NEW!

KNOW YOUR RELIGIOUS FREEDOM RIGHTS

PACIFIC JUSTICE INSTITUTE

REVISED EDITION

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CHAPTER 1:
PREACH IT! WHAT YOU NEED TO KNOW ABOUT LEGAL RIGHTS FOR PUBLIC EVANGELISM

Each year, Pacific Justice Institute receives many inquiries about free speech rights, often in the context of open-air preaching, tract distribution, evangelism at malls, evangelism in and around schools, sidewalk counseling at abortion clinics, and many similar venues. We have successfully defended a number of students who were disciplined for sharing their faith, preachers who were arrested, and others who were initially silenced. While there are hundreds of court cases and examples that would be relevant for a complete discussion of all these issues, we've prepared this brief summary, in the form of common questions and answers, to share some of what we've learned in more than 20 years of defending public evangelism and provide a starting point for understanding your evangelistic rights. If you need more than what is provided here (see disclaimer at the bottom of this document), contact us through our website, www.PJI.org, for assistance and possible representation.

In this resource, we will tackle the following questions:

- Where are my rights of public evangelism the greatest?
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Q&A ON PUBLIC EVANGELISM RIGHTS

Q: Where are my rights of public evangelism the greatest?

A: Public forums. In a landmark 1939 case called Hague v. Congress of Industrial Organizations (C.I.O.),[1] the Supreme Court explained that speech rights are at their zenith in what have become known as public forums. The C.I.O., a labor union, had been cited by police for holding a "public assembly" without a permit. The ordinance required any public assembly within the city to be approved by the Director of Safety, who could at any time refuse a permit if he believed there would be potential riots or disturbances. The Court voided the ordinance and held that the city's restrictions went too far. The Supreme Court's identification of parks, streets and sidewalks as the "quintessential" forums for public events, demonstrations and discussions has led to the strongest protections of speech in such venues. These are by no means the only places where free speech rights may be exercised—the Court has elsewhere identified other forums such as designated public forums and limited forums. But traditional public forums are where your rights are the strongest.

Q: Do I have fewer speech rights outside government buildings?

A: Actually, your speech rights can be very strong outside public buildings, particularly on the public sidewalks adjacent to those buildings. One important case involved protests outside the Supreme Court itself. In United States v. Grace,[2] the Supreme Court held that prohibiting free speech on the public sidewalk outside of their own building is a violation of the First Amendment. One of the plaintiffs had been threatened with arrest for handing out pamphlets including a letter complaining about unfit judges. Another demonstrator had held a sign on the sidewalk outside the Court with the text of the First Amendment. She had been ordered to move or face arrest. The Justices ruled that, although the Supreme Court building itself is a nonpublic forum, extending restrictions out to include the public sidewalk went too far.

Q: Are all sidewalks treated the same for First Amendment purposes?

A: No. The Supreme Court has drawn distinctions between at least two different types of sidewalks. Following the Grace case discussed above, United States v. Kokinda[3] cautioned that the same speech rights do not apply where a sidewalk does not run along the street but leads from the street to a building. In Kokinda, the sidewalk was on the property of a post office. The reasoning is that the latter types of sidewalks serve a different, more limited purpose of facilitating ingress and egress from the building. Your rights are greater where the sidewalk is virtually indistinguishable from all the other pedestrian pathways nearby. Something else to remember is that, if an area is cramped (like a narrow sidewalk), law enforcement may have more of a basis to prevent you from holding up pedestrian traffic or blocking driveways, entrances or exits to a building. Make sure you are leaving plenty of space for people to get around you and keep going if they do not want to engage in a discussion or accept literature you may be handing out.

1 307 U.S. 496 (1939).
2 461 U.S. 171 (1983).
3 497 U.S. 720 (1990).

Q&A ON PUBLIC EVANGELISM RIGHTS

Q: How are my rights different if I am distributing literature?
A: Your rights to distribute literature in public are strong. In Murdock v. Pennsylvania,4 the Supreme Court struck down a local licensing and tax ordinance for door-to-door solicitation. Robert Murdock, a Jehovah's Witness, had been arrested for going door-to-door to distribute religious material. The Supreme Court observed, "The hand distribution of religious tracts is an age-old form of missionary evangelism, as old as the history of printing presses . . . . This form of evangelism is utilized today on a large scale . . . . It is more than preaching. It is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting." Many other cases also attest to the importance of protecting literature distribution as a form of free speech. As noted above, you just want to make sure passersby feel free to decline literature and you leave plenty of room for the flow of pedestrian traffic.

