

# The Burger Court Opinion Writing Database

## *Heffron v. International Society for Krishna Consciousness, Inc.*

452 U.S. 640 (1981)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 9, 1981

No. 80-795, Heffron v. International Society for  
Krishna Consciousness.

Dear Byron:

I join.

Regards,

Justice White  
Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 4, 1981

RE: No. 80-795 Heffron v. International Society

Dear Thurgood:

You and I voted to reverse in part and affirm in part (as to leaflets) in the above. I'll undertake the dissent.

Sincerely,



Justice Marshall

cc: Justice Stevens

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 28, 1981

RE: No. 80-795 Heffron v. International Society for  
Krishna, etc.

Dear Byron:

I'll probably be writing separately in this case.

Sincerely,



Justice White

cc: The Conference

206  
The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: JUN 3 1981

Recirculated: \_\_\_\_\_

Heffron v. International Society for Krishna Consciousness

No. 80-795

JUSTICE BRENNAN, concurring in part and dissenting in part.

As the Court recognizes, the issue in this case is whether Minnesota State Fair Rule 6.05 constitutes a reasonable time, place, and manner restriction on respondents' exercise of protected first amendment rights. See Schad v. Borough of Mt. Ephraim, \_\_\_ U.S. \_\_\_, \_\_\_ (1981); Grayned v. City of Rockford, 408 U.S. 104, 115-116 (1972). In deciding this issue, the Court considers whether the regulation serves a significant governmental interest and whether that interest can be served by a less restrictive alternative. See ante, at 8-9, 12-13. The Court errs, however, in failing to apply its analysis separately to each of the protected First Amendment activities restricted by Rule 6.05. Thus, the Court fails to recognize that some of the State's restrictions may be reasonable while others may not.

Rule 6.05 restricts three types of protected First Amendment activity: distribution of literature, sale of literature, and solicitation of funds. See Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 632, 633 (1980); Murdock v. Pennsylvania, 319 U.S. 105, 111 (1943); Jamison v. Texas, 318

3, 5, 6

RECEIVED  
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Dec 10 1981

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SUPREME COURT OF THE UNITED STATES

No. 80-795

<p>Michael Heffron, etc., et al.,          Petitioners,          v.          International Society for Krishna          Consciousness, Inc., et al.</p>	}	<p>On Writ of Certiorari to          the Supreme Court of          Minnesota.</p>
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[June —, 1981]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, concurring in part and dissenting in part.

As the Court recognizes, the issue in this case is whether Minnesota State Fair Rule 6.05 constitutes a reasonable time, place, and manner restriction on respondents' exercise of protected First Amendment rights. See *Schad v. Borough of Mt. Ephraim*, — U. S. —, — (1981); *Grayned v. City of Rockford*, 408 U. S. 104, 115-116 (1972). In deciding this issue, the Court considers, *inter alia*, whether the regulation serves a significant governmental interest and whether that interest can be served by a less intrusive restriction. See *ante*, at 8-9, 12-13. The Court errs, however, in failing to apply its analysis separately to each of the protected First Amendment activities restricted by Rule 6.05. Thus, the Court fails to recognize that some of the State's restrictions may be reasonable while others may not.

Rule 6.05 restricts three types of protected First Amendment activity: distribution of literature, sale of literature, and solicitation of funds. See *Village of Schaumburg v. Citizens for a Better Environment*, 444 U. S. 620, 632, 633 (1980); *Murdock v. Pennsylvania*, 319 U. S. 105, 108 (1943); *Jamison v. Texas*, 318 U. S. 413, 416 (1943); *Schneider v. State*, 308 U. S. 147, 160 (1939); *Lovell v. City of Griffin*, 303 U. S. 444, 452 (1938). No individual or group is permitted

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 28, 1981

Re: No. 80-795, Heffron v. ISKCON

Dear Byron,

I am glad to join your opinion for  
the Court.

Sincerely yours,

PS  
/

Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 27 MAY 1981

HEFFRON v. ISKCON, No. 80-795

Recirculated: \_\_\_\_\_

Justice White delivered the opinion of the Court.

