# SUPREME COURT OF THE UNITED STATES

No. 91–155

## INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC., AND BRIAN RUMBAUGH, PETITIONERS *v.* WALTER LEE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 26, 1992]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In this case we consider whether an airport terminal operated by a public authority is a public forum and whether a regulation prohibiting solicitation in the interior of an airport terminal violates the First Amendment.

The relevant facts in this case are not in dispute. Petitioner International Society for Krishna Consciousness, Inc. (ISKCON) is a not-for-profit religious corporation whose members perform a ritual known as *sankirtan*. The ritual consists of "`going into public places, disseminating religious literature and soliciting funds to support the religion.'" 925 F. 2d 576, 577 (CA2 1991). The primary purpose of this ritual is raising funds for the movement. *Ibid.*

Respondent Walter Lee, now deceased, was the police superintendent of the Port Authority of New York and New Jersey and was charged with enforcing the regulation at issue. The Port Authority owns and operates three major airports in the greater New York City area: John F. Kennedy International Airport (Kennedy), La Guardia Airport (La Guardia), and Newark International Airport (Newark). The three airports collectively form one of the world's busiest metropolitan airport complexes. They serve

approximately 8% of this country's domestic airline market and more than 50% of the trans-Atlantic market. By decade's end they are expected to serve at least 110 million passengers annually. *Id.*, at 578.

The airports are funded by user fees and operated to make a regulated profit. *Id.*, at 581. Most space at the three airports is leased to commercial airlines, which bear primary responsibility for the leasehold. The Port Authority retains control over unleased portions, including La Guardia's Central Terminal Building, portions of Kennedy's International Arrivals Building, and Newark's North Terminal Building (we refer to these areas collectively as the "terminals"). The terminals are generally accessible to the general public and contain various commercial establishments such as restaurants, snack stands, bars, newsstands, and stores of various types. *Id.*, at 578. Virtually all who visit the terminals do so for purposes related to air travel. These visitors principally include passengers, those meeting or seeing off passengers, flight crews, and terminal employees. *Ibid.*

The Port Authority has adopted a regulation forbidding within the terminals the repetitive solicitation of money or distribution of literature. The regulation states:

> ``1. The following conduct is prohibited within the interior areas of buildings or structures at an air terminal if conducted by a person to or with passers-by in a continuous or repetitive manner:
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> ``(a) The sale or distribution of any merchandise, including but not limited to jewelry, food stuffs, candles, flowers, badges and clothing.
>
> ``(b) The sale or distribution of flyers, brochures, pamphlets, books or any other printed or written material.
>
> ``(c) Solicitation and receipt of funds.'' *Id.,* at 578–579.

The regulation governs only the terminals; the Port Authority permits solicitation and distribution on the sidewalks outside the terminal buildings. The regulation effectively prohibits petitioner from performing *sankirtan* in the terminals. As a result,

petitioner brought suit seeking declaratory and injunctive relief under 42 U. S. C. §1983, alleging that the regulation worked to deprive them of rights guaranteed under the First Amendment.[1] The District Court analyzed the claim under the "traditional public forum" doctrine. It concluded that the terminals were akin to public streets, 721 F. Supp. 572, 577 (SDNY 1989), the quintessential traditional public fora. This conclusion in turn meant that the Port Authority's terminal regulation could be sustained only if it was narrowly tailored to support a compelling state interest. *Id.*, at 579. In the absence of any argument that the blanket prohibition constituted such narrow tailoring, the District Court granted petitioner summary judgment. *Ibid.*

The Court of Appeals affirmed in part and reversed in part. 925 F. 2d 576 (1991). Relying on our recent decision in *United States* v. *Kokinda*, 497 U. S. ___ (1990), a divided panel concluded that the terminals are not public fora. As a result, the restrictions were required only to satisfy a standard of reasonableness. The Court of Appeals then concluded that, presented with the issue, this Court would find that the ban on solicitation was reasonable, but the ban on