Q: When can a city or local government require that I get a permit to use a public forum?
A: The larger your event, the more likely it is that you will be required to obtain a permit. For instance, permit requirements for groups of 50 or more were upheld in Thomas v. Chicago Park District.5 There, the Supreme Court unanimously upheld 13 specified grounds for denial of a permit since they were deemed unrelated to the content of specific expression. In this case, a pro-marijuana group was therefore out of luck when its permit application was denied. Permit requirements for smaller groups or individuals are scrutinized more closely. The Ninth Circuit Court of Appeals struck down permit requirements for street performers in Berger v. City of Seattle.6 Of particular interest here, the Ninth Circuit held that permit requirements for single individuals, particularly in a public forum, are almost never valid. It's less clear at what point the permit requirement would be vulnerable, but the Ninth Circuit observed that cases from other parts of the country have also struck down permit requirements for groups of 2 or 3, and in some cases groups of 10. The takeaway is that, if you're an individual or a small group expressing yourself, particularly in a park, along a sidewalk, or in a designated public forum, a city's claim that you must have a permit to speak is highly suspect. One difference with streets is that, even though deemed a public forum, you would almost certainly need a parade permit (and stoppage of traffic) before strolling down the middle of the thoroughfare with a sign, bullhorn or tracts.

Q: Can a city deny me access to a public park when a large event like a festival is taking place?
A: Probably not. The Ninth Circuit Court of Appeals ruled on this issue in a case called Gathright v. City of Portland,7 in which a preacher filed suit in 2003 against the City for ejecting him from a public park for his "unreasonable" interference at public events. On six occasions Portland police forced Gathright to leave public venues for contradicting the messages of the event organizers. He was arrested after preaching during a Dalai Lama event and during an pro-LGBT event. The District Court and the Ninth Circuit sided with Gathright and laid out the differences between participating in an event and merely being present at the same location. The Ninth Circuit struck down Portland's vague ordinance used against the street preacher to enforce silence. The court drew a distinction with the Supreme Court's 1995 decision in Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston.8 There, the Supreme Court ruled that private parade organizers could not be required to include a particular message in there parade. However, the Ninth Circuit held that counter-messages must be tolerated where it is clear they are not associated with the event organizers.

4 319 U.S. 105 (1943).
5 534 U.S. 316 (2002).
6 569 F.3d 1029 (9th Cir. 2009) (en banc).
7 439 F.3d 573 (2006).
8 515 U.S. 557 (1995).

Q&A ON PUBLIC EVANGELISM RIGHTS

Q: Do I have the right to evangelize outside public schools?
A: Yes, with some limitations. In a case called Grayned v. City of Rockford,9 the Supreme Court upheld an anti-noise ordinance against demonstrators outside a school, with some important limitations. The Court emphasized that the ordinance targeted demonstrations that took place while school was in session, and that willfully disrupted classwork. In that case, the petitioner was one of dozens of demonstrators arrested for protesting outside a high school in Illinois. In all, an estimated 200 people joined the demonstration. Perhaps not surprisingly, there was evidence that the students in their classes were distracted, and this concerned the Court. Much more recently, PJI has had success defending several evangelists outside of schools who have been careful to preach or hand out literature after the school day ends and students are leaving campus. Some police and school authorities believe they can punish such speech, often because they do not like the message, but this is not at all what the Supreme Court has held.

Q: If I am a student, can I evangelize my fellow students during non-instructional time?
A: In many cases, yes. PJI has successfully represented a number of students who were either suspended or threatened with disciplinary action for sharing their faith. In our case Leal v. Everett Public Schools10 a senior high school student in Everett, Washington, was repeatedly disciplined, faced expulsion, and reported to the police by school administrators for preaching at lunchtime and after-school events, and for sharing tracts with peers during the school day. Beginning in late 2014, PJI filed suit in federal court to ensure Leal was not expelled. The court ultimately agreed that aspects of the school district's policy were invalid. One of the restrictions that the court agreed could not be enforced was an odd requirement that students only be allowed to distribute literature they had written themselves. The district later had to pay PJI's attorneys' fees for trying to punish Leal. In another case filed in Northern California, K.C. v. Medd,11 PJI successfully represented a young student who had been called into the principal's office after giving a fellow student an invitation to a church-promoted apologetics event. The invitation was offered outside class time. The school eventually acknowledged that they could not prohibit this type of leafleting, and the case was settled favorably for our client.

Q: Are my rights of speech and evangelism any different outside abortion clinics?
A: Somewhat. Congress enacted a federal law known as the Freedom of Access to Clinic Entrances Act (FACE).12 Some states like California also have their own version of this law.13 The Supreme Court has upheld narrower versions of such restrictions but struck down efforts to extend so-called "bubble zones" too far. For instance, the Supreme Court upheld a limited 8-foot bubble zone near abortion clinics in Hill v. Colorado14 but struck down a broader, 35-foot zone in McCullen v. Coakley.15 On the West Coast, in Hoye v. City of Oakland,16 the Ninth Circuit struck down a bubble zone ordinance that permitted only pro-abortion speech while punishing pro-life speech outside clinics. This type of double standard has rightfully been rejected by even liberal courts.

