FOLLETT *v*. McCORMICK, *321 U.S. 573* (1944)

64 S.Ct. 717

FOLLETT *v*. TOWN OF McCORMICK.

APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA.

No. 486.

Argued February 11, 1944.

Decided March 27, 1944.

A municipal ordinance imposing a flat license tax on book agents, as applied to an evangelist or preacher who distributes religious tracts in his home town and who makes his livelihood from such activity, *held* violative of the freedom of worship guaranteed by the First and Fourteenth Amendments. P. 576.
Reversed.

APPEAL from the affirmance of a conviction for violation of a municipal ordinance prescribing an occupational license tax.

Mr. Hayden C. Covington, with whom *Mr. Grover C. Powell* was on the brief, for appellant.

Messrs. J. Fred Buzhardt and *Jeff D. Griffith* for

appellee.
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Miss Dorothy Kenyon filed a brief on behalf of the American Civil Liberties Union, as *amicus curiae*, urging reversal.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Appellant was convicted of violating an ordinance of the town of McCormick, South Carolina which provided: ". . . the following license on business, occupation and professions to be paid by the person or persons carrying on or engaged in such business, occupation or professions within the corporate limits of the Town of McCormick, South Carolina: Agents selling books, per day $1.00, per year $15.00." Appellant is a Jehovah's Witness and has been certified by the Watch Tower Bible & Tract Society as "an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus." He is a resident of McCormick, South Carolina, where he went from house to house distributing certain books. He obtained his living from the money received; he had no other source of income. He claimed that he merely offered the books for a "contribution." But there was evidence that he "offered to and did sell the books." Admittedly he had no license from the town and refused to obtain one. He moved for a directed verdict of not guilty at the close of the evidence, claiming that the ordinance restricted freedom of worship in violation of the First Amendment which the Fourteenth Amendment makes applicable to the States. The motion was overruled and appellant was found guilty by the jury in the Mayor's Court. That judgment was affirmed by the Circuit Court of General Sessions for McCormick County and then by the Supreme Court of South Carolina. The case is here on appeal. Judicial Code, § 237(a), 28 U.S.C. § 344 (a).

The ordinance in this case is in all material respects the same as the ones involved in *Jones* v. *Opelika*,
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319 U.S. 103, and *Murdock* v. *Pennsylvania*, 319 U.S. 105. In those cases, the tax imposed was also a license tax — "a flat tax imposed on the exercise of a privilege granted by the Bill of Rights" and therefore an unconstitutional exaction. *Murdock* v.

Pennsylvania, supra, p. 113. In those cases members of Jehovah's Witnesses had also been found guilty of "peddling" or "selling" literature within the meaning of the local ordinances. But since they were engaged in a "religious" rather than a "commercial" venture, we held that the constitutionality of the ordinances might not be measured by the standards governing the sales of wares and merchandise by hucksters and other merchants. "Freedom of press, freedom of speech, freedom of religion are in a preferred position." *Murdock* v. *Pennsylvania, supra*, p. 115. We emphasized that the "inherent vice and evil" of the flat license tax is that "it restrains in advance those constitutional liberties" and "inevitably tends to suppress their exercise." p. 114.

The Supreme Court of South Carolina recognized those principles but distinguished the present case from the *Murdock* and *Opelika* decisions. It pointed out that the appellant was not an itinerant but was a resident of the town where the canvassing took place, and that the principle of the *Murdock* decision was applicable only to itinerant preachers. It stated, moreover, that appellant earned his living "by the sale of books," that his "occupation was that of selling books and not that of colporteur," that "the sales proven were more commercial than religious." It concluded that the "license was required for the selling of books, not for the spreading of religion."[fn1]

We pointed out in the *Murdock* case that the distinction between "religious" activity and "purely commercial" activity would at times be "vital" in determining the constitutionality of flat license taxes such as these. 319 U.S. p. 110. But we need not determine here by what tests the existence of a "religion" or the "free exercise" thereof in the constitutional sense may be ascertained or measured. For the Supreme Court of South Carolina conceded that "the book in question[fn2] is a religious book"; and it concluded "without difficulty" that "its publication and distribution come within the words, `exercise of religion,' as they are used in the Constitution." We must accordingly accept as *bona fide* appellant's assertion that he was "preaching the gospel" by going "from house to house presenting the gospel of

the kingdom in printed form." Thus we have quite a different case from that of a merchant who sells books at a stand or on the road.

The question is therefore a narrow one. It is whether a flat license tax as applied to one who earns his livelihood as an evangelist or preacher in his home town is constitutional. It was not clear from the records in the *Opelika* and *Murdock* cases to what extent, if any, the Jehovah's Witnesses there involved were dependent on "sales" or "contributions" for a livelihood. But we did state that an "itinerant evangelist" did not become "a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him." 319 U.S. p. 111. Freedom of religion is not merely reserved for those with a long purse. Preachers of the more orthodox faiths are not engaged in commercial undertakings because they are dependent on their calling for a living.

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Whether needy or affluent, they avail themselves of the constitutional privilege of a "free exercise" of their religion when they enter the pulpit to proclaim their faith. The priest or preacher is as fully protected in his function as the parishioners are in their worship. **A flat license tax on that constitutional privilege would be as odious as the early "taxes on knowledge" which the framers of the First Amendment sought to outlaw. *Grosjean* v. *American Press Co.*, 297 U.S. 233, 245-248.** A preacher has no less a claim to that privilege when he is not an itinerant. We referred to the itinerant nature of the activity in the *Murdock* case merely in emphasis of the prohibitive character of the license tax as so applied. Its unconstitutionality was not dependent on that circumstance. **The exaction of a tax as a condition to the exercise of the great liberties guaranteed by the First Amendment is as obnoxious** (*Grosjean* v. *American Press Co., supra; Murdock* v. *Pennsylvania, supra*) as the imposition of a censorship or a previous restraint. *Near* v. *Minnesota*, 283 U.S. 697. For, to repeat, "the power to tax the exercise of a privilege is the power to control or suppress its enjoyment." *Murdock* v. *Pennsylvania, supra,* p. 112.

But if this license tax would be invalid as applied to one who preaches the Gospel from the pulpit, the judgment below must be reversed. For we fail to see how such a tax loses its constitutional infirmity when exacted from those who confine themselves to their own village or town and spread their religious beliefs from door to door or on the street. The protection of the First Amendment is not restricted to orthodox religious practices any more than it is to the expression of orthodox economic views. He who makes a profession of evangelism is not in a less preferred position than the casual worker.

This does not mean that religious undertakings must be subsidized. The exemption from a license tax of a preacher who preaches or a parishioner who listens does
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not mean that either is free from all financial burdens of government, including taxes on income or property. We said as much in the *Murdock* case. 319 U.S. p. 112. But to say that they, like other citizens, may be subject to general taxation does not mean that they can be required to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege.

Reversed.