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[1]The suit was filed in 1975. ISKCON originally sought access to both the airline controlled areas and to the terminals and as a result sued both respondent and various private airlines. The suit worked a meandering course, see 721 F. Supp. 572, 573–574 (SDNY 1989), with the private airlines eventually being dismissed and leaving, as the sole remaining issue, ISKCON's claim against respondent seeking a declaration and injunction against the regulation. The regulation at issue was not formally promulgated until 1988 although it represents a codification of presuit policy. App. to Pet. for Cert. 52. As noted in the text, *supra*, respondent concedes that *sankirtan* may be performed on the sidewalks outside the terminals.

distribution was not. Petitioner sought certiorari respecting the Court of Appeals' decision that the terminals are not public fora and upholding the solicitation ban. Respondent cross-petitioned respecting the court's holding striking down the distribution ban. We granted both petitions, 502 U. S. ___ (1992), to resolve whether airport terminals are public fora, a question on which the Circuits have split[2] and on which we once before granted certiorari but ultimately failed to reach. *Board of Airport Comm'rs of Los Angeles* v. *Jews for Jesus, Inc.*, 482 U. S. 569 (1987).[3]

It is uncontested that the solicitation at issue in this case is a form of speech protected under the First Amendment. *Heffron* v. *International Society for Krishna Consciousness, Inc.*, 452 U. S. 640 (1981); *Kokinda*, *supra*, at ___ (citing *Schaumburg* v. *Citizens for a Better Environment*, 444 U. S. 620, 629 (1980)); *Riley* v. *National Federation of Blind of N.C., Inc.*, 487 U. S. 781, 788–789 (1988). But it is also well settled that the government need not permit all forms of speech on property that it owns and controls. *United*

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[2]Compare decision below with *Jamison* v. *St. Louis*, 828 F. 2d 1280 (CA8 1987), cert. denied, 485 U. S. 987 (1988); *Chicago Area Military Project* v. *Chicago*, 508 F. 2d 921 (CA7), cert. denied, 421 U. S. 992 (1975); *Fernandes* v. *Limmer*, 663 F. 2d 619 (CA5 1981), cert. dism'd, 458 U. S. 1124 (1982); *U. S. Southwest Africa/Namibia Trade & Cultural Council* v. *United States*, 228 U. S. App. D. C. 191, 708 F. 2d 760 (1983); *Jews for Jesus, Inc.* v. *Board of Airport Commissioners of Los Angeles*, 785 F. 2d 791 (CA9 1986), aff'd on other grounds, 482 U. S. 569 (1987).

[3]We deal here only with ISKCON's petition raising the permissibility of solicitation. Respondent's cross-petition concerning the leafletting ban is disposed of in the companion case, *Lee* v. *International Society for Krishna Consciousness, Inc.*, 91–339, *post,* p. ___.

*States Postal Service* v. *Council of Greenburgh Civic Assns.*, 453 U. S. 114, 129 (1981); *Greer* v. *Spock*, 424 U. S. 828 (1976). Where the government is acting as a proprietor, managing its internal operations, rather than acting as lawmaker with the power to regulate or license, its action will not be subjected to the heightened review to which its actions as a lawmaker may be subject. *Kokinda*, *supra*, at ___ (plurality opinion) (citing *Cafeteria & Restaurant Workers* v. *McElroy*, 367 U. S. 886, 896 (1961)). Thus, we have upheld a ban on political advertisements in city-operated transit vehicles, *Lehman* v. *City of Shaker Heights*, 418 U. S. 298 (1974), even though the city permitted other types of advertising on those vehicles. Similarly, we have permitted a school district to limit access to an internal mail system used to communicate with teachers employed by the district. *Perry Education Assn.* v. *Perry Local Educators' Ass'n*, 460 U. S. 37 (1983).

