

The Church of Peace (the Church) is a religious organization that advocates "peace to everyone." Recently, a Church chapter (Chapter) was organized in the town of Homestead. Chapter members decided to spread the Church's message to the people of Homestead by handing out leaflets that proclaimed in bold letters, "PEACE TO ALL!" Chapter members who participated in passing out the leaflets stood on a public sidewalk and distributed the leaflets to pedestrians. The Chapter members did not block traffic or take any actions except passing out leaflets and remarking, "Peace to all!"

Many people who took the leaflets threw them onto the sidewalk, and Homestead employees spent several hours cleaning up these discarded leaflets. Chapter was fined \$3,000 under a municipal anti-leafletting ordinance that prohibits any distribution of leaflets "in or on any public space, including roads, streets, and sidewalks." No Chapter member threw leaflets or other litter onto the ground.

Chapter members who attend High School, a public school in Homestead, recently formed the "Church of Peace Club" (Church Club) to pray together and to do good works. High School has a policy that permits student groups to meet in High School classrooms after scheduled classes. Under this policy, student groups must first obtain permission from Principal before using a classroom for a meeting. Pursuant to this policy, the Chess Club, the Drama Club, and the Future Lawyers Club all use classrooms for after-school meetings. Church Club officers asked Principal if they could meet in a classroom after school. Principal denied this request and stated that after-school use of a classroom by Church Club would be "a violation of the separation of church and state."

Father, a Chapter member and the parent of a Church Club officer, learned about Principal's decision and went to High School to see Principal. Outside Principal's office was a sign reading "No admittance without an appointment." Father, who had no appointment, threw open the closed door and marched into Principal's office, interrupting a meeting between Principal and another parent, and told Principal, "Your policy is unwise and unconstitutional. I believe that you are discriminating against members of my faith." Principal asked Father to leave the office until the meeting with the other parent was concluded, but Father refused. Principal called the police, who forcibly removed Father from Principal's office.

Father was convicted of trespassing on government property.

Does the First Amendment, as applied to state and local governments through the Fourteenth Amendment,

1. Preclude Homestead's enforcement of its anti-leafletting ordinance against Chapter? Explain.
2. Preclude Principal's denial of Church Club's request to use classroom space for its meetings? Explain.
3. Provide grounds to vacate Father's trespass conviction? Explain.

Copyright © 2010 by the National Conference of Bar Examiners. All rights reserved

Question Presented

A church chapter handed out leaflets on a public sidewalk, not blocking traffic or doing anything but distributing them.

← sidewalk = traditional public forum

Many recipients threw the leaflets on the ground; the town spent hours cleaning up, though no chapter member littered.

← the litter was caused by third parties, not the speakers

The chapter was fined \$3,000 under an ordinance banning any distribution of leaflets on any public space.

← a total ban: content-neutral, but is it narrowly tailored?

A public high school lets the Chess, Drama, and Future Lawyers clubs meet in classrooms after school (with permission).

← opening classrooms to student groups = a limited public forum

The principal denied the Church Club's request, citing 'separation of church and state'.

← excluding a group because it is religious = viewpoint discrimination

A parent ignored a 'no admittance without an appointment' sign, burst into the principal's office, and refused to leave; he was removed and convicted of trespass.

← a private office is a nonpublic forum; a neutral access rule

1. Does the First Amendment preclude enforcing the anti-leafleting ordinance against the chapter?

← → public-forum time/place/manner

2. Does it preclude denying the Church Club classroom access?

← → limited public forum / viewpoint discrimination

3. Does it provide grounds to vacate the trespass conviction?

← → nonpublic forum time/place/manner

Question 1: The Anti-Leafleting Ordinance

Issue. Whether the First Amendment bars enforcing a total ban on public-sidewalk leafleting against the chapter.

Is the ordinance a valid time/place/manner rule?

Rule. A public sidewalk is a traditional public forum. A content-based restriction there gets strict scrutiny; a content-neutral time,

Public forum. Content-neutral TPM: narrowly tailored + significant interest

place, and manner restriction is valid only if it is narrowly tailored to a significant government interest and leaves open ample alternative channels of communication.

Analysis. Here, the ban is **content-neutral** (it targets the method, not the message) and keeping streets clean is significant, but a **total ban on all leafleting** is not narrowly tailored and leaves no alternative channel. The town could instead punish the **people who actually litter** rather than the peaceful speakers.

Conclusion. Therefore, the ordinance fails and cannot be enforced against the chapter.

+ ample alternatives.

Total ban = not narrowly tailored, no alternative; target the litterers, not the speech.

Unconstitutional as applied.

Question 2: Equal Access for the Church Club

Issue. Whether denying a religious student club the classroom access given to secular clubs violates the First Amendment.

Rule. When a public school opens its classrooms to student groups, it creates a limited public forum. Exclusions must be viewpoint-neutral and reasonable, and excluding a group because it is religious is viewpoint discrimination. Allowing religious groups the same evenhanded access as secular groups does not violate the Establishment Clause.

Analysis. Here, the **Chess, Drama, and Future Lawyers clubs all meet after school**, but the Church Club was **denied solely for being religious**. The principal's Establishment-Clause worry is misplaced: neutral access open to all groups is not government endorsement of religion.

Conclusion. Therefore, the denial violates the free-speech guarantee and the First Amendment bars it.

Is a religion-based exclusion viewpoint discrimination?

Limited public forum: viewpoint-neutral + reasonable. Equal access is not endorsement.

Secular clubs admitted; only the religious one barred = viewpoint discrimination.

Unconstitutional denial.

Question 3: The Father's Trespass Conviction

Issue. Whether the First Amendment provides grounds to vacate the parent's trespass conviction.

Rule. A private government office is not a public forum. Access to a nonpublic forum may be limited by reasonable, viewpoint-neutral rules, and the First Amendment does not license trespass; a content-neutral restriction on the time, place, and manner of access is valid if it serves a significant interest and leaves open alternative channels.

Protected speech, or a valid place restriction?

Nonpublic space: reasonable, viewpoint-neutral access rules control; speech doesn't license trespass.

Analysis. Here, the 'no admittance without an appointment' rule is content-neutral, serves orderly government business, and left an alternative: the parent could have spoken after the meeting. Instead he barged in and refused to leave.

Neutral rule + alternative offered; he refused it and trespassed.

Conclusion. Therefore, the conviction did not violate free speech, and the First Amendment gives no grounds to vacate it.

Conviction stands.

Step-by-Step: First Amendment Speech Screen

Identify the forum, ask content-based vs. content-neutral, apply the matching test, and watch for viewpoint discrimination dressed up as an Establishment concern.

1. Traditional public forum + a content-neutral restriction?

→ Valid only if narrowly tailored with ample alternatives. A total ban fails. **Q1: ban-all-leafleting → unconstitutional**



2. Limited public forum (classrooms opened to student groups)?

→ Exclusions must be viewpoint-neutral; barring the religious club is viewpoint discrimination, and equal access is not Establishment endorsement. **Q2: religion-based denial → unconstitutional**



3. Nonpublic forum (a private government office)?

→ A reasonable, content-neutral access rule with an alternative controls; speech does not license trespass. **Q3: conviction stands**