Memo: To Glen Allen
From: Randy Sheppard
Re: The Constitutional Right To Distribute Pamphlets And Leaflets Door-to-Door In Residential Neighborhoods, Particularly In The Face Of Allegations Of Illegal Littering
Date: May 31, 2024

The California Supreme Court in its somewhat wizened decision of Van Nuys Publishing Company, Inc. v. City of Thousand Oaks (see below) stated that "Door to door distribution of circulars is essential to the poorly financed causes of little people". This very truthful observation has particular and even unique application to our clients and other White nationalists and activists. For that reason the following memorandum covers a number of legal issues with which such persons are likely be confronted. I am sure that it will also greatly facilitate the preparation of a brief in our present case. I will always be available to consult with and participate with you in that very important task. Note that all of the cases and treatise excerpts upon which I rely are appended to the memorandum.

I. AN IMPORTANT PURPOSE OF THE FIRST AMENDMENT IS TO GUARANTEE FREE AND UNFETTERED DISCOURSE ON AND DISCUSSION OF POLITICS AND PUBLIC AFFAIRS.

281 Care Committee v. Arneson, 766 F. 3d 774, 784 (8th Cir. 2014)- The regulation of political speech or expression is, and always has been, at the core of the protection afforded by the First Amendment. Political speech is the primary object of First Amendment protection and the lifeblood of a self-governing people.

Snyder v. Phelps, 562 US 443, 131 S. Ct. 1207, 1215 (2011)- [S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection. Boos v. Barry, 485 US 312, 108 S. Ct. 1157, 1162 (1988) … the First Amendment reflects a "profound national commitment" to the principle that debate on public issues should be uninhibited, robust, and wide-open", and have consistently commented on the central importance of protecting speech on public issues.
Equity Prime Mortgage v. Greene for Congress, Inc., 366 Ga. App. 207, 211, 880 S. E. 2d 642, 647 (2022)- Speech on matters of public concern is at the heart of the First Amendment's protection.
See also:
16A Am. Jur. 2d Constitutional Law
§ 461 Purpose of constitutional guarantees of free speech and press
§ 462 Name and principal function of constitutional guarantees of free speech and press

II. IN ACCORD WITH ITS EMPHASIS ON FIRST AMENDMENT BASED FREE SPEECH IN THE SPHERE OF POLITICS AND PUBLIC AFFAIRS THE UNITED STATES SUPREME COURT EMPHATICALLY SUPPORTS AND UPHOLDS THE RIGHT OF PERSONS AND GROUPS TO EXPRESS AND DISSEMINATE THEIR VIEWS BY MEANS OF PAMPHLETS, BROSHURES AND NEWSPAPERS.

Lovell v. City of Griffin, Georgia, 303 US 444, 58 S. Ct. 666, 669 (1938). The freedom of the press posited in the First Amendment necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of

publication which affords a vehicle of information and opinion…. The ordinance cannot be saved because it relates to distribution and not publication. Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.

Martin v. City of Struthers, Ohio, 319 US 141, 63 S. Ct. 862, 863 (1943)- The right of freedom of speech and press has broad scope. The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if enlightenment was ever to triumph over slothful ignorance. This freedom embraces the right to distribute literature, and necessarily protects the right to receive it. The privilege may not be withdrawn even if it creates the minor nuisance for a community of cleaning litter from the streets.

Van Nuys Publishing Company, Inc. v. City of Thousand Oaks, 5 Cal. 3d 817, 489 P2d 809 (1971)- A municipality cannot preserve the privacy of its citizens or attack the problem of litter by prohibiting all distribution of literature without prior consent. Thus a prosecutor must show that recipient in fact objected in some manner to having brochure left on his or her premises- by use of a **No Trespassing** sign for example- to prosecute for littering or similar crime. California Supreme Court further notes that "Door to door distribution of circulars is essential to the poorly financed causes of little people." 5 Cal. 2d at 825, 489 P2d at 813.

7 McQuillin Mun. Corp. § 24:372 "Residential and door to-door soliciting" (3d ed.)

16 Am. Jur. 2d Constitutional Law § 549 "House-to-house distribution of written material as affected by freedom of speech."

III. OUR CLIENTS HAD THE RIGHT TO DISTRIBUTE THE MATERIALS AT ISSUE ANONYMOUSLY BECAUSE THE US SUPREME COURT NOT ONLY ALLOWS SUCH A PRACTICE BUT CLEARLY APPROVES OF IT AS A MATTER OF FACILITATING THE GREATEST POSSIBLE DISCUSSION OF CONTROVERSIAL PUBLIC ISSUES

Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 536 US 150, 122 S. Ct. 2080, 2089 (2002)- First, as our cases involving distribution of unsigned handbills demonstrate, there are a significant number of persons who support causes anonymously.