These cases reflect, either implicitly or explicitly, a "forum-based" approach for assessing restrictions that the government seeks to place on the use of its property. *Cornelius* v. *NAACP Legal Defense and Educational Fund, Inc.*, 473 U. S. 788, 800 (1985). Under this approach, regulation of speech on government property that has traditionally been available for public expression is subject to the highest scrutiny. Such regulations survive only if they are narrowly drawn to achieve a compelling state interest. *Perry*, *supra*, at 45. The second category of public property is the designated public forum, whether of a limited or unlimited character — property that the state has opened for expressive activity by part or all of the public. *Ibid.* Regulation of such property is subject to the same limitations as that governing a traditional public forum. *Id.*, at 46. Finally, there is all remaining public property. Limitations on expressive activity conducted on this

last category of property must survive only a much more limited review. The challenged regulation need only be reasonable, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view. *Ibid.*

The parties do not disagree that this is the proper framework. Rather, they disagree whether the airport terminals are public fora or nonpublic fora. They also disagree whether the regulation survives the "reasonableness" review governing nonpublic fora, should that prove the appropriate category.[4] Like the Court of Appeals, we conclude that the terminals are nonpublic fora and that the regulation reasonably limits solicitation.

The suggestion that the government has a high burden in justifying speech restrictions relating to traditional public fora made its first appearance in *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, 515, 516 (1939). Justice Roberts, concluding that individuals have a right to use "streets and parks for communication of views," reasoned that such a right flowed from the fact that "streets and parks . . . have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." We confirmed this observation in *Frisby* v. *Schultz*, 487 U. S. 474, 481 (1988), where we held that a residential street was a public forum.

Our recent cases provide additional guidance on the characteristics of a public forum. In *Cornelius* we noted that a traditional public forum is property that has as "a principal purpose . . . the free exchange of ideas." 473 U. S., at 800. Moreover, consistent with

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[4]Respondent also argues that the regulations survive under the strict scrutiny applicable to public fora. We find it unnecessary to reach that question.

the notion that the government — like other property owners — "has power to preserve the property under its control for the use to which it is lawfully dedicated," *Greer*, *supra*, at 836, the government does not create a public forum by inaction. Nor is a public forum created "whenever members of the public are permitted freely to visit a place owned or operated by the Government." *Ibid.* The decision to create a public forum must instead be made "by intentionally opening a nontraditional forum for public discourse." *Cornelius*, *supra*, at 802. Finally, we have recognized that the location of property also has bearing because separation from acknowledged public areas may serve to indicate that the separated property is a special enclave, subject to greater restriction. *United States* v. *Grace*, 461 U. S. 171, 179–180 (1983).

These precedents foreclose the conclusion that airport terminals are public fora. Reflecting the general growth of the air travel industry, airport terminals have only recently achieved their contemporary size and character. See H.V. Hubbard, M. McClintock, & F.B. Williams, Airports: Their Location, Administration and Legal Basis, 8 (1930) (noting that the United States had only 807 airports in 1930). But given the lateness with which the modern air terminal has made its appearance, it hardly qualifies for the description of having "immemorially . . . time out of mind" been held in the public trust and used for purposes of expressive activity. *Hague*, *supra*, at 515. Moreover, even within the rather short history of air transport, it is only "[i]n recent years [that] it has become a common practice for various religious and non-profit organizations to use commercial airports as a forum for the distribution of literature, the solicitation of funds, the proselytizing of new members, and other similar activities." 45 Fed. Reg. 35314 (1980). Thus, the tradition of airport activity does not demonstrate that

airports have historically been made available for speech activity. Nor can we say that these particular terminals, or airport terminals generally, have been intentionally opened by their operators to such activity; the frequent and continuing litigation evidencing the operators' objections belies any such claim. See n.2, *supra*. In short, there can be no argument that society's time-tested judgment, expressed through acquiescence in a continuing practice, has resolved the issue in petitioner's favor.

