CONSTITUTIONAL LAW—FREEDOM OF THE PRESS—DISTRIBUTION OF HANDBILLS—[United States].—The Supreme Court of the United States recently reviewed together four cases involving local ordinances which either totally prohibited distribution of handbills in designated areas[1] or permitted distribution only after the securing of a permit from the chief of police.[2] *Held*, that municipalities may not exercise their police power to abridge an individual's constitutionally guaranteed freedom to impart information through the distribution of non-commercial literature.

In recent years there has been a significant increase in ordinances prohibiting or restricting the distribution of handbills.[3] Although the majority of these ordinances do not specify motives and are confined to the restriction itself,[4] others are passed, or are sustained, under the authority of the police power to prevent the frightening of horses,[5] the littering of streets,[6] the creating of fire hazards,[7] the clogging of sewers,[8] or the perpetrating of fraud.[9] It is settled law that such ordinances may constitutionally be applied to commercial advertising,[10] but there has been a definite split of authority concerning the treatment of non-commercial literature.[11] The United States Supreme Court, in *Lovell v. Griffin* (1938),[12] definitely established the principle that the freedom of the press guaranteed in the First Amendment of the Federal Constitution against federal action is embodied as well in the Fourteenth Amendment and so applies to municipal ordinances

1. Young v. California, Snyder v. Milwaukee, Nichols v. Massachusetts (1939) 60 S. Ct. 146.
2. Schneider v. New Jersey (1939) 60 S. Ct. 146.
3. (1937) 5 Internat'l Juridical Ass'n Bull. 147.
4. Ibid.
5. Wettengel v. Denver (1895) 20 Colo. 552, 39 Pac. 343; People v. Armstrong (1889) 73 Mich. 288, 41 N. W. 275; Philadelphia v. Brabender (1902) 201 Pa. 574, 51 Atl. 374.
6. People v. St. John (1930) 108 Cal. App. 779, 288 Pac. 53; Wettengel v. Denver (1895) 20 Colo. 552, 39 Pac. 343; People v. Armstrong (1889) 73 Mich. 288, 41 N. W. 275, 2 A. L. R. 721, 16 Am. St. Rep. 578; Almassi v. Newark (C. P. 1930) 8 N. J. Misc. 420, 150 Atl. 217; Philadelphia v. Brabender (1902) 201 Pa. 574, 51 Atl. 374; Milwaukee v. Kassen (1931) 203 Wis. 383, 234 N. W. 352.
7. In re Anderson (1903) 69 Neb. 686, 96 N. W. 149, 5 Ann. Cas. 421; Milwaukee v. Kassen (1931) 203 Wis. 383, 234 N. W. 352.
8. See cases cited supra note 7.
9. Schneider v. New Jersey (1939) 60 S. Ct. 146; Maplewood Township v. Albright (C. P. 1934) 13 N. J. Misc. 46, 176 Atl. 194; Dziatkiewicz v. Maplewood Township (1935) 115 N. J. Law 37, 178 Atl. 205.
10. San Francisco Shopping News Co. v. South San Francisco (C. C. A. 9, 1934) 69 F. (2d) 879; People v. St. John (1930) 108 Cal. App. 779, 288 Pac. 53; Sieroty v. Huntington Park (1931) 111 Cal. App. 377, 295 Pac. 564; Allen v. McGovern (Sup. Ct. 1933) 12 N. J. Misc. 12, 169 Atl. 345; People v. Horwitz (1912) 27 N. Y. Cr. 237, 140 N. Y. Supp. 437. See Schneider v. New Jersey (1939) 60 S. Ct. 146; Coughlin v. Sullivan (1924) 100 N. J. Law 42, 126 Atl. 177; People v. Johnson (Ct. of Gen. Sess. 1921) 117 N. Y. Misc. 133, 191 N. Y. Supp. 750.
11. Note (1923) 22 A. L. R. 1484; Note (1938) 114 A. L. R. 1446.
12. (1938) 303 U. S. 444.

restricting leaflet distribution.[13] An ordinance prohibiting the distribution of handbills at any point in a city without a permit from the city manager was held to establish a censorship which violates the due process clause in abridging the freedom of the press.