McIntyre v. Ohio Elections Commission, 514 US 334, 115 S. Ct. 1511, 1516 (1995)- Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind…. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible….[A]n author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.

2 Smolla & Nimmer on Freedom of Speech § 16.37 "Distribution of anonymous political literature"

IV. SO LONG AS THE MATERIALS THAT THE CLIENTS DISTRIBUTED DID NOT CONTAIN ANY ALLEGATIONS THAT WERE CRIMINALLY OR CIVILY ACTIONABLE, I.E., THREATS AND/OR DEFAMATION THEY COULD NOT BE PUNISHED BECAUSE THERE WERE FACTUAL INACCURACIES OR ERRORS IN THEM

United States v. Alvarez, 567 US 709, 132 S. Ct. 2537 (2012)
1 Law of Defamation § 4:70.50 (2d ed.) "Attempting to criminalize mere 'lies'- The Stolen Valor Act example"
5 Treatise on Constitutional Law § 20.32 (c)- Lies

V. OUR CLIENTS CANNOT BE PUNISHED BECAUSE OF THE CONTENT OF THE LEAFLETS THAT THEY DISTRIBUTED IN VIEW OF THE FACT THAT THERE IS IN THE UNITED STATES NO "HATE SPEECH" EXCEPTION TO THE BROAD PURVIEW OF THE FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH

Virginia v. Black, 538 US 343, 123 S. Ct. 1536 (2003)
R. A. V. v. City of St. Paul, MN, 505 US 377, 112 S. Ct. 2538 (1992)
Brandenburg v. Ohio, 395 US 444, 89 S. Ct. 1827 (1969)

The following subchapters from the thorough and definitive treatise **1 Smolla & Nimmer on Freedom of Speech, chapter 12 concerning hate speech, April 2024 update** should be carefully examined:

§12:4- There is no hate speech exception to the First Amendment
§12:10- Relevance of the Brandenburg decision
§12:19- Court's invocation of the rule against viewpoint discrimination [The US Supreme Court has] all but enshrined the proscription against view-point discrimination as an absolute First Amendment rule. After *R. A. V.,* it is possible to state with great confidence that modern First Amendment jurisprudence erects what is in effect a *per se* rule prohibiting discrimination on the basis of viewpoint.

§12:20- Relationship of the emotion principle to the Court's discussion of viewpoint discrimination
§12:22- Summary of First Amendment doctrines applicable to hate speech

VI. IN THE ABSENCE OF A SHOWING THAT THE PLACEMENT OF A LEAFLET OR PAMPHLET ON THE DOORSTEP OF A RESIDENCE CONSTITUTES AN UNDUE HARDSHIP ON THE PERSON OR PERSONS LIVING THEREIN THE DISTRIBUTOR(S) OF SUCH LITERATURE CANNOT BE CHARGED WITH LITTERING IN A MANNER CONSISTENT WITH FIRST AMENDMENT VALUES. NOTE: THIS SECTION SHOULD BE READ IN CONJUNCTION WITH THE AUTHORITIES CITED IN SECTION II ABOVE IN ORDER TO FULLY UNDERSTAND THE CONTROLLING PRECEPT OF LAW PERTAINING TO THIS ISSUE.

Schneider v. State of New Jersey, 308 US 147, 60 S. Ct. 146, 151 (1939)- We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. Note that Schneider is cited to approvingly by the Georgia Supreme Court in its decision of Statesboro Publishing Company, Inc. v. City ofSylvania, 271 Ga. 92, 516 S. E. 2d 296, fn. 2 (1999), a case upon which our clients have understandably relied in justifying their residential distribution efforts.
Miller v. The City of Laramie, 880 P.2d 594 (Wyo. 1994) (relying very heavily on Schneider v. New Jersey.

Ramsey v. City of Pittsburgh, PA., 764 F. Supp. 2d 728, 732 (WD PA 2011)-The public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution. The right to distribute literature may not be withdrawn even if it creates the minor nuisance for a community of cleaning litter from its streets. Moreover, the Supreme Court has repeatedly emphasized merely invoking interests is insufficient. The government must show that the proposed communicative activity endangers those interests…. Assuming, the prevention of litter is a significant government interest, the City must demonstrate that vehicle or hand leafletting creates an abundance of litter such that the interference with free speech is justified.
State v. Dolcini, Ohio Court of Appeals, Ninth District, Medina County, decided May 13, 2024, 2024 WL 2132079- According to [Appellant-Defendant's] affidavit, all residences where he left materials had political signage in their yards and none of them had **No Trespassing** (emphasis added) signs posted. Thus, their consent to receive literature is "implied from community custom and tradition". (Note: As the dates of the preparation of this memorandum of decision- May 28 through 31, 2024- it is the most recent reported case on this issue from any jurisdiction in the United States.)

