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## THE RIGHT TO PICKET, DEMONSTRATE AND WITNESS

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

Furthermore, the U.S. Supreme Court has noted that, in some cases, the sidewalk surrounding a public property may be considered a public forum even though the property itself is not a public forum. *United States v. Grace*, 461 U.S. 171 (1983). If members of the public as well as users of the facility use a sidewalk, then the courts have determined it to be a public forum and thus entitled to the greatest protection for freedom of speech. Moreover, peacefully speaking to another person cannot be considered criminal, harassment or intimidation, even where the conversation is uninvited and not consensual. See *Madsen v. Women’s Health Center, Inc.*, 512 U.S. 753, 773-74 (1994).

Several courts have also conferred public forum status, and the attendant freedoms of speech and expression, upon public beaches. In *Naturist Society, Inc. v. Fillyaw*, 958 F.2d 1515, 1521-23 (11<sup>th</sup> Cir. 1992), the Court held that public beaches are no different from public parks, and government cannot prohibit or regulate speech beyond reasonable, content-neutral time, place and manner restrictions. See also, *Smith v. City of Fort Lauderdale, Florida*, 177 F.3d 954, 956 (11<sup>th</sup> Cir. 1999) (“beach and sidewalk space is a public forum”); *Perry v. Los Angeles Police Dept.*, 121 F.3d 1365 (9<sup>th</sup> Cir. 1997) (invalidating city ordinance that prohibited ideological expression in beach area); *Paulsen v. Lehman*, 839 F. Supp. 147 (E.D.N.Y. 1993) (concluding that beach state park is public forum and that state violated constitutional rights of religious group prohibited from passing out literature).

Based upon countless opinions from the courts, prohibiting a person from witnessing and distributing literature from a public park, street, sidewalk or beach would clearly be a violation of that person’s constitutional rights.