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The First Amendment Doesn't Protect Libertarian Hippies Who Dance in the Jefferson Memorial

Thursday, January 28, 2010, 8:30 AM

Joe Carter

Generally speaking, I'm a tolerant, live-and-let-live, kind of guy. But there are four types of people that drive me nuts: libertarians, hippies, bad dancers, and folks who pull goofy stunts in public for attention.

So you can imagine my dismay when on midnight April 12, 2008, the eve of Thomas Jefferson's birthday, a group of eighteen libertarian hippies donned iPods and **danced inside the Jefferson Memorial**. The Man—in the form of a National Park Service officer—told them to stop the tomfoolery (he may have also told them to wash their hair and get a real job (i.e., stop interning at Cato) but the news reports don't say). The leader of the hippies, Mary Oberwetter, refused to stop that awkward gyrating they call dancing and was arrested, though the charges were later dropped (The Man is getting squishy).

Instead of being grateful for the leniency, Oberwetter sued the Park Service last year claiming that the very reason the First Amendment was added to the Constitution was to protect libertarian hippies who like to dance a jig in front of statues at midnight (or something like that).

Fortunately, the courts disagreed. As **Eugene Volokh** explains in, ***Oberwetter v. Hilliard*** (aka, *Hippie v. The Man*), the court concluded that:

1. the Jefferson Memorial qualified as a "nonpublic forum" for First Amendment purposes, so that restrictions on speech there were constitutional if they were viewpoint-neutral and reasonable, and
2. the limitation on conduct in the Memorial "which involve[s] the communication or expression ... [and] has the effect, intent or propensity to draw a crowd or onlookers" was indeed viewpoint-neutral and reasonable.

I'm not sure what is viewpoint-neutral about libertarian hippie dancing, but I'm not going to complain about the outcome of the ruling.

(Note: There is a rumor that Mary Oberwetter is the same person as **Brooke Oberwetter**, but I don't see how that is possible. Brooke is clean-cut, has a job, and is originally from Dallas, so there is *no way* she can be a hippie.)

Comments (5)

5 Comments

Eric Sundwall

January 28th, 2010 | 11:15 am

Release your inner thug Joe Carter . . .

Jefferson's smiling in conservative heaven someplace.

John C

January 28th, 2010 | 12:03 pm

At least be honest. If you are really a "live-and-let-live" kinda guy, there is no way/reason libertarians would drive you nuts. The bad dancer thing I understand a little bit.

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Joe Carter

January 28th, 2010 | 12:24 pm

John C: *If you are really a "live-and-let-live" kinda guy, there is no way/reason libertarians would drive you nuts.*

I'm "live-and-let-live", not "live-and-let-live-like-heathens." It's a very moralistic tolerance. ;)

My opposition to libertarians, though, is part of a larger aversion to Utopianists.

Joseph Bottum

January 28th, 2010 | 1:32 pm

No, Joe, you need to rethink