April 14, 2026

Board of Mayor and Aldermen
City of Sparta
6 Liberty Square, P.O. Box 30
Sparta, Tennessee 38583

Sent via U.S. Mail and Electronic Mail (j.lowery@spartatn.gov; r.officer@spartatn.gov; b.young@spartatn.gov; b.jones@spartatn.gov; j.floyd@spartatn.gov; j.payne@spartatn.gov; t.mcbride@spartatn.gov)

Dear Board Members:

On March 3, FIRE wrote to inform you of the unconstitutionality of the City of Sparta's handbill ordinances.[1] Since then, we have not received a response, suggesting the Board either has no intention of bringing its ordinances into constitutional conformity or mistakenly believes the ordinances pass constitutional muster in their current form.

To reiterate our position, there are a multitude of constitutional deficiencies with Sparta's handbill ordinances, such as the ban on any handbill that "may reasonably tend to incite riot or other public disorder, or which advocates disloyalty to or the overthrow of the Government of the United States or of this state," "urges any unlawful conduct, or encourages or tends to encourage a breach of the public peace or good order of the community," or is "offensive to public morals or decency, or which contains blasphemous, obscene, libelous or scurrilous language."[2] This ban is facially invalid as overbroad, viewpoint discriminatory, and vague. Sparta's ban on anonymous handbills and permit requirement for all handbilling for hire also violate the First Amendment.

As illustrated in our letter, there is clear binding case law which prohibits Sparta from restricting handbilling in these manners. For instance, the Supreme Court has made it unequivocally clear that bans on blasphemous speech will be struck down as the government may not suppress speech because it is irreverent toward religion or religious beliefs.[3] A developing fact that will make it even more difficult for the Board to defend its ordinances from a constitutional challenge is that

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[1] Letter enclosed.

[2] *The Sparta Municipal Code*, Municipal Technical Advisory Service Institute for Public Service, The University of Tennessee, in Cooperation with the Tennessee Municipal League, see page 210, https://www.mtas.tennessee.edu/system/files/codes/combined/Sparta-code.pdf.

[3] *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 505–06 (1952) (invalidating statute banning "sacrilegious" films, holding that blasphemy-based restrictions are incompatible with the First Amendment); *see also Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (government may not tailor laws to religious orthodoxy).

this is now the *fifth* attempt to put it on notice, considering the Board ignored *three* prior letters from the Freedom From Religion Foundation in addition to our own prior letter.[4]

It is important to note the liability that exists by the Board's failure to address its unconstitutional ordinances. For instance, the city can be liable under 42 U.S.C. § 1983 when a constitutional violation results from an official policy or ordinance.[5] Moreover, individual officers and officials are not shielded by qualified immunity, and thus may be personally required to pay money damages, where the constitutional violation is "clearly established."[6] As emphasized by the U.S. Court of Appeals for the Sixth Circuit, decisions of which bind Sparta, qualified immunity will be denied where a "reasonable official would understand that what he is doing violates that [clearly established] right."[7] Given the longstanding and well-settled protections for core political and religious speech, the handbill ordinances expose Sparta and its officials to liability, including damages and attorneys' fees under 42 U.S.C. § 1988.

Sparta's handbill ordinances simply will not pass constitutional muster if challenged, creating needless liability for Sparta and a chilling effect on those seeking to exercise their First Amendment rights in the city. FIRE urges the Board to amend its handbill ordinances accordingly.

FIRE's offer to assist the Board in drafting constitutionally compliant amendments free of charge remains open. The Board would be well-advised to accept it.

We respectfully request a substantive response to this letter no later than April 28, 2026.

Sincerely,

Brennen VanderVeen
Program Counsel, Public Advocacy

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[4] *See Letter to Lynn Omohundro, City of Sparta, Tennessee,* FREEDOM FROM RELIGION FOUND. (Mar. 14, 2022), https://ffrf.org/uploads/legal/CityofSpartaTN.

[5] *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91 (1978).

[6] *Ashcroft v. al-Kidd,* 563 U.S. 731, 735 (2011); *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982).

[7] *Leonard v. Robinson,* 477 F.3d 347, 355 (6th Cir. 2007) (internal citations omitted). *See also Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 255–56 (6th Cir. 2015) (en banc) (denying qualified immunity where officials suppressed protected speech in violation of clearly established First Amendment rights).