Petitioner attempts to circumvent the history and practice governing airport activity by pointing our attention to the variety of speech activity that it claims historically occurred at various "transportation nodes" such as rail stations, bus stations, wharves, and Ellis Island. Even if we were inclined to accept petitioner's historical account describing speech activity at these locations, an account respondent contests, we think that such evidence is of little import for two reasons. First, much of the evidence is irrelevant to *public* fora analysis, because sites such as bus and rail terminals traditionally have had *private* ownership. See *United Transportation Union* v. *Long Island R. Co.*, 455 U. S. 678, 687 (1982); H.R. Grant & C.W. Bohi, The Country Railroad Station in America, 11–15 (1978); United States Dept. of Transportation, The Intercity Bus Terminal Study 31 (Dec. 1984). The development of privately owned parks that ban speech activity would not change the public fora status of publicly held parks. But the reverse is also true. The practices of privately held transportation centers do not bear on the government's regulatory authority over a publicly owned airport.

Second, the relevant unit for our inquiry is an airport, not "transportation nodes" generally. When new methods of transportation develop, new methods for accommodating that transportation are also likely to be needed. And with each new step, it therefore

will be a new inquiry whether the transportation necessities are compatible with various kinds of expressive activity. To make a category of "transportation nodes," therefore, would unjustifiably elide what may prove to be critical differences of which we should rightfully take account. The "security magnet," for example, is an airport commonplace that lacks a counterpart in bus terminals and train stations. And public access to air terminals is also not infrequently restricted — just last year the Federal Aviation Administration required airports for a 4-month period to limit access to areas normally publicly accessible. See 14 CFR 107.11(f) (1991) and United States Dept. of Transportation News Release, Office of the Assistant Secretary for Public Affairs, January 18, 1991. To blithely equate airports with other transportation centers, therefore, would be a mistake.

The differences among such facilities are unsurprising since, as the Court of Appeals noted, airports are commercial establishments funded by users fees and designed to make a regulated profit, 925 F. 2d, at 581, and where nearly all who visit do so for some travel related purpose. *Id.*, at 578. As commercial enterprises, airports must provide services attractive to the marketplace. In light of this, it cannot fairly be said that an airport terminal has as a principal purpose "promoting the free exchange of ideas." *Cornelius* v. *NAACP Legal Defense and Educational Fund, Inc.,* 473 U. S. 788 (1985). To the contrary, the record demonstrates that Port Authority management considers the purpose of the terminals to be the facilitation of passenger air travel, not the promotion of expression. Sloane Affidavit, ¶11, 2 App. 464; Defendant's Civil Rule 3(g) Statement, ¶39, 2 App. 453. Even if we look beyond the intent of the Port Authority to the manner in which the terminals have been operated, the terminals have never been dedicated (except under

the threat of court order)
to expression in the form sought to be exercised here: *i.e.*, the solicitation of contributions and the distribution of literature.

The terminals here are far from atypical. Airport builders and managers focus their efforts on providing terminals that will contribute to efficient air travel. See, *e.g.*, R. Horonjeff & F. McKelvey, Planning and Design of Airports 326 (3d. ed. 1983)("[t]he terminal is used to process passengers and baggage for the interface with aircraft and the ground transportation modes"). The Federal Government is in accord; the Secretary of Transportation has been directed to publish a plan for airport development necessary "to anticipate and meet the needs *of civil aeronautics*, to meet requirements of the national defense . . . and to meet identified needs of the Postal Service." 49 U. S. C. App. §2203(a)(1) (emphasis added); see also, 45 Fed. Reg. 35317 (1980) ("[t]he purpose for which the [Dulles and National airport] terminal[s] was built and maintained is to process and serve air travelers efficiently"). Although many airports have expanded their function beyond merely contributing to efficient air travel, few have included among their purposes the designation of a forum for solicitation and distribution activities. See *supra*, at 7. Thus, we think that neither by tradition nor purpose can the terminals be described as satisfying the standards we have previously set out for identifying a public forum.

The restrictions here challenged, therefore, need only satisfy a requirement of reasonableness. We reiterate what we stated in *Kokinda*, the restriction ```need only be *reasonable;* it need not be the most reasonable or the only reasonable limitation.'" 496 U. S., at ___ (plurality opinion) (quoting *Cornelius*, *supra*, at 808). We have no doubt that under this standard the prohibition on solicitation passes muster.