9 408 U.S. 104 (1972).
10 2:14-cv-01762 TSZ (W.D. Wash. 2015).
11 2:14-cv-02614 (E.D. Cal. 2014).
12 18 U.S.C. § 248.
13 California Penal Code §423-423.6.
14 530 U.S. 703 (2000).
15 134 S. Ct. 2518 (2014).
16 653 F.3d 835 (2011).

Q&A ON PUBLIC EVANGELISM RIGHTS

Q: Can a city ban all sound amplification, such as a bullhorn?
A: No. Just over 70 years ago, the Supreme Court decided Saia v. New York.17 There, a city ordinance banned the use of sound amplification except with the permission of the police chief. Saia, who was a Jehovah's Witness, had initially obtained permission from the chief for use of amplification atop his vehicle to communicate his religious message on Sundays in a public park, but the chief refused to grant permission the next time Saia requested it, citing complaints. When Saia continued his speech activities after permission had expired, he was fined and jailed. The Supreme Court held that this sweeping, standardless restriction of amplification violated the First Amendment. The Court observed that loudspeakers had become an indispensable form of public communication, and officials can regulate with objective criteria like decibel levels and the time and place of amplification, rather than relying on a broad-based ban subject to the sole discretion of the police. On the other end of the spectrum, one of the classic examples of a city's ability to control noise levels came in the context of rock concerts. In Ward v. Rock Against Racism,18 the Supreme Court approved New York City's insistence that its own sound technicians control the volume of permitted concerts in Central Park. Some common sense comes into play here—the government has stronger interests in shielding residents from a high-volume concert that rattles the windows of neighboring apartment buildings and can be heard far beyond its immediate audience, than it does to shut down the speech of a lone preacher with a bullhorn or portable sound system straining to be heard above the ambient noise levels.

Q: Can the government limit the size or types of signs I may carry?
A: In many cases, yes. Restrictions based on the content of a sign are highly suspect under decisions such as Reed v. Town of Gilbert.19 But the size of signs may be regulated depending on the venue, such as a sidewalk. And certain locations (such as the grounds of the California State Capitol where many protests take place20) prohibit signs on sticks that could be used as weapons. These types of size limitations are deemed content-neutral and are reviewed less stringently by the courts than restrictions that deal with content. In Reed, a pastor renting space at an elementary school in Gilbert, Arizona, ran into a maze of city ordinances restricting the church's ability to let people know of their location. The Supreme Court's decision in the pastor's favor sharply restricts the government's ability to favor some types of messages on signs over other messages.

Q: What about carrying signs along a highway or displaying them from an overpass?
A: Some additional safety concerns come into play when you're thinking about carrying signs along a major highway or holding signs on an overpass to be seen by drivers below. In California, though, the courts have not been willing to give authorities carte blanche to restrict this type of expression. In a case called Brown v. Cal. Dept. of Transportation,21 Cassandra Brown hung anti-war banners above Highway 17 in Santa Cruz following the 9/11 terrorist attack. A Scotts Valley police officer removed the banners, which led Brown to again hang banners in the same place. The second group of banners were removed. The California Department of Transportation stated that any citizens wishing to display a sign on a California highway overpass were first required to obtain a permit. But only signs that designate turn offs for an event are permitted. CalTrans does, however, permit the American flag to be displayed on an overpass. The Ninth Circuit Court of Appeals ruled that CalTrans' suggestion that the anti-war messages be alternatively displayed on bill board space imposes a financial burden on one viewpoint and not the other. The Court sided with Brown, declaring, "In the wake of terror, the message expressed by the flags flying on California's highways has never held more meaning. America, shielded by her very freedom, can stand strong against regimes that dictate their citizenry's expression only by embracing her own sustaining liberty."

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17 334 U.S. 558 (1948).
18 491 U.S. 781 (1989).
19 135 S.Ct. 2218 (2015).
20 13 C.C.R. Section 1862(a).
21 321 F. 3d 1217 (9th Cir. 2003).