March 3, 2026

Board of Mayor and Aldermen
City of Sparta
6 Liberty Square, P.O. Box 30
Sparta, Tennessee 38583

Sent via U.S. Mail and Electronic Mail (j.lowery@spartatn.gov; r.officer@spartatn.gov; b.young@spartatn.gov; b.jones@spartatn.gov; j.floyd@spartatn.gov; j.payne@spartatn.gov; t.mcbride@spartatn.gov)

Dear Board Members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech nationwide, is concerned by the City of Sparta's various handbill ordinances that unconstitutionally (a) restrict handbill content in ways that are vague, overbroad, and viewpoint discriminatory; (b) ban anonymous handbills; and (c) impose permit requirements for all handbilling for hire. As each of these provisions chills the exercise of free speech rights and violate the First Amendment, we urge the Board to repeal or substantially amend the ordinances.

I. Sparta's Handbill Content Bans Violate the First Amendment

Ordinance 11-919 bans distribution of any handbill that "may reasonably tend to incite riot or other public disorder, or which advocates disloyalty to or the overthrow of the Government of the United States or of this state" or "urges any unlawful conduct, or encourages or tends to encourage a breach of the public peace or good order of the community."[1] It further bans handbills "offensive to public morals or decency, or which contains blasphemous, obscene, libelous or scurrilous language."[2] This ordinance is facially invalid as overbroad, viewpoint discriminatory, and vague.

a. The government may not ban speech simply because it "tends" to incite disorder or advocates illegal activity.

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[1] *The Sparta Municipal Code,* Municipal Technical Advisory Service Institute for Public Service, The University of Tennessee, in Cooperation with the Tennessee Municipal League, see page 210, https://www.mtas.tennessee.edu/system/files/codes/combined/Sparta-code.pdf.

[2] *Id.*

Under longstanding Supreme Court precedent, the government may punish advocacy as incitement only if it is both "directed to inciting or producing imminent lawless action and … likely to incite or produce such action."[3] Banning speech that merely "may reasonably tend to incite" disorder or "urge" unlawful conduct falls far short of the threshold for this narrow constitutional exception. A "tendency of speech to encourage unlawful acts is not … sufficient … for banning it."[4]

Bans on speech advocating "disloyalty" or "overthrow" of the government without requiring any intent, imminence, or likelihood of violence have the same constitutional defect, as the Supreme Court has long distinguished protected abstract advocacy—even of unlawful or revolutionary ideas—from unprotected incitement.[5] As Sparta's incitement ban exceeds what the First Amendment allows it to proscribe—*i.e.*, it "prohibits a substantial amount of protected speech … not only in an absolute sense, but also relative to [its] plainly legitimate sweep"—it is unconstitutionally overbroad.[6]

And because the ordinance is not tied to intent, imminence, or likelihood, its bar on advocating "disloyalty" or other speech that rejects or challenges governmental authority boils down to a ban on viewpoints of which the government disapproves. That violates the First Amendment's command that the government "abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."[7] To do otherwise is viewpoint discrimination, an "egregious" form of censorship[8] that is especially severe where, as here, a regulation restricts political speech, where "First Amendment protection is at its zenith."[9]

Furthermore, terms and phrases like "disloyalty," "artifice," and "good order," are unconstitutionally vague because speakers "of common intelligence must necessarily guess at [their] meaning"[10] and they lack "explicit standards" to prevent "arbitrary and discriminatory enforcement."[11] Recently, FIRE wrote the Miami Beach Police Department about its flagrantly unconstitutional abuse of power in showing up at a woman's home in

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[3] *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969); *see also Nwanguma v. Trump*, 903 F.3d 604, 609–11 (6th Cir. 2018) (speech is proscribable incitement only if it (1) "specifically advocate[s] for listeners to take unlawful action," (2) is "directed to … producing imminent lawless action," and (3) is "likely to incite or produce such action.").

[4] *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 239 (2002)); *see also Hess v. Indiana*, 414 U.S. 105, 108–09 (1973) (reversing disorderly conduct conviction where the speech did not advocate and was not likely to produce imminent lawless action).

[5] *See Yates v. United States*, 354 U.S. 298, 318–20 (1957); *Brandenburg*, 395 U.S. at 447–49.

[6] *United States v. Williams*, 553 U.S. 285, 292 (2008).

[7] *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

[8] *Id.*

[9] *See Meyer v. Grant*, 486 U.S. 414, 425 (1988) (cleaned up).

