

Our Right to Distribute Literature is Guaranteed by the US Constitution

prepared by the National Office of the National Alliance

THE UNITED STATES Constitution is by definition the basic law of the land: No federal, state, county, city, or community law can contradict any of the basic principles of the Constitution. In fact, all government executives, legislators, policemen, and judges are *required* to abide by it.

Our Constitution states: "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; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

As you can see from the above quotation, the First Amendment of the US Constitution guarantees every citizen, among other things, *freedom of speech*. In regard to leafleting, the Supreme Court has interpreted this to mean that a state or municipality may not ban the distribution of leaflets on streets, sidewalks, or other public places. *Jamison v. Texas* 318 US 413 (1943) and *Marsh v. Alabama* 326 US 501 (1946).

The Supreme Court applied this rule to universities both state and private, in *Papish v. University of Missouri* 410 US 667 (1973). Furthermore, leafleting cannot be prohibited on a military base in areas of public access, according to *Flower v. U.S.* 407 US 197 (1972).

The Supreme Court has also found that door-to-door solicitations for the purpose of distributing information may not be banned regardless of the wishes of the householder to receive such information in this manner, according to *Martin v. Struthers* 319 US 141 (1943). Furthermore, a state or municipality may not tax or require any license for the distribution or sale of political or religious material door-to-door, as stated in *Opelika v. Jones* 319 US 105 (1943).

In shopping center cases, the Supreme Court has said that privately owned property may be treated as if it is publicly held where it is held open to the public; see *Amalgamated Food Employees Union v. Logan Valley Plaza* 391 US 308 (1968). In *Amalgamated*, the union was allowed to picket a business inside the shopping mall. However, a shopping center may ban leafleting *in the shopping mall walkways* as this interferes with the business of the center, as we see in *Lloyd Corp. V. Tanner* 407 US 551 (1972). As yet, there has been no case dealing specifically with the question of leafleting in the parking lot of a shopping center, but a leading legal treatise on the First Amendment says this on the subject: "The First Amendment interest should not be defeated because the property owner either disapproves of the message conveyed or simply wants to censor all speech activities. Whether outside of a freestanding store or in the common areas of a shopping center, a bare property interest does not justify the subordination of First Amendment speech rights." *Nimmer on Freedom of Speech*, Section 4.09, page 4-121.

In light of the above, we recommend that in the event of arrest while leafleting in one of the above areas, the individual arrested should file a civil suit for false imprisonment, malicious prosecution, and the intentional deprivation of constitutional rights and that the parties sued should include the municipality, the police department, the arresting officer, and the private property owner where applicable. In such a case, punitive as well as compensatory damages will be awarded.

We also recommend that those distributing our literature carry a pre-printed "rights card" containing the following text, which may be obtained in pre-printed form from the National Office.

To: Law Enforcement Officers:

My name: _____

My address: _____

My date of birth: _____

Formal Legal Notice:

1. I do not wish to answer any questions without first speaking to an attorney.

2. I do not consent to any search whatsoever; including but not limited to a search of my home, my car, my baggage, or my person.

3. I do not consent to being in a line-up or a show-up, or any display of any type.

4. I do not and will not waive any of my legal rights whatsoever.

Print out or obtain this "rights card" and fill in your name, address, and date of birth; fold and keep in your wallet. If stopped, present the card to the police, and then *make no other statements*.

What to Do if Stopped by the Police:

- Stay calm and keep your hands where the officer(s) can see them.

- Don't argue, complain, or resist arrest, even if the police are unreasonable; it will only make your situation worse.

- Hand them the "rights card" above. When questioned, say only "I have nothing to say," then *make no further statements or comments*.

- Remember anything you say can and will be used against you, even if officers have not read you your *Miranda* rights!

- Remember police badge numbers and patrol car numbers. Ask to see police identification.

- If not in custody, write down everything that happened as soon as possible.

- Keep a small audio recorder handy to record any conversations with officers; many cell telephones have recording capability.

- Try to find witnesses; get their names and telephone numbers.

- If you are injured, seek medical attention, but also get photographs of the injuries as soon as possible.

- If arrested, ask to see a lawyer immediately.

Remember These Points

1. You don't have to answer a police officer's questions, but you must show your license, registration and insurance when stopped in a car. In other situations, you can't legally be arrested for refusing to identify yourself to an officer.

2. You don't have to consent to any search of your person, your car or your house—and therefore *you should not consent*. If the police say they have a warrant, ask to see it. Still; do not consent to a search even if they have a warrant; make them rely on the warrant. Remember: Warrants can be defective.

3. You can be arrested for obstructing or interfering with police; do not do this.

4. You can ask if you are under arrest. If you are, you have a right to know, and a right to know why.

The National Office can assist your attorney with case law and precedent citations, based on earlier victories of National Alliance members over selective prosecution and unconstitutional statutes which were used in an attempt to deny us our constitutional right to distribute literature to the public.

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