Q&A ON PUBLIC EVANGELISM RIGHTS

Q: Can a city prohibit door-to-door evangelism?
A: No, though individual residents may post "no solicitation" signs that should be respected. The Supreme Court has addressed this in several cases involving the Jehovah's Witnesses. One of the earliest cases was Murdock v. Pennsylvania, quoted above in reference to literature distribution. More recently, in Watchtower Bible & Tract Society v. Village of Stratton,22 the Village of Stratton in Ohio put into effect their municipal ordinance that banned canvassers from entering private property to promote any cause without a permit from the mayor's office. The Watchtower Bible & Tract Society, a group of Jehovah's Witnesses who publish and distribute tracts, sued the Village of Stratton for violation of free speech rights. The District Court and the Sixth Circuit Court of Appeals ruled that the Village had a valid interest in protecting residents from fraud. However, the Supreme Court decided the ordinance infringed on the right to anonymous pamphleteering and religious proselytizing. The Court held that the Village's reasoning behind the desire to prevent fraud and promote safety was not enough to justify the making of door-to-door advocacy a misdemeanor.

Q: Can my public speech be silenced if someone considers it "hate speech" or offensive?
A: No. One of the first Supreme Court cases to apply First Amendment rights to state and local laws was Cantwell v. Connecticut.23 Newton Cantwell, a Jehovah's Witness, went door-to-door to witness in a Catholic neighborhood when police arrested him for disturbing the peace with his anti-Catholic message and violating Connecticut statute that required certification of solicitors. The Supreme Court unanimously ruled in Cantwell's favor. Although it is necessary to regulate solicitation and maintain order, allowing state officials to selectively decide how and when to apply statutes to a situation involving religion is suppressive. The Court protected Cantwell's speech, despite its offensive nature to the Catholic community. Today, most Americans are repulsed by the antics of the notorious Westboro Baptist Church, which has protested at hundreds of venues and events including military funerals, with signs such as "Thank God for dead soldiers." Yet the Supreme Court held that even their speech was protected, "notwithstanding the distasteful and repugnant nature of the words," in Snyder v. Phelps.24 In Terminiello v. City of Chicago, the Court held that one cannot be sued for engaging in speech on a matter of public concern in a traditional public forum such as a street or sidewalk. The Supreme Court overturned a disorderly conduct conviction, where a speaker angered a crowd of about 1000 protestors by denouncing various political and racial groups.25 Even though a riot broke out after he spoke, his speech could not be prohibited. The speaker did not raise his voice above the ambient noise level, disrupt traffic, or personally confront anyone. If members of the public actually threaten public safety, government entities can stop their dangerous conduct. Yet so long as their conduct is orderly and polite, they have a First Amendment right to free speech, even if the public reacts badly to their speech.

22 536 U.S. 150 (2002).
23 310 U.S. 296 (1940).
24 131 S.Ct. 1207 (2011).
25 337 U.S. 1, 3-4 (1949).

Q&A ON PUBLIC EVANGELISM RIGHTS

Q: What are my rights to evangelize in shopping malls?
A: In most states, shopping malls are considered private property and your rights can be greatly restricted by the owners or management of the mall. California and New Jersey are the only states that consider shopping malls as public forums, both basing these enlarged rights to expression on their own Constitutions. In California, a series of court decisions have deemed large shopping malls to be equivalent to public forums, and open to free speech under the state constitution. Beginning in the late 1970s, the California Supreme Court interpreted the California Constitution to create free speech rights in large shopping malls.26 The U.S. Supreme Court approved this expansion of speech rights in the Golden State, notwithstanding its corresponding restriction on property rights, in Pruneyard Shopping Ctr. v. Robins.27 The Pruneyard case involved students gathering signatures for a political petition. More recently, in a case called Snatchko v. Westfield, LLC,28 Pacific Justice Institute represented Matthew Snatchko, a youth pastor who often went to a large shopping mall in a Sacramento suburb to share his faith. One day Mr. Snatchko approached three young women in their late teens, asked them if they were willing to talk with him, and upon receiving their consent, engaged them in conversation, which included, with their permission, sharing with them principles of his faith. A nearby store employee thought the teens looked uncomfortable with the discussion, so they called security, who roughly arrested Snatchko. The criminal charges were later dropped, but Snatchko commenced a civil suit with PJI's help to prevent the same thing from happening again. The trial court sided with the mall, but the Court of Appeals reversed. It held that, like other public forums, a shopping mall can place reasonable time, place, and manner restrictions on those visiting the mall, as long as the restrictions are content-neutral. Restrictions that allow speech between strangers on subjects related to the business of the mall but require a permit for speech between strangers on any other subject are content-based and therefore are subject to strict scrutiny. When examined in light of strict scrutiny, such rules are unconstitutional. Like California, the courts in New Jersey also have an expanded view of free speech.29

Q: What should I do if I am confronted by police or security guards when I am evangelizing?
A: Remain calm and respectful; ask to see the ordinance you are accused of violating. In anticipation of such confrontations, we recommend that you adopt the practice of recording your preaching or other evangelistic outreaches whenever possible with audio and video. This can counter later claims that you were being unreasonably loud, were interfering with traffic or were otherwise acting outside your constitutional rights.

