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Witnessing and Leafleting within Florida's School Safety Zones

Under Section 810.0975 of the Florida Statutes, a school can designate an area within 500 feet of the school grounds as a School Safety Zone. For one hour before and after school, anyone who does not have "legitimate business" or other permission within the School Safety Zone can be charged with a misdemeanor. Persons without "legitimate business" or other permission to be in a School Safety Zone and who provide the principal or designee with a reasonable belief they will commit a crime, or who are harassing or intimidating students, may also be charged with a misdemeanor if they fail to leave the School Safety Zone when requested. Even so, the statute itself states it is not to be construed to "abridge or infringe upon" First Amendment constitutional rights of any person.

Section 810.0975 of the Florida Statutes cannot prohibit peaceful leafleting and witnessing activities on sidewalks off school property but within a School Safety Zone. To construe the statute to do so would both violate its very terms and would violate the terms of the United States Constitution. Moreover, at least one Florida Federal District Court has found two provisions of the statute to be unconstitutionally vague because the term "legitimate business" is not defined. *Gray v. Kohl*, 568 F.Supp.2d 1378 (S.D. Fla. 2008).

Under the First Amendment, a citizen has the right to distribute literature and speak freely within a traditional public forum and also has such rights within a designated, limited or nonpublic forum. Traditional public fora include public parks, streets and sidewalks. Access to traditional public fora or other similar public places "for the purpose of exercising First Amendment rights cannot constitutionally be denied broadly." *Grayned v. City of Rockford*, 408 U.S. 104, 117 (1972). Public parks, streets and sidewalks "have immemorially been held in trust for the use of the public." *Frisby v. Schultz*, 487 U.S. 474, 481 (1988) (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939)). *See also Perry Educ. Ass'n v. Perry Local Educators' Ass'n,* 460 U.S. 37 (1983). "In [these] quintessential public forums, the government may not prohibit all communicative activity." *Frisby*, 487 U.S. at 481 (quoting *Perry Educ. Ass'n*, 460 U.S. at 45). *See also Heffron v. ISKCON*, 452 U.S. 640 (1981).

While school grounds themselves are generally not considered to be public fora, *see May v. Evansville-Vanderburgh School Corp.,* 787 F.2d 1105, 1114 (7th Cir. 1986), and school administrators are given "broad discretion in supervising the visitation of the school environment by persons not associated with the school," *Texas State Teachers Association v. Garland*

Independent School District, 777 F.2d 1046, 1050-51 (5th Cir. 1985), *aff'd*, 479 U.S. 801 (1986), sidewalks are considered to be public fora, *United States v. Belsky*, 799 F.2d 1485, 1489 (11th Cir. 1986). Furthermore, the U.S. Supreme Court has noted that, in some cases, the sidewalk surrounding a public property may be considered a public forum even though the property itself is not a public forum. *United States v. Grace*, 461 U.S.171 (1983).

It is generally accepted by the courts that the sidewalk in front of a school is in fact a public forum as opposed to a designated, limited or nonpublic forum. If both members of the public as well as school children use the sidewalk, then the courts have determined it to be a public forum and thus entitled to the greatest protection for freedom of speech. The courts have stated that it is "nonsense to say that the sidewalk in front of the high school, considering its unrestricted use by pedestrians, is not a public way and therefore not a public forum." *Bacon v. Bradley-Bourbonnais High Sch. Dist. No. 307*, 707 F. Supp. 1005, 1009 (C.D. Ill. 1989).

The Florida School Safety Zone statute clearly attempts to protect schools from those without "legitimate business" who remain in the zone after being asked to leave by the principal or designee. Fla. Stat. § 810.0975. Exercising one's constitutional rights to free speech, both written and oral, is legitimate business that does not require permission or consent of school authorities. The School Safety Zone statute further limits the reasons for which the principal or designee may request that an individual leave the School Safety Zone. Only those persons whom they have "reasonable belief . . . will commit a crime" or who are engaged in "harassment or intimidation of students" may be asked to leave and be charged with a crime if they fail to do so. *Id*. While two sections of the statute were found to be unconstitutionally vague in *Grey v. Kohl*, the provision declaring it a second degree misdemeanor to staying in the zone after being asked to leave upon reasonable belief one will commit a crime or one is harassing or intimating students was found to be sufficiently clear and thus constitutional. 568 F. Supp. at 1391.

Even though the *Grey* decision upheld a portion of the statute, leafleting is not prohibited by the statute because it is settled law that simply distributing literature is not a form of harassment in and of itself. *See Jews for Jesus, Inc. v. Board of Airport Comm'rs of City of Los Angeles*, 661 F. Supp. 1223, 1231 (C.D. Cal. 1985). Since the Florida statute regarding School Safety Zones only prohibits criminal activity, harassment and intimidation, and since the distribution of literature does not fall in any of these categories, the statute does not prohibit or criminalize the distribution of literature. Fla. Stat. § 810.0975. Moreover, peacefully speaking to another person cannot be considered criminal, harassment or intimidation, even where the conversation is uninvited and not consensual. *See Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 773-74 (1994). Accordingly, the statute also does not prohibit or criminalize witnessing.

Based upon countless opinions from the courts, prohibiting a person from witnessing and distributing literature to students from a public sidewalk would clearly be a violation of that person's constitutional rights. It is equally clear that since witnessing and the distribution of literature are not crimes or forms of harassment or intimidation in and of themselves, the Florida statute regarding School Safety Zones does not prohibit speaking with students entering or leaving school premises about the Gospel and handing them religious literature. If a school official or law enforcement official attempts to apply the statute to prevent witnessing or the distribution of literature within the School Safety Zone, that application is unconstitutional and should be legally challenged. Please contact Liberty Counsel immediately if you have been prohibited from exercising your rights to free speech in a Florida School Safety Zone.