Attempts were made to distinguish the instant cases from *Lovell v. Griffin* on the ground that the restrictions were limited to designated areas,[14] or were manifestly enacted to prevent the littering of streets[15] or fraudulent solicitation.[16] The court, in rejecting these distinctions, followed the view that courts should examine the effect upon freedom of speech and press of challenged ordinances "to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."[17] Such a judicial technique casts upon the courts the problem of deciding what kind of handbill should receive protection as non-commercial literature of opinion. It has been held that the handbills need not be distributed gratuitously[18] and that the constitutional protection covers expression of religious opinions,[19] presentation to the public of the contentions of picketing trade unionists,[20] solicitation of membership in trade unions,[21] criticism of governmental bodies and agencies by groups of citizens,[22] the advertising of social affairs and meetings of non-commercial organizations,[23] and pro-

13. Cf. Gitlow v. New York (1925) 268 U. S. 652; Stromberg v. California (1931) 283 U. S. 359; Near v. Minnesota (1931) 283 U. S. 697; Grosjean v. American Press Co. (1936) 297 U. S. 233; DeJonge v. Oregon (1937) 299 U. S. 353.

14. Young v. California, Nichols v. Massachusetts (1939) 60 S. Ct. 146.

15. Snyder v. Milwaukee (1939) 60 S. Ct. 146.

16. Schneider v. New Jersey (1939) 60 S. Ct. 146.

17. Schneider v. New Jersey (1939) 60 S. Ct. 146, 151. A different test was presented in In re Anderson (1903) 69 Neb. 686, 96 N. W. 149, 150, 5 Ann. Cas. 421: "The test in such cases is whether the regulation in question is a bona fide exercise of the police power or an arbitrary and unseasonable interference with the rights of individuals under the guise of police regulations." Quoted with approval in Milwaukee v. Kassen (1931) 203 Wis. 383, 234 N. W. 352.

18. Lovell v. Griffin (1938) 303 U. S. 444; Schneider v. New Jersey (1939) 60 S. Ct. 146.

19. Lovell v. Griffin (1938) 303 U. S. 444 (Jehovah's Witnesses); Schneider v. New Jersey (1939) 60 S. Ct. 146 (Jehovah's Witnesses). Contra: Coleman v. Griffin (1936) 55 Ga. App. 123, 189 S. E. 427 (Jehovah's Witnesses); Dziatkiewicz v. Maplewood Township (1935) 115 N. J. Law 37, 178 Atl. 205; Semansky v. Common Pleas Ct. (Sup. Ct. 1935) 13 N. J. Misc. 589, 180 Atl. 214; Maplewood Township v. Albright (C. P. 1934) 13 N. J. Misc. 46, 176 Atl. 194.

20. Snyder v. Milwaukee (1939) 60 S. Ct. 146.

21. Rochester v. Parr (City Ct. of Rochester 1937) 165 N. Y. Misc. 182, 1 N. Y. Supp. (2d) 771.

22. Nichols v. Massachusetts (1939) 60 S. Ct. 146; Coughlin v. Sullivan (1924) 100 N. J. L. 42, 126 Atl. 177, where the majority of the handbills were distributed in stores and only one or two upon the streets.

23. Young v. California (1939) 60 S. Ct. 146 (Friends Lincoln Brigade); People v. Armstrong (1889) 73 Mich. 288, 41 N. W. 275, 2 L. R. A. 721, 16 Am. St. Rep. 578 (Y. M. C. A.). Contra: Commonwealth v. Kimball (Mass. 1938) 13 N. E. (2d) 18, 114 A. L. R. 1440 (Play sponsored by I. L. G. W. U.).

tests of groups of citizens against activities inimical to their interests.[24] Furthermore, ordinances of these types may not be directed against limited groups such as non-residents[25] or members of the Industrial Workers of the World.[26]

Unfortunately, the Court in the instant cases indicates a method whereby the distribution of leaflets might be indirectly curtailed. The littering of streets may be prevented by punishing "those who actually throw papers on the streets."[27] Such circuitous restrictions of the freedom of the press might well have the effect of direct total prohibition, since they might cause potential recipients to refuse to accept any handbills. Other indirect attacks have been made by punishing distributors of leaflets under the guise of disorderly conduct, loitering, breach of the peace, or other well recognized categories of offenses.[28] Taking their cue from these indirect methods, municipal legislative bodies bent on the curtailment of literature distribution may be inclined to enact circuitous restrictions which will have the effect of prohibition.[29]

The decision in the instant cases is a definite step forward in the protection of civil liberties, but the dictum in the opinion indicates that freedom of the press, as exercised in the publishing and distributing of handbills, remains subject to a degree of control[30] and that the exigencies of local or

24. People v. Johnson (Ct. of Gen. Sess. 1921) 117 N. Y. Misc. 133, 191 N. Y. Supp. 750 (National Association for the Advancement of Colored People protesting pro-Ku Klux Klan moving pictures).