Q: What should I do if I am arrested for preaching or public evangelism?
A: Call Pacific Justice Institute immediately!

26 Robins v. Pruneyard Shopping Ctr., 23 Cal.3d 899, 910 (1979).
27 447 U.S. 74 (1980).
28 187 Cal.App.4th 469 (Cal. Ct. App. 3d Dist. 2010).
29 State v. Schmidt, 423 A.2d 615 (N.J. 1980).

CHAPTER 2:
FAITH IN THE WORKPLACE

Faith in the Workplace with Brad Dacus - Part 1:

Faith in the Workplace with Brad Dacus - Part 2:

CHAPTER 3:
WRITING A RELIGIOUS EXEMPTION/ACCOMODATION LETTER TO YOUR EMPLOYER

Religious Accommodation for Employees

In most public and private workplaces, the primary legal option for objecting to a requirement that conflicts with your conscience is by requesting an accommodation of your sincerely-held religious beliefs. This option is governed by Title VII of the federal Civil Rights Act of 1964, as well as by similar state statutes. Making the request does not guarantee it will be granted, but it obligates the employer to engage in an interactive process with you to determine what accommodations are possible without creating an undue hardship for its operations.

Requests for accommodation must be submitted to your employer in writing (electronic submission is equally effective). If your employer has created a form for vaccine and related accommodations or exemptions, you should use their form, including the information described below in the space provided on their form. If no form has been provided by the employer, you can submit the below information as a letter.

1. State that you are requesting an accommodation of your sincerely-held religious beliefs.
2. Explain why your beliefs conflict with the vaccine or related job requirement. Cite Scriptures whenever possible to explain your beliefs.
3. If you mention scientific aspects of the vaccines, do so only to the limited extent necessary to explain the conflict with your religious beliefs. Avoid debating or trying to educate your employer about the effectiveness of the vaccines, research studies, etc. Also do not attempt to argue legal points about the Constitution or other laws—stay narrowly focused on your religious beliefs.
4. Request an accommodation. Propose alternatives that will meet the employer's underlying health and safety objectives without violating your conscience. Be positive and emphasize that you value your job and are committed to the well-being of your workplace, co-workers and customers.
5. We recommend concluding with a sentence which reads: "Based on my sincerely held religious convictions described above, I respectfully request a religious accommodation pursuant to Title VII." Note that the law does not permit your employer to require a letter from your church, minister, or place of worship to corroborate your beliefs. Your own religious beliefs are sufficient. If you already have a supporting letter from your pastor, this could be included at your option. Due to the extraordinary volume of requests we are receiving at this time, PJI is unable to review and comment on every accommodation letter being sent to us. Following the above guidelines should, however, put you in the strongest position to either have your request granted, or to contest its denial.

CHAPTER 4:
WHAT TO DO IF YOUR RELIGIOUS ACCOMODATION/EXEMPTION LETTER IS DENIED

Religious Exemption Denial Steps

1. Request that your employer provide you with the steps on how to appeal the denial. Follow those appeal steps, if any. Even if they say there is no appeal, review the PJI guidelines on requesting a religious exemption here. Submit a revised request if you think that is necessary, even if it is past the deadline. Your rights against religious discrimination under Title VII of the Civil Rights Act of 1964 can still be asserted. Do not use form letters or letters you found online. It needs to be your personal beliefs.

2. If the denial is final and you want to pursue the matter further, you must file a complaint with either the regional office of the U.S. Equal Employment Opportunity Commission (EEOC) or your State's equivalent. Note that some states may require you to file with them in order to preserve specific state rights.

3. What constitutes a violation? When an employer requires an action that violates your sincerely held religious beliefs, and you communicate those beliefs to your employer, the employer should then meet with you to discuss ways to accommodate your beliefs. Only if all reasonable accommodations would create an undue hardship on your employer can they move to dismiss you.

4. After you file your complaint, the matter will either be resolved by the government agency or you will receive a right to sue letter. It is important to go through either the EEOC or your State's equivalent before you can bring a matter to court. Courts will throw employment cases out if this process is not followed. There are often strict time limits on filing with the EEOC. Some states will have time limits that are unique to them.

5. After you receive a right to sue letter from either the EEOC or the State agency, you may contact the PJI Legal Dept. to review your records and determine if you have a viable case in which we can represent you or refer you to an employment law attorney. The EEOC and equivalent state agency processes are designed to be used by individuals and do not require a lawyer to be involved. Due to the extraordinary volume of requests, we are receiving at this time, PJI is unable to review and comment on every exemption letter being sent to us. Following the above guidelines should, however, put you in the strongest position to either have your request granted, or to contest its denial.