[10] *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

[11] *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

response to a social media post in which she merely criticized her mayor.[12] The officers, dispatched after the mayor alerted police to the post,[13] cited self-serving and speculative allegations that her speech could *probably* incite violence against the mayor. This is just one of many examples which illustrate potential overreach stemming from a vague ordinance or poor understanding of the Constitution. And the phrase "encourage … breach of the public peace or good order of the community" similarly relies on vague and subjective standards that invite an impermissible heckler's veto based on listener reactions.[14] Thus, the Supreme Court has consistently invalidated such "breach of the peace" formulations as incompatible with the First Amendment.[15]

b. Sparta's other sundry content-based bans are unconstitutional.

The ordinance's bans on "offensive," "blasphemous," "scurrilous," and/or "libelous" handbills are all also unconstitutionally overbroad, viewpoint-discriminatory, and vague.

Any prohibition on speech "offensive to public morals or decency" directly conflicts with settled Supreme Court law that makes clear the government may not suppress speech merely because it is offensive, shocking, or distasteful to the community.[16] Community standards of "morals" or "decency" are also not only inherently subjective but also invite a heckler's veto.[17] And banning "blasphemous" language is similarly unconstitutional under longstanding Supreme Court precedent holding the government may not suppress speech because it is irreverent toward religion or religious beliefs.[18]

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[12] *Cops showing up at your door for political Facebook posts is absolutely intolerable in a free society*, FIRE (Jan. 20, 2026), https://www.thefire.org/news/cops-showing-your-door-political-facebook-posts-absolutely-intolerable-free-society.

[13] Abby Dodge, *Emails show Miami Beach mayor flagged critic's Facebook post to police chief*, CBS MIAMI (Jan. 31, 2026), https://www.cbsnews.com/miami/news/miami-beach-mayor-steven-meiner-police-chief-facebook-complaint.

[14] *Nationalist Movement v. City of York*, 481 F.3d 178, 184, 186 (3d Cir. 2007); *see also Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992) (invalidating security fee requirement for demonstrations and other public property uses because it vested unbridled discretion in government officials and authorized them to assess fees based on their "measure of the amount of hostility likely to be created by the speech based on its content").

[15] *See Terminiello v. Chicago*, 337 U.S. 1, 4–5 (1949) (government may not punish speech that "stirs people to anger"); *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971) (invalidating criminalization of conduct "annoying" to others).

[16] *See Cohen v. California*, 403 U.S. 15, 25–26 (1971) (invalidating conviction for wearing a jacket emblazoned with "Fuck the Draft" at a county courthouse where children were present and proclaiming that "one man's vulgarity is another's lyric"); *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (government may not prohibit expression simply because society finds it offensive or disagreeable); *see also Matal v. Tam*, 582 U.S. 218, 243 (2017) ("Giving offense is a viewpoint.").

[17] *See Forsyth Cnty.*, 505 U.S. at 134–35 (holding that speech restrictions based on anticipated hostile audience reaction constitute an impermissible heckler's veto).

[18] In *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 505–06 (1952) (invalidating statute banning "sacrilegious" films, holding that blasphemy-based restrictions are incompatible with the First Amendment); *see also Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (government may not tailor laws to

Although the ordinance uses the term "obscene," it does not limit that prohibition to the narrow constitutional definition of obscenity. Only speech that satisfies the three-part test articulated in *Miller v. California* may be prohibited as obscene.[19] A general reference to "obscene" language, without incorporating the *Miller* standard, operates as a ban on a broad range of protected speech and invites officials to prohibit speech that is "obscene" merely in their own opinion. And the ordinance's prohibition on "scurrilous" language is unconstitutionally vague, overbroad, and viewpoint-discriminatory. The Supreme Court has repeatedly invalidated laws using imprecise, value-laden terms such as "scurrilous," "abusive," or "indecent" to regulate speech.[20] Such terms discriminate based on viewpoint by distinguishing "between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation."[21] These subjective labels also fail to give speakers fair notice of what is prohibited and invite arbitrary enforcement.[22]

Finally, to the extent it applies to speech that has not been adjudicated libelous in court, Sparta cannot constitutionally enforce its blanket prohibition on libelous handbills. Whether speech is libelous requires legal adjudication and cannot be determined by a government administrator on an *ad hoc* basis.[23] The Supreme Court has made clear that libel laws must be carefully tailored and may not be enforced through broad prior restraints or categorical bans on speech.[24]

II. Requiring a Permit for Handbilling for Hire Violates the First Amendment

Ordinance 11-916 requires individuals to obtain a permit before engaging in the paid distribution of handbills: "Any person desiring to engage, as principal, either in the business

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religious orthodoxy). This is not the first time the Board is being put on notice of the unconstitutionality of banning "blasphemous" language, as Freedom From Religion Foundation wrote the Board about this ordinance in 2022, but received no response to that letter or two follow-ups. *See Letter to Lynn Omohundro, City of Sparta, Tennessee*, FREEDOM FROM RELIGION FOUND. (Mar. 14, 2022), https://ffrf.org/uploads/legal/CityofSpartaTN.