25. Elgin v. Winchester (1921) 300 Ill. 214, 133 N. E. 205, 22 A. L. R. 1481 (fee and bond required); Nutley v. Brandt (Sup. Ct. 1934) 12 N. J. Misc. 670, 174 Atl. 244 (non-resident required to pay a fee, to be fingerprinted and photographed).

26. Ex parte Campbell (1923) 64 Cal. App. 300, 221 Pac. 952 (ordinance prohibiting distribution by Industrial Workers of the World).

27. Schneider v. New Jersey (1939) 60 S. Ct. 146.

28. (1938) 7 Internat'l Juridical Ass'n Bull. 30, 32, n. 15.

29. After Chicago v. Schultz (1930) 341 Ill. 208, 173 N. E. 276, voided an ordinance totally prohibiting leaflet distribution on the streets as being an unreasonable interference with private rights, the ordinance was amended to prohibit distribution of handbills 4½" x 6" or longer, except that such handbills "may be distributed from hand to hand if not tossed or thrown, if enclosed in envelopes or folded or otherwise handed out in such a manner as to avoid the likelihood of falling while being passed out" (Chicago Code of 1931, sec. 4281 as amended). Wettengel v. Denver (1895) 20 Colo. 552, 39 Pac. 343, upheld an ordinance which prohibited distribution of handbills of such a character that the recipients would naturally or probably throw them in the streets. In this case, recipients were requested not to drop them in the streets, and circulators endeavored to pick up such handbills as were thrown away. The case went off on error of the trial court in not submitting the case to the jury.

30. This control includes certain well-recognized situations in which there is a clear and immediate danger of violent overthrow of the state or in which the handbills contain obscenity, libel, or undisputed invasions of the right of privacy. But, also, in times of imagined crises there are shifting definitions in the interpretations affecting the rights of handbill distributors. Under the pretense of prohibiting the activities of alleged subversive groups, legitimate freedom of the press can be distorted or destroyed. Pos-

national conditions may lead the courts to validate extended indirect invasions of the immunities contained in the Bill of Rights. Subsequent decisions will reveal whether this undesirable possibility will be actualized.

J. R. S.

CORPORATIONS—MERGER—RIGHT OF HOLDER OF CUMULATIVE PREFERRED STOCK TO ACCRUED DIVIDENDS—[Delaware].—A corporation, by vote of 91.8% of its total stock, adopted a plan to merge with its wholly owned subsidiary. Under the plan one share of $3 cumulative preferred stock and six shares of no par value common stock in the new company were to be exchanged for each share of the old $6 cumulative preferred stock and $29 accrued, unpaid dividends. The parent corporation had at the time a surplus, unearned but available for dividends, which was more than sufficient to pay the accumulated preferred dividends. This surplus was to be capitalized and given to the preferred stockholders. Delaware statutes existing at the time the corporation was created authorized the merger of parent corporation with subsidiary and the adoption of a plan for converting the stock of the old corporation into that of the new.[1] Such a plan had to be adopted by a two-thirds vote of all stockholders and all "rights of creditors * * * all debts, liabilities and duties" and "all the restrictions, disabilities and duties of each" were to survive against the resulting corporation.[2] The plaintiffs, holding shares of the old $6 cumulative preferred stock, brought a bill in equity to have the merger declared void insofar as it would convert their stock into other securities without paying the accrued dividends. *Held*, that the merger statute, which was automatically a part of the contract between stockholder and corporation, authorized two-thirds of the stockholders at any time to effect a merger and to alter, under a fair and equitable plan, the rights of preferred stockholders to accumulated unpaid dividends as well as to future preferences. Plaintiffs were also held to be barred by laches.[3]

The court's task was to construe the merger statute to determine whether the legislature had intended to foster mergers to the extent of allowing the corporation to make a fair and equitable adjustment of existing claims by commuting accrued dividends into common stock rather than compelling literal compliance with the terms of the stock contract.[4] In previous cases, where the changes had been attempted under a statute authorizing charter amendments, the same court had refused to allow abrogation of the right to preferred cumulative dividends already accrued, but did allow it as

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sible unpredictable judicial action serves only to emphasize that the courts cannot be relied upon as the bulwark of civil liberties and that preservation of civil liberties fundamentally rests upon the vigilance of the citizenry acting through the legislature.

1. Del. Revised Code (1935) secs. 2091, 2091A.
2. Del. Revised Code (1935) sec. 2092.
3. Federal United Corp. v. Havender (Del. 1940) 11 A. (2d) 331.
4. Literal compliance with the terms of the contract would require payment of all accrued dividends before any other class of stockholders might participate in profits.