Regards, PJI Legal Team

State Agencies

Alabama https://www.eeoc.gov/field-office/ birmingham/location
Alaska https://humanrights.alaska.gov/
Arizona https://www.azag.gov/civil-rights
Arkansas https://www.eeoc.gov/field-office/littlerock/location
California https://www.dfeh.ca.gov/
Colorado https://ccrd.colorado.gov/
Connecticut https://portal.ct.gov/CHRO
Delaware https://labor.delaware.gov/divisions/industrial-affairs/discrimination/
District of Columbia https://ohr.dc.gov/
Florida https://fchr.myflorida.com/
Georgia https://gceo.georgia.gov/
Hawaii https://labor.hawaii.gov/hcrc/
Idaho https://humanrights.idaho.gov/
Illinois https://www2.illinois.gov/dhr/Pages/default.aspx
Indiana https://www.in.gov/icrc/ Iowa https://icrc.iowa.gov/
Kansas http://www.khrc.net/
Kentucky https://kchr.ky.gov/Pages/index.aspx
Louisiana https://www.gov.louisiana.gov/page/lchr
Maine https://www.maine.gov/mhrc/
Maryland https://mccr.maryland.gov/Pages/default.aspx
Massachusetts https://www.mass.gov/orgs/massachusetts-commissionagainst-discrimination
Michigan https://www.michigan.gov/mdcr
Minnesota https://mn.gov/mdhr/
Mississippi https://mdes.ms.gov/information-center/about-mdes/mississippi-employment-security-law-mdes-regulations/equal-opportunity/
Missouri https://labor.mo.gov/mohumanrights
Montana https://erd.dli.mt.gov/human-rights/
Nebraska https://neoc.nebraska.gov/
Nevada https://detr.nv.gov/NERC
New Hampshire https://www.nh.gov/hrc
New Jersey https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/
New Mexico https://www.dws.state.nm.us/Human-RightsInformation
New York https://dhr.ny.gov/
North Carolina https://www.oah.nc.gov/civil-rights-division/employment-discrimination
North Dakota https://www.nd.gov/labor/human-rights
Ohio https://crc.ohio.gov/
Oklahoma https://www.oag.ok.gov/civil-rights-enforcement
Oregon https://www.oregon.gov/boli/civil-rights/pages/default.aspx
Pennsylvania https://www.phrc.pa.gov/Pages/default.aspx
Rhode Island http://www.richr.ri.gov/
South Carolina https://schac.sc.gov/
South Dakota https://dlr.sd.gov/human_rights/default.aspx
Tennessee https://www.tn.gov/humanrights
Texas https://twc.texas.gov/programs/civil-rights-programoverview
Utah https://laborcommission.utah.gov/divisions/utah-antidiscriminationand-labor-uald/
Vermont https://ago.vermont.gov/about-the-attorney-generals-office/divisions/civil-rights/
Virginia https://www.oag.state.va.us/divisions/civil-litigation/ office-of-civil-rights
Washington https://www.hum.wa.gov/
West Virginia https://hrc.wv.gov/
Wisconsin https://dwd.wisconsin.gov/er

CHAPTER 5:
RELIGIOUS EXEMPTION RIGHTS FOR STUDENTS

Religious Exemption for Students

In the event that the college requires you to be vaccinated, you will need to provide a written request seeking a medical or religious exemption. Medical exemptions require a medical provider to verify that a vaccination is contraindicated for you. For a religious exemption, the information below is required:

1. State your religious convictions as to why you do not wish to take the coronavirus vaccination. To the extent you are able, add religious texts (e.g., Bible verses) to support your position.
2. State that your religious beliefs are sincerely held.
3. Request an exemption.
4. We recommend concluding with a sentence which reads: "Based on my sincerely held religious convictions described above, I respectfully request a religious accommodation pursuant to Title VII."

Note that the request should be in writing. The law does not require a letter from your church, minister, or place of worship. Your own religious beliefs are sufficient.

Due to the extraordinary volume of requests we are receiving at this time, PJI is unable to review and comment on every exemption letter being sent to us. Following the above guidelines should, however, put you in the strongest position to either have your request granted, or to contest its denial.

Regards,
PJI Legal Team

CHAPTER 6:
WHAT TO DO IF YOUR EMPLOYER OR SCHOOL ASK FOR A THIRD-PARTY VERIFICATION OF YOUR RELIGIOUS BELIEFS

MEMORANDUM RE THIRD-PARTY VERIFICATION OF RELIGIOUS BELIEFS

Our office frequently receives questions as to whether an employer or school can require an individual to provide verification of religious convictions from a minister or a place of worship. In short, no.