We have on many prior occasions noted the

disruptive effect that solicitation may have on business. "Solicitation requires action by those who would respond: The individual solicited must decide whether or not to contribute (which itself might involve reading the solicitor's literature or hearing his pitch), and then, having decided to do so, reach for a wallet, search it for money, write a check, or produce a credit card." *Kokinda, supra*, at ___; see *Heffron*, 452 U. S., at 663 (BLACKMUN, J., concurring in part and dissenting in part). Passengers who wish to avoid the solicitor may have to alter their path, slowing both themselves and those around them. The result is that the normal flow of traffic is impeded. *Id.*, at 653. This is especially so in an airport, where "air travelers, who are often weighted down by cumbersome baggage . . . may be hurrying to catch a plane or to arrange ground transportation." 925 F. 2d, at 582. Delays may be particularly costly in this setting, as a flight missed by only a few minutes can result in hours worth of subsequent inconvenience.

In addition, face-to-face solicitation presents risks of duress that are an appropriate target of regulation. The skillful, and unprincipled, solicitor can target the most vulnerable, including those accompanying children or those suffering physical impairment and who cannot easily avoid the solicitation. See, *e.g.*, *International Society for Krishna Consciousness, Inc.* v. *Barber*, 506 F. Supp. 147, 159–163 (NDNY 1980), rev'd on other grounds 650 F. 2d 430 (CA2 1981). The unsavory solicitor can also commit fraud through concealment of his affiliation or through deliberate efforts to shortchange those who agree to purchase. 506 F. Supp., 159–163. See 45 Fed. Reg. 35314–35315 (1980). Compounding this problem is the fact that, in an airport, the targets of such activity frequently are on tight schedules. This in turn makes such visitors unlikely to stop and formally complain to airport authorities. As a result, the airport faces considerable difficulty in achieving its legitimate

interest in monitoring solicitation activity to assure that travelers are not interfered with unduly.

The Port Authority has concluded that its interest in monitoring the activities can best be accomplished by limiting solicitation and distribution to the sidewalk areas outside the terminals. Sloane Supp. Affidavit, ¶11, 2 App. 514. This sidewalk area is frequented by an overwhelming percentage of airport users, see *id.*, at ¶14, 2 App. 515–516 (noting that no more than 3% of air travelers passing through the terminals are doing so on intraterminal flights, *i. e.* transferring planes). Thus the resulting access of those who would solicit the general public is quite complete. In turn we think it would be odd to conclude that the Port Authority's terminal regulation is unreasonable despite the Port Authority having otherwise assured access to an area universally traveled.

The inconveniences to passengers and the burdens on Port Authority officials flowing from solicitation activity may seem small, but viewed against the fact that "pedestrian congestion is one of the greatest problems facing the three terminals," 925 F. 2d, at 582, the Port Authority could reasonably worry that even such incremental effects would prove quite disruptive.[5] Moreover, "the justification for the Rule should not be measured by the disorder that would result from granting an exemption solely to ISKCON." *Heffron*, *supra*, at 652. For if petitioner is given access, so too must other groups. "Obviously, there would be a much larger threat to the State's interest

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[5]The congestion problem is not unique to these airports. See 45 Fed. Reg. 35314–35315 (1980) (describing congestion at Washington's Dulles and National airports) and 49 U. S. C. App. §2201(a)(11) (Congressional declaration that as part of the national airport system plan airport projects designed to increase passenger capacity "should be undertaken to the maximum feasible extent").

in crowd control if all other religious, nonreligious, and noncommercial organizations could likewise move freely." 452 U. S., at 653. As a result, we conclude that the solicitation ban is reasonable.

For the foregoing reasons, the judgment of the Court of Appeals sustaining the ban on solicitation in Port Authority terminals is

*Affirmed*.