VII. FUNDAMENTAL PRECEPTS OF STATUTORY INTERPRETATION AS EXPLICATED BY THE GEORGIA COURTS MANDATE THAT OUR CLIENTS CANNOT BE PROSECUTED UNDER GEORGIA'S LITTERING STATUTE

Our clients' brochures, as downloaded from the internet, are not sophisticated, glossy productions- at least insofar as their individual formats are concerned. Each of them is nevertheless a coherent,

intelligible document which reflects thought and analysis. Anyone who reads one of them must conclude that it is a product of rational thought at some level and that it discusses important issues even if the reader totally disagrees with its message. Consequently none of them can be regarded as "waste paper" from their inception.

The fact that each and all of the documents are communicative in nature is unmistakably evinced by the fact that they are invariably left at the front door of the residences where they have been dropped and delivered. This is clearly done in the hope and anticipation that the leaflet will soon be discovered and examined by the person or persons who live in that place. The manner in which they are transmitted is for that reason wholly dissimilar to the heedless and inconsiderate manner in which those who dispose of unwanted matter engage in the justly condemned act of "littering". The individuals who prepared and delivered these items cannot for that reason be said to have engaged in that antisocial, criminal practice.

The portion of Georgia's littering statute defining its salient terms uses the following words in O. C. G. A. § 16-7-42 (1) (A) in demarcating that conduct: "Litter means any discarded or abandoned refuse, rubbish, junk or other waste material." On the other hand the **Oxford American Desk Dictionary & Thesaurus (3rd ed.)** defines a leaflet as "a printed sheet of paper, sometimes folded, containing information or advertising." In a similar vein the same dictionary describes a pamphlet as a "small booklet or leaflet."

Thus littering is in no way synonymous with or even very similar to the purposeful and intentional distribution of literature and lesser forms of communication. A leaflet, brochure, handbill or a pamphlet can in no way be described from its inception as constituting inherent waste. It is usually handed out or distributed as a matter of design, purpose and intentionality. In contrast items and things typically described as litter are frequently cast aside and discarded in a thoughtless and heedless manner, a circumstance that

has brought about the necessity for anti-littering laws. For that reason an informational handbill should not automatically be bracketed with a cigarette butt in determining the purview of a law against littering. See State v. Iverson, 365 Wis.2d 302, 871 N. W. 2d 661 (2015) (throwing a cigarette butt out of a moving vehicle can properly be punished as littering).

Thus it can be concluded that the authorities prosecuting our clients are endeavoring to compress and collapse an orderly process of literature distribution into what is generally recognized as the typically haphazard and disorganized- and not infrequently chaotic-phenomenon of littering. And this was and is clearly being done because these officials intensely dislike and are indeed very fearful of the recurring messages contained within these pamphlets and leaflets.

These officials are clearly attempting to utilize the littering statute in a manner that could not have been readily anticipated before the arrest of our clients. This twisted mode of interpretation clearly violates basic rules of statutory interpretation in Georgia and in all probability traduces a fundamental precept of due process grounded in the Fourteenth Amendment to the United States Constitution.

"Statutes should be read according to their natural and most obvious import of the language, without resorting to subtle and forced constructions to limit or extend their operation. [A reviewing court] will not adopt a tortured reading of an otherwise plain statute." Choicepoint Services, Inc. v. Graham, 305 Ga. App. 254, 699 S. E. 2d 452, 455 (2010). The plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow or strained construction. 82 C. J. S. Statutes § 399. Moreover, the State's proposed construction of the littering statute, O. C. G. A. § 16-7-43, clearly violates another longstanding and venerable tenet of interpretation. "What is paramount is that a penal statute must

always be interpreted strictly against the State and in favor of human liberty." State v. Crumpton, 369 Ga. App. 403, 893 S. E. 2d 816, 820 (2023).

Moreover, this strained and not readily anticipated utilization of the statute may very well violate a fundamental precept of due process in criminal cases. "To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, of those which are enumerated." Bouie v. City of Columbia, 378 US 347, 84 S. Ct. 1697, 1707 (1964). The Georgia appellate courts have acknowledged the principle enunciated in Bouie. See Hillman v. State, 232 Ga. App. 741, 503 S. E. 2d 610, 613 (1998).

A reasonable and discerning reading of § 16-7-43 does not reveal that it encompasses the distribution of controversial literature even though much or indeed most of it may be unwanted by the intended recipients. The littering prosecution against our clients is totally unwarranted and the warrants lodged against them should be dismissed or these cases otherwise terminated on bases indicative of their lack of culpability.

VIII. WHITE ACTIVISTS SHOULD BE VERY CIRCUMSPECT IN NEIGHBORHOOD LITERATURE DISTRIBUTION AND CANVASSING AND SHOULD OPERATE WELL BEHIND "THE LINE OF LEGALITY" IN UNDERTAKING THESE AND SIMILAR OPERATIONS

Given the closed nature of the American political system insofar as questions of ethnic rivalry and conflict are concerned all Americans of White Christian European descent who care about

their civilization should be grateful to our clients for their efforts on our people's behalf. As their arrests on these charges illustrate their proselytization efforts are not without hazard and even some degree of danger, particularly in the large, multi-ethnic urban areas of the United States.

For one thing much of this work is done at night in order to hopefully preserve the anonymous status of the canvassers. Distribution at night is nevertheless problematic for reasons of which I am sure our clients are well aware. Depending on locale residents of certain urban areas can be very much "on guard" and hostile to strangers who are viewed as intruding into their neighborhoods. Some of them are even armed and that circumstance can make for some very unpleasant encounters.

Of great importance is the fact that electronic visual surveillance is pervasive in such places and the more affluent the area the greater and more sophisticated is its density and coverage. And well-to-do neighborhoods are also regularly patrolled by private security agencies. Such concerns will surely make it their business to discover the identities of nonresidents who are passing out leaflets and pamphlets, particularly those of a clearly controversial nature, in "their" neighborhoods, particularly at night.

Moreover, the minority/liberal watchdog groups are on constant alert to discover very quickly the identity of those who are distributing "hate",i.e., materials perceived to be inimical to nonwhite and nonChristian political and group interests, particularly Jewish interests. I am thinking here principally of the ADL and the SPLC. The ADL (aka the League) has been at this for more than a century and it is very proficient at what it does. It and allied groups work hand-in-glove with local law enforcement and federal agencies such as the FBI. The only way to remotely succeed at "staying in the game" with these outfits is not to do anything stupid or illegal.

Another challenge to effective literature distribution is the manner in which middle class and high-end multi-occupancy housing has been constructed in the last several decades. In places such as the Buckhead area of Atlanta high-rise, expensive apartments and condominiums have been built as virtual castles and fortresses. They have several levels of security both human and electronic. I can't conceive of any door-to-door salesman or political canvasser of any kind being able to gain access to such places in ordinary circumstances. It is interesting to note that several years ago the Georgia legislature had to enact a special statutory provision that would in some manner facilitate service of legal papers on the occupants of such redoubts. See O. C. G. A. § 9-11-4 (f) (4).

For the time being I surmise that literature distribution might be easier and more fruitful in the smaller towns and the more demographically friendly areas (north Georgia and Alabama?). Other than these observations there are other matters that must be considered with regard to the successful distribution of nationalist literature in metropolitan areas and their surroundings.

The central fact that empowers lawful and hopefully successful distribution in areas of single-family dwellings is the recognition that the usual configuration of this type of residence has given rise to an important inference concerning lawful access to that place. In proper circumstances reviewing courts are willing to infer that each home occupant has extended to possible visitors an implied invitation or license to approach the front door of the dwelling and to make a brief inquiry of persons therein- usually by knocking on the door. This inference is based upon the typical paved driveway and walkway that palpably facilitates the approach to the front entrance although a well-worn path will, of course, serve the same purpose.

The permission to approach the front door is limited as to time and space. In addition, this inference of permission can be negated in

a given case if the resident has placed a clearly visible **No Trespassing** sign in his or her front yard.

The nature of the license that a person has to approach the front door of another and to make inquiry has been described by the US Supreme Court as follows: "We have…recognized that the knocker on the front door is treated as an invitation or license to attempt entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds. This implicit license typically permits the visitor to approach the door by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters." Florida v. Jardines, 569 US 1, 133 S. Ct. 1409, 1415 (2013).

For a generalized discussion of this issue see 75 Am. Jur. 2d Trespass § 76. Georgia has followed this precept in criminal cases although it has evidently not yet had the occasion to address the issue at the appellate level in a civil matter. See Jenkins v. State, 223 Ga. App. 486, 477 S. E. 2d 910, 912 (1996) and Pickens v. State, 225 Ga. App. 792, 484 S. E. 2d 731, 735-736 (1997). In contrast, an Ohio appellate court has adhered to this principle precisely within the context of litigation dealing with the constitutional right to distribute literature at residential addresses. Reddy v. Plain Dealer Publishing, 991 N. E. 2d 1158 (Ohio App. 2013). A very recent decision discussing the issue and worthy of study and review is from Oklahoma, Capron v. Sixsmith, 534 P. 3d 279 (OK Civ. App. 2023).

Clearly any visitor to premises seeking to properly and effectively utilize this privilege should not jump over any fence or gate to reach the front door. Nor should he or she otherwise apply any appreciable degree of force to any other intentionally designed obstruction in the yard blocking the way to that entrance.

More importantly, the ostensible visitor should stay on the authorized path and not wander off onto other areas of the property, particularly those in close proximity to the windows of the house. Such caution is particularly mandated at night. Roaming about another's premises could cause the visitor to be charged with loitering and prowling under a statute such as O. C. G. A. § 16- 11-36. It does not require an abundance of evidence to be convicted under that provision- at least in Georgia, for example. See Brown v. State, 312 Ga. App. 489, 718 S. E. 2d 847 (2011).

Finally, a canvasser should resist the temptation to place brochures and leaflets into residential mailboxes. It is against federal law to place mailable materials into such receptacles without adequate postage. See 18 U. S. C. A. § 1725 as discussed in United States Postal Service v. Council of Greenburgh Civic Associations, 453 US 114, 101 S. Ct. 2676 (1981).

IX. DAMAGES CAN BE RECOVERED FOR WRONGFUL ARREST IN GEORGIA.

Assuming that these arrests are found to be unconstitutional and therefore unlawful our clients will be entitled to recover damages. The following materials should be helpful in determining what those damages should be:

Ga. Law of Damages § 30:14 (2023-2024 ed.) "Malicious Prosecution"
5 Am. Jur. 2d Arrest § 120 "Liability of arresting officer; state law claims; tort claims acts
5 Am. Jur. 2d Arrest § 122 "Liability of arresting officer; federal constitutional claims, generally

X. A CONSTITUTIONALLY BASED FEDERAL CLAIM FOR INVASION OF PRIVACY COULD BE VIABLE IN THIS MATTER

As is noted in section III above the Supreme Court has looked with favor upon an individual's right to distribute sensitive, controversial materials anonymously so as to spur on and expand discussion concerning public matters. In my opinion there is a very strong inference that can be drawn that the Court would recognize as a matter of First Amendment jurisprudence an individual's right to privacy in maintaining his or her anonymity in distributing controversial pamphlets, leaflets and the like. In other words, law enforcement agencies have absolutely no reason to cooperate with vigilante outfits like the ADL in "outing" their opponents absent a very strong and universally recognized interest in doing so such as, for example, probable cause to believe that the person investigated has committed a crime.

Such an action would be grounded in a government officials' putative liability for the unlawful disclosure of public facts in a situation wherein the plaintiff was guilty of nothing other than having and expressing controversial beliefs. An important case to review concerning this theory is Sterling v. Borough of Minersville, 232 F.3d 190 (3rd. Cir. 2000) wherein the United States Court of Appeals for the Third Circuit found that there was a viable cause of action for invasion of privacy when a law enforcement officer threatened to reveal an arrestee's suspected homosexuality.

I am not an expert in civil rights law but I am aware that initiating litigation over a matter such as this would be a costly and time consuming undertaking. At this juncture we are merely at the "thinking" stage of the matter and far from actually doing something in my opinion. The conduct of the law enforcement authorities is so

egregious in this case that we should consider doing some early spadework on the issue, however.

To that end I recommend that the following materials be reviewed at your leisure:

Materials Stating That A Person Has A Right To Keep His Or Political Associations And Affiliations Confidential:

Barenblatt v. United States, 360 US 109, 79 S. Ct. 1081 (1959)
Britt v. Superior Court of San Diego County, 20 Cal. 3d 844, 574 P.2d 766 (1978)
Familias Unidas v. Briscoe, 619 F.2d 391 (5th Cir. 1980)

Materials Helpful On The Invasion Of Privacy Question

1 Nahmod, Civil Rights & Civil Liberties Litigation: The Law of Section 1983 § 4:33 "First Amendment- Presumed damages"
Police Misconduct: Law and Litigation § 2:26 "Illegal Search-Privacy"
Police Misconduct:, etc. §2:28 "Denial of First Amendment Rights
Privacy Torts § 3:1 "Truth and malice"
Privacy Torts § 3:3 "The publicity requirement"
Privacy Torts § 3:5 "The private facts requirement"
Privacy Torts § 3:6 "The highly offensive requirement"