The Supreme Court has stated clearly that the "guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect." Thomas v. Review Bd., 450 U.S. 707, 16 (1981). In view of this, the specific convictions of the individual are sufficient. That does not mean that a letter from a religious institution where one worships or a member of the clergy cannot be supportive. "Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection of the Free Exercise Clause, one must be responding to the commands of a particular religious organization." Frazee v. Illinois Employment, 489 U.S. 829, 834 (1989). Thus, it does not matter that some or most persons that practice the same faith within the same religion or denomination find a specific belief or practice "scripturally acceptable." Thomas v. Review Bd., 450 U.S. at 716. It is often the case that congregants attending the same local house of worship have sincerely held beliefs that differ. Hence, the high court has consistently found that a shared tenet of faith is not necessary to support a sincerely held belief.

In view of the line of cases discussed above, a letter of verification from a member of the clergy, a church, denomination, or other religious institution is not a precondition for enjoying the right to a religious accommodation or exemption.

Feel free to share or submit this memo to your employer or school if third-party verification of your religious beliefs is requested and you are unable to obtain the requested verification.

CHAPTER 7:
THE CONSTITUTION ON CAMPUS: RELIGIOUS RIGHTS EVERY PUBLIC UNIVERSITY STUDENT SHOULD KNOW

The Constitution on Campus: Rights Every Public University Student Should Know They Have

Historically, colleges and universities have served as the quintessential "marketplace of ideas" where debate should flourish and students have opportunities to compare and choose differing views. Today, faith and free speech are under attack on many campuses, and it's important for every student to know their basic constitutional rights. On a public college or university campus, those rights include:

- **The Right for Student Religious Groups to Meet on Campus**
  In the early 1980s, the U.S. Supreme Court ruled that it was unconstitutional for a state university in Missouri to exclude a registered religious student group from meeting on campus. "Separation of church and state" is not a valid basis for treating religious groups worse than other groups. Although public universities can determine where and when events can take place on campus, the administration and the campus community have no authority to hinder or punish religious clubs for their viewpoints. And public universities are expected to accommodate those clubs and the religious speakers that the clubs may invite to the campus.

- **The Right for Student Publications to Receive Equal Treatment**
  The University of Virginia was the setting for another important religious speech case at the Supreme Court in 1995. This case established that a state university cannot withhold funding from religious student publications when funding is provided for similar student publications on secular topics.

- **The Constitutional Right . . . to Distribute the Constitution**
  A student at Modesto Junior College was escorted to the Student Development Office by a campus police officer. What was his violation? Distributing the United States Constitution. On Constitution Day. He handed out copies of the Constitution to passing students on campus for only ten minutes before he was informed that he was distributing material without permission. College officials stated the student could only act within their free speech zone and might have to wait several weeks to use the space after he has registered his event with officials. The student argued the college's policies restricted his free speech and filed a lawsuit in October 2013, which ended in a favorable settlement. The College rewrote their policies and compensated the student for violating his First Amendment rights.

- **The Right to Not Participate in Offensive Assignments**
  In Axson-Flynn v. Johnson, the Tenth Circuit Court of Appeals ruled in favor of a Utah University student, a member of the Mormon church, who was pressured by her Actor Training Program professors to perform a scene against her will. Christina Axson-Flynn laid out her religious objections to nudity and profanity before she was accepted to the University's acting program. However, when she later requested to change obscenities in her class assignment, the professors told Axson-Flynn that her request for accommodation was "unacceptable" and that she would need to either moderate her views or find another place to study acting. She left the University and filed a lawsuit stating that her First Amendment rights were violated and she was forced to say words she found offensive to her faith. The Court of Appeals sided with the student and vindicated her rights. This precedent should be followed by every state university seeking to stay on the right side of the Constitution!

- **The Right to Pray**

  In December 2007 an instructor at the College of Alameda, in the San Francisco Bay Area, complained about overhearing a private prayer shared by a student on behalf of a sick teacher. College administration responded by issuing a formal notice of intent to suspend the student and her friend who was merely a bystander. Pacific Justice Institute took the case to federal court, and after defeating the college's Motion to Dismiss, we were able to obtain a settlement on behalf of our clients. No student has to put up with this type of infringement of the basic right to pray on campus!