[19] 413 U.S. 15, 24 (1973) (expressive material may be banned as "obscene" only if "taken, as a whole," the "average person, applying contemporary community standards" would consider it to "appeal[] to the prurient interest"; it depicts or describes "sexual conduct" in a "patently offensive" manner; *and* it lacks "serious literary, artistic, political, or scientific value").

[20] *See Iancu v. Brunetti*, 588 U.S. 388 (2019) (prohibitions on "immoral" and "scandalous" speech are viewpoint-discriminatory and unconstitutional); *Gooding v. Wilson*, 405 U.S. 518 (1972) (invalidating the term "abusive" as overbroad in other contexts); *Lewis v. City of New Orleans*, 415 U.S. 130, 133–34 (1974).

[21] *Iancu*, 588 U.S. at 394.

[22] *See Grayned*, 408 U.S. at 108–09 (1972).

[23] The First Amendment requires that determining whether speech is defamatory must occur only in adversarial judicial proceedings, in which the plaintiff must prove (1) the speaker made a provably false statement of fact, as opposed to a true statement or opinion; (2) an unprivileged communication of the statement to a third party; (3) fault, which in the case of speech about a public figure or official (such as a mayor) means the speaker knew the statement was false or recklessly disregarded the truth; and (4) harm to the defamed individual. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974).

[24] *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Near v. Minnesota*, 283 U.S. 697, 713–14 (1931).

of a billposter for hire, or in the business of distributing commercial or noncommercial handbills for hire, shall make application to and receive from the chief of police or recorder a permit" and "the board of mayor and aldermen may revoke any permit obtained ... any ... grounds specified by law."[25] In applying to both commercial and noncommercial handbills, the ordinance broadly encompasses protected political and religious speech.

The Supreme Court has consistently held that leafletting and handbill distribution are core First Amendment activities, entitled to the highest level of constitutional protection.[26] Yet by requiring individuals to obtain a permit before handbilling for hire, Sparta's ordinance imposes a prior restraint, "the most serious and the least tolerable infringement" of expressive rights,[27] bearing a "heavy presumption" against their constitutionality.[28] Prior restraint schemes are constitutional only if they include narrow, objective, and definite standards that leave no room for viewpoint discrimination or discretionary enforcement,[29] with the Supreme Court having repeatedly invalidated licensing schemes that vest officials with discretion to approve or deny speech based on broad or undefined standards.[30]

Despite this, Sparta's ordinance gives city officials unbridled discretion to license or deny speech activity, potentially for even viewpoint-discriminatory reasons, by conditioning it on approval by the chief of police or recorder, without clearly defined criteria governing issuance or denial of permits. Among other things, it mentions an open-ended "other just grounds for revocation," with those grounds undefined, leaving applicants and government officials no workable standards. Even where municipalities may impose reasonable time, place, and manner restrictions, they may not require advance permission for core expressive activity absent narrow tailoring to advance a significant government interest and leaving ample alternative channels for communication.[31]

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[25] *The Sparta Municipal Code*, Municipal Technical Advisory Service Institute for Public Service, The University of Tennessee, in Cooperation with the Tennessee Municipal League, see page 209–210, https://www.mtas.tennessee.edu/system/files/codes/combined/Sparta-code.pdf.

[26] *See Schneider v. State*, 308 U.S. 147, 161–62 (1939) (invalidating permit requirements for handbill distribution and emphasizing that "pamphlets have proved most effective instruments in the dissemination of opinion"); *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938) (striking down an ordinance requiring permission from city officials before distributing religious literature).

[27] *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

[28] *Forsyth County*, 505 U.S. at 133.

[29] *See id.*; *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150–51 (1969).

[30] *See City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 757–59 (1988); *Forsyth County*, 505 U.S. at 130–33.

[31] *Forsyth Cnty.*, 505 U.S. 123, 130 (1992); *see also Watchtower Bible & Tract Society v. Village of Stratton*, 536 U.S. 150, 165–66 (2002) (invalidating an ordinance requiring individuals to obtain a permit to engage in door-to-door advocacy of political or religious causes and requiring display of the permit upon request).

