciting or demanding gifts, money, goods or services." 36 C.F.R. § 7.96(h) (1991). Another regulation allows the sale or distribution of newspapers, leaflets, and pamphlets, 36 C.F.R. § 7.96(j) (1991), and, by a Park Service "enforcement guideline," that of bumper stickers buttons, posters, and T-shirts displaying messages directly related to a particular cause and activity. However, the guideline does not permit the sale or distribution of jewelry, records, and tapes.

The permit was routinely renewed until March 1991 when the plaintiffs were informed that Park Service regulations forbade the dissemination of audiocassette tapes and jewelry, including prayer beads. The Park Service also prohibits solicitations. 36 C.F.R. § 7.96(h) and (j) (1991). Since the Krishna's activities were in violation of these restrictions, their permit to engage in the program on the Mall was revoked. Following an administrative appeal, the revocation was sustained.

The Park Service defended its regulatory action on the basis that "the Mall should be protected from the disruptive activities sought to be engaged in by the Krishnas." Specifically, the Park Service argued that the challenged regulations were rationally related to the following legitimate governmental interests:

(1) that the parks should be preserved in an attractive and intact condition, readily available to the people who wish to enjoy them; (2) that the aesthetic aspects of the Mall and other Park Service property in the Washington area would be undermined by the Krishnas' solicitation; and (3) that visitors to the Mall and other parks must be protected from being harassed or bothered. In short, the Park Service considers solicitation by the Krishnas a nuisance that would be a blight on the beautiful park property and might be resented by visitors to the Air and Space Museum and its environs, as well as to other parks in the National Capital area.

However, in the opinion of the federal district court, "none of these purposes presents a valid basis for the denial of the requested activities of the Krishnas."

It does not detract in any way from the magnificent Air and Space Museum and the beautiful, largely pristine parks in Washington to conclude that, as between the values they embody, and the protection of the First Amendment to the Constitution, the latter cannot validly be relegated by government to second place. Indeed, it is clear that the blunt Park Service prohibition is in violation of settled law...

[T]he use of parks for public assembly and airing of opinions is historic in our democratic society, and one of its cardinal values. Public assembly for First Amendment purposes is surely a "park use" as any tourist or recreational activity... Similarly, the public expression of ideas may not be prohibited merely because the ideas themselves are offensive to some of their hearers...

There is no question but that the Mall area in Washington across from the Air and Space Museum is a public forum for protected speech. In fact, it is difficult to imagine an area more clearly established as a public forum than the Mall area in the Nation's Capital. It is also clear--and the government does not seriously contest --that plaintiffs'

activities are sufficiently communicative to be protected by the First Amendment. That, of course, does not end the inquiry, for it is also established that the government may, in appropriate circumstances, place reasonable restrictions on the time, place or manner of protected speech, as long as alternative means of communication are left open.

As indicated, the dispute between the parties now essentially revolves around the request of the Krishnas for permission to distribute beads and audiotapes and to solicit voluntary donations on the Mall at the place described above, and the denial of that request by the Park Service. Interestingly, the permit was revoked not at a high level but by a Park Police sergeant.

Accordingly, the specific issues before the court were " (1) whether the ban on solicitations violates the First Amendment rights of the Krishnas, and (2) whether the prohibition on the sale by the members of the organization of beads and tapes violates the First Amendment." While noting that "solicitation is a recognized form of speech protected by the First Amendment," the court recognized that "it is not unreasonable to prohibit solicitation on the ground that it is unquestionably a particular form of speech that is disruptive of business." The court cited solicitation in a post office as an example of such prohibited activity because it impedes the normal flow of traffic" However, under the circumstances of this case, the court found such reasoning "is not dispositive in any way of the request of the Krishnas for permission to solicit in the open air on the Mall where no government business is being transacted"

[T]he government has here conceded that the National Mall is a public forum... [Unlike the Vietnam Veterans Memorial where the] tranquil, contemplative mood at the Memorial wall--perhaps awe captures it better--would be affected by the activity of any leafleters regardless of their message... No comparable mood of awe exists on the Mall near the Air and Space Museum, with its thousands of joyful tourists, its dozens of hot dog vendors, and the commotion that exists almost around the clock in the Museum's vicinity.

In so doing, the court cited the "well settled" principle of law that "charitable appeals for funds, on the street or door-to-door, involve a variety of speech interests that are within the protection of the First Amendment."

Soliciting financial support is undoubtedly subject to reasonable regulation but the latter must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues, and for the reality that without solicitation the flow of such information and advocacy would likely cease.

As noted by the court, "to pass constitutional muster," governmental regulation of free speech activity, including solicitation, must be limited to reasonable time, place, and manner restrictions which do not discriminate based upon the content of the message. Applying these principles to the facts of the case, the federal district court found that the Park Service regulations "prohibiting all solicitation" were not "content neutral and narrowly tailored" to meet legitimate governmental objectives. Further, the challenged regulations in this instance did not allow adequate "alternative channels for communication of the information." According to the court, governmental regulation as applied in this instance was unconstitutional "it singles out solicitation--the form of communication associated with the religious

activity of the Krishnas--while permitting many other forms of communication potentially as disruptive of the Mall atmosphere as the Krishna activities."

The invalidity of the Park Services' regulations is perhaps even more clearly apparent when its ban on the sale by the Krishnas of such items as religious beads and audio cassettes is considered. Hindu music is an integral part of the Hindu religion. The Park Service regards the Krishna beads as jewelry, when in fact they are similar in function to the rosary beads of Roman Catholics.

[T]he Park Service allows the sale of bumper stickers, posters, T-shirts, and buttons in the same area where it forbids the sales sought to be effected and the solicitations sought to be received by the Krishnas. It is difficult to discern any underlying, valid rationale for these distinctions, as it is impossible to conclude that the prohibitions are content-neutral and narrowly tailored.

It is not apparent what alternative channels for communication by the Krishnas the Park Service has in mind if the agency considers the National Mall opposite the Air and Space Museum to be inappropriate. In fact the government's rationale for the prohibitions--that the Park Service regulations "are intended to preserve the Mall and other parks for visitors" suggests that the government regards no parkland suitable for the Krishna's First Amendment activities. The government's attempt to equate the ban on the sale of such items as religious beads with the ban on overnight camping in Lafayette Park is far-fetched.

As a result, the federal district court concluded that the Park Service regulations "are plainly invalid as violative of the Constitution and the applicable precedents." The court, therefore, issued an order prohibiting the Park Service "from enforcing sections 7.96(h) and (j) of the Code of Federal Regulations against the Hare Krishnas for these activities... in the area of the Mall adjacent to the Air and Space Museum."