- **The Right to Use Facilities for Pro-Life Messages**

  In 2001 a pro-life student group sought permission from the Dean at the University of Houston to display their "Justice For All Exhibit," promoting the right to life for the unborn and all vulnerable people, on a part of campus often designated for student expressive activities. The University subjected the pro-life student group to the "Disruption of University Operations and Events" Policy, a free speech policy that applied additional requirements on any student-sponsored event that the University deemed "potentially disruptive." The "potentially disruptive" organizations are obligated to meet with the Dean and follow time, location, and content restraints, while other student expressive groups not considered disruptive by the University have none of those restrictions. The Dean rejected access to the space the pro-life group needed for their exhibit, space previously accessible to the National Organization of Women and Planned Parenthood. The District Court for the Southern District of Texas sided with the students in a ruling that labeled the University's selectively applied Disruption Policy invalid and unconstitutional and ordered that the University stop applying their Policy. The court victory for those brave students left a message to all public universities that restrict pro-life speech.

- **The Right to Choose a Roommate**

  When dorm room conflicts arise, students need to know they don't have to subject themselves to living with someone of a different gender or sexual orientation. The Ninth Circuit Court of Appeals made the profound observation that an individual seeking a roommate has the right to choose who they want to share their intimate spaces with. In 2008 the Fair Housing Councils of San Fernando Valley and San Diego brought a lawsuit against Roommate.com, claiming the online business had violated anti-discrimination housing laws by asking detailed questions regarding the user's preferences in roommate characteristics such as their sex, sexual orientation, and familial status. The Fair Housing Councils claimed that the Roommate.com system of sorting and matching was discriminatory roommate advertising, but the Ninth Circuit ultimately decided that existing housing laws significantly deprive an individual of their privacy and safety, stating, "Roommates . . . hear songs we sing in the shower [and] see us in various stages of undress . . . As roommates often share bathrooms and common areas, a girl may not want to walk around in her towel in front of a boy."

- **The Right Not to Be Assaulted**

  A group of 13 pro-life demonstrators, consisting mostly of students from UC Santa Barbara, met on the UCSB campus to speak with passing students about abortion and hand out educational literature regarding abortions. A professor from the UCSB Department of Feminist Studies passed by the pro-life group and stated that she was negatively "triggered" by their signs. The professor gathered pro-abortion students and confronted the demonstrators, chanting "tear down the sign." The professor proceeded to steal a pro-life sign from out of the hands of a 16-year-old girl in the group and scratched her arm in a struggle to run away. Students recorded footage of the professor screaming, "I may be a thief but you're a terrorist." The professor closed herself in her office and destroyed the sign with scissors, later stating she had the "personal right to go to work and not be in harm." Although the University refused to acknowledge a problem with the professor's crimes on campus, a settlement was made outside of court that students believe is an effective warning to prevent pro-abortion groups from attempting to interfere with the system of free speech on campuses across the country.

- **The Right Not to Blaspheme in Class**

  Ryan Rotela, a Mormon student attending Florida Atlantic University, faced the offensive assignment of writing the name of Jesus on a piece of paper and stomping on it. The Intercultural Communications professor required his students to perform this ludicrous assignment in class together but was unsuccessful in pressuring Rotela to participate. University authorities ordered Rotela not to return to the class and charged him with a violation of the student code of conduct. Public exposure, not court action, prompted the University to later drop the charges against Rotela. Under no condition should students be compelled to engage in an act of publicly rejecting their genuine beliefs. In this case, the University misapplied their speech code to a student who was guilty of simply complaining that a class assignment insulted his faith.

- **The Right to Be Controversial on Campus**

  A Public Health Professor at Fresno State University scrubbed away pro-life messages that students wrote with chalk on the campus sidewalk, remarking that controversial messages need to remain within the parameters of the University's free speech area. However, Fresno State has no free speech zone, and the University stated that they promote freedom of expression anywhere on their campus. The pro-life students, who were part of the campus group Students for Life USA, sued the professor who later agreed to pay $17,000 and attend First Amendment training sessions. No University policy should block pro-life speech on the basis of being "controversial."

- **The Right to Privacy of Student Records**

  A federal law, known by its acronym FERPA, applies to any state or local university that receives federal funds. FERPA provides for students the right to inspect and review their education records, request corrections, stop the release of personally identifiable information, and obtain a copy of their institution's policy concerning access to educational records. FERPA further protects student rights by prohibiting an educational institution from disclosing the student's educational records without the written consent of the student. A student can review their educational records without paying a fee to the university, as well as request that educational records be amended if they contain information that is inaccurate or violates their privacy.

- **The Right to Due Process**

  When a university seeks to deprive a student of their right to education through long-term suspension or expulsion, the student is entitled to an impartial hearing. The student has the right to know what specific rules were violated, bring evidence and witnesses on their behalf, bring legal counsel, and have the hearing be closed to the public to protect their privacy. If a school official deprives the student of their right to due process, the student can argue that as a basis to reverse a suspension or expulsion decision.

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