None of this changes simply because the ordinance governs only "for hire" handbilling. The fact that speech is compensated does not diminish its First Amendment protection.[32] A nonprofit employee distributing political or social advocacy materials may be doing it "for hire," but they still retain First Amendment rights. A ban on handbilling "for hire" is not narrowly tailored to serve a significant governmental interest and fails to leave open ample alternative channels of communication. Not only is it difficult to imagine a significant government interest in regulating this speech while allowing uncompensated handbilling, but volunteer handbilling is a legally insufficient alternative.[33]

III. Sparta's Ban on Anonymous Handbilling Violates the First Amendment

Ordinance 11-915 bars distribution of any handbill "which does not have printed on the cover, front or back … the name and address of" both the person "who printed, wrote, compiled or manufactured" it and "who caused [it] to be distributed," with a further requirement that, "in case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers or agents of the person sponsoring said handbill shall also appear ….[34] The ordinance accordingly imposes a blanket prohibition on anonymous handbilling, a form of speech expressly protected by the First Amendment—especially when the speech is political or religious.

Given that such bans disproportionately impact criticism and dissent, there is a long history of First Amendment protection for anonymous speech in public discourse,[35] and restrictions like the one at issue here have been consistently invalidated.[36] Because the ordinance here compels disclosure, prohibits anonymous advocacy, and burdens a substantial amount of protected speech, it is facially unconstitutional and subject to invalidation.[37]

Similar ordinances have suffered precisely that fate. In *Talley v. California*, the Supreme Court struck down an ordinance requiring handbills to identify their authors, holding that

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[32] *See, e.g., Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 801 (1988) ("It is well settled that a speaker's rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak."); *see also Meyer v. Grant,* 486 U.S. 414 (1988) (striking down prohibition on paid petition circulators as an impermissible burden on core political speech).

[33] *Meyer*, 486 U.S. 422–23 (rejecting the argument that volunteer circulation is an adequate substitute for paid circulators and holding that restricting paid circulation limits the number of voices and the audience reached).

[34] *The Sparta Municipal Code*, Municipal Technical Advisory Service Institute for Public Service, The University of Tennessee, in Cooperation with the Tennessee Municipal League, see page 209, https://www.mtas.tennessee.edu/system/files/codes/combined/Sparta-code.pdf.

[35] *See, e.g., Watchtower Bible,* 536 U.S. 150; *Thomas v. Collins,* 323 U.S. 516, 539 (1945) ("As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly.").

[36] *See McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 347 (1995) (recognizing anonymous speech as core political expression with bans on it subject to invalidation).

[37] *See id.* at 342–47; *Talley v. California,* 362 U.S. 60, 64–65 (1960).

compelled identification impermissibly burdens anonymous advocacy.[38] The Court reaffirmed this principle in *McIntyre v. Ohio Elections Commission*, invalidating a statute requiring campaign literature to include the speaker's name and address.[39] The Court emphasized that anonymity is "a shield from the tyranny of the majority" and that forced disclosure chills speech, particularly for unpopular or dissenting speakers.[40]

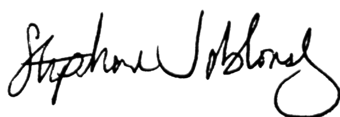
The ordinance here exacerbates that by requiring the disclosure of home addresses, significantly heightening the chilling effect by exposing speakers to harassment, retaliation, or safety risks. And its treatment of fictitious names or clubs exacerbates it further still by requiring disclosure of "true names and addresses," thereby explicitly banning pseudonymous expression—a practice the Supreme Court has repeatedly recognized as constitutionally protected.[41]

Even if the City's interests include accountability, fraud prevention, or litter control, the ordinance is not narrowly tailored to those interests. Less restrictive alternatives—such as enforcing littering laws or regulating false or misleading commercial advertising—are readily available.[42] A blanket ban on anonymous handbilling cannot survive constitutional scrutiny.

IV. <u>Conclusion</u>

The City of Sparta's ordinances governing handbilling violate the First Amendment. As written, they expose residents to penalties for engaging in protected expression—including core political and religious speech—and grant officials overly broad discretion to regulate public discourse. We therefore call on the Board to repeal or substantially amend these ordinances. We are happy to assist in this endeavor, free of charge. We respectfully request a response by March 17, 2026.

Sincerely,



Stephanie Jablonsky
Senior Program Counsel, Public Advocacy

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[38] 362 U.S. 60 (1960).

[39] 514 U.S. 334 (1995).

[40] *Id.* at 357.

[41] *See McIntyre*, 514 U.S. at 357.

[42] *See Schneider*, 308 U.S. 161–62.