The question presented for review is whether a State, consistent with the First Amendment, may require a religious organization desiring to distribute and sell religious literature and to solicit donations at a state fair to conduct those activities only at an assigned location within the fairgrounds even though application of the rule limits the religious practices of the organization.

I

Each year, the Minnesota Agricultural Society (Society), a public corporation organized under the laws of Minnesota, see Minn. Stat. §37.01, operates a state fair on a 125-acre state-owned tract located in St. Paul, Minnesota.<sup>1</sup> The fair is conducted for the purpose of "exhibiting . . . the agricultural, stock-breeding, horticultural, mining, mechanical, industrial, and other products and resources of the state, including proper exhibits and expositions of the arts, human skills, and sciences." Id. The fair is a major public event and attracts

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<sup>1</sup> The facts are taken primarily from the parties Stipulation of Facts filed with the Minnesota District Court on July 31, 1978, and reprinted in the App. at pages A-30 through A-36.

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Stylistic & p. 1

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 6-2-81

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-795

Michael Heffron, etc., et al., Petitioners, v. International Society for Krishna Consciousness, Inc., et al.	}	On Writ of Certiorari to the Supreme Court of Minnesota.
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[June —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

The question presented for review is whether a State, consistent with the First and Fourteenth Amendments, may require a religious organization desiring to distribute and sell religious literature and to solicit donations at a state fair to conduct those activities only at an assigned location within the fairgrounds even though application of the rule limits the religious practices of the organization.

I

Each year, the Minnesota Agricultural Society (Society), a public corporation organized under the laws of Minnesota, see Minn. Stat. § 37.01, operates a state fair on a 125-acre state-owned tract located in St. Paul, Minn.<sup>1</sup> The Fair is conducted for the purpose of "exhibiting . . . the agricultural, stock-breeding, horticultural, mining, mechanical, industrial, and other products and resources of the state, including proper exhibits and expositions of the arts, human skills, and sciences." *Ibid.* The Fair is a major public event and attracts visitors from all over Minnesota as well as from other parts of the country. During the past 5 years, the average

<sup>1</sup>The facts are taken primarily from the parties Stipulation of Facts filed with the Minnesota District Court on July 31, 1978, and reprinted in the App., at pp. A-30 through A-36.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 22, 1981

MEMORANDUM TO THE CONFERENCE

Cases held for No. 80-795 - Heffron v. ISKCON

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There is one case held for Heffron. In Rusk v. Espinosa, No. 80-1207, the Tenth Circuit overturned the City of Albuquerque's licensing ordinance applicable to door-to-door solicitations on the ground that it violated the Free Exercise Clause. The ordinance, enacted for the purpose of preventing deception and fraudulent conduct in connection with charitable solicitations, requires any solicitor to fill out an extensive application in order to obtain a license. Religious organizations are exempt if their "solicitations are in the form of ... solicitations ... solely for evangelical, missionary, or religious but not secular purposes." The ordinance defines secular as "not spiritual or ecclesiastical but rather relating to the affairs of the present world, such as providing food, clothing and counseling." The Board charged with issuing licenses is empowered to determine whether a particular religious organization is exempt from the licensing scheme.

Members of the Seventh Day Adventist Church, appellees in the present case, brought suit against the enforcement of the ordinance on the grounds that it violated their First Amendment rights. The stipulated facts demonstrated that the church obtained donations to help feed the hungry, cloth the naked, and educate the young as part of the church's self-defined mission. While the church considered these activities to be a form of evangelism, the City considered them secular within the meaning of the ordinance. The district court permanently enjoined the City from enforcing the ordinance as to the appellees. The Tenth Circuit affirmed finding that Cantwell v. Connecticut, 310 U.S. 296

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 3, 1981

Re: No. 80-795 - Heffron v. ISKCON

Dear Bill:

Please join me in your opinion.

Sincerely,

*Jm.*  
T.M.

Justice Brennan

cc: The Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: JUN 16 1981

Recirculated: \_\_\_\_\_

No. 80-795, Heffron v. ISKCON

JUSTICE BLACKMUN, concurring in part and dissenting in part.

For the reasons stated by JUSTICE BRENNAN, I believe that Minnesota State Fair Rule 6.05 is unconstitutional as applied to the distribution of literature.<sup>1</sup> I also agree, however, that the Rule is constitutional as applied to the sale of literature and the solicitation of funds. I reach this latter conclusion by a different route than does JUSTICE BRENNAN for I am not persuaded that, under the Court's precedents, the State's interest in protecting fairgoers from fraudulent solicitation or sales practices justifies Rule 6.05's restrictions of those activities.<sup>2</sup>

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<sup>1</sup>Like JUSTICE BRENNAN, I would not reach the question whether respondents can claim an exemption from the operation of Rule 6.05 because of their adherence to the doctrine of Sankirtan.

<sup>2</sup>It should be stressed that Rule 6.05 does not prevent respondents from wandering throughout the fairgrounds and directing interested donors or purchasers to their booth. See Brief for Petitioners 35-36. Thus, it is in fact only the exchange of money, rather than the solicitation per se of contributions or of purchases, that is limited to a booth. See 299 N.W.2d 79, 86 (Minn. 1980) (opinion dissenting in part). Accordingly, I use the terms "solicitation" and "sales" to connote only the actual exchange of money, rather than the act of requesting that the fairgoer purchase literature or make a contribution at the booth.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Thomas

From: Mr. Justice Blackmun

1st PRINTED DRAFT

Circulated: \_\_\_\_\_

Re-circulated: JUN 17 1981

**SUPREME COURT OF THE UNITED STATES**

No. 80-795

Michael Heffron, etc., et al.,  
v.  
International Society for Krishna  
Consciousness, Inc., et al. } On Writ of Certiorari to  
the Supreme Court of  
Minnesota.

[June —, 1981]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

For the reasons stated by JUSTICE BRENNAN, I believe that Minnesota State Fair Rule 6.05 is unconstitutional as applied to the distribution of literature.<sup>1</sup> I also agree, however, that the Rule is *constitutional* as applied to the sale of literature and the solicitation of funds. I reach this latter conclusion by a different route than does JUSTICE BRENNAN for I am not persuaded that, under the Court's precedents, the State's interest in protecting fairgoers from fraudulent solicitation or sales practices justifies Rule 6.05's restrictions of those activities.<sup>2</sup>

In *Village of Schaumburg v. Citizens for a Better Environment*, 444 U. S. 620, 636-637 (1980), the Court stressed that

<sup>1</sup> Like JUSTICE BRENNAN, I would not reach the question whether respondents can claim an exemption from the operation of Rule 6.05 because of their adherence to the doctrine of *Sankirtan*.

<sup>2</sup> It should be stressed that Rule 6.05 does not prevent respondents from wandering throughout the fairgrounds and directing interested donors or purchasers to their booth. See Brief for Petitioners 35-36. Thus, it is in fact only the exchange of money, rather than the solicitation *per se* of contributions or of purchases, that is limited to a booth. See 299 N. W. 2d 79, 86 (Minn. 1980) (opinion dissenting in part). Accordingly, I use the terms "solicitation" and "sales" to connote only the actual exchange of money, rather than the act of requesting that the fairgoer purchase literature or make a contribution at the booth.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 27, 1981

80-795 Heffron v. Iskcon

Dear Byron:

Please join me.

Sincerely,

A handwritten signature in cursive script that reads "Lewis".

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

Re: No. 80-795 Heffron v. Iskcon

Dear Byron:

Please join me.

Sincerely,  
*WHR*

Justice White

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 29, 1981

Re: 80-795 - Heffron v. International Society  
for Krishna, etc.

Dear Byron:

Because I am still somewhat uncertain about this case, I will wait for Bill's writing. As of now, however, I find your opinion very persuasive.

Respectfully,



Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 10, 1981

Re: 80-795 - Heffron v. International Society  
of Krishna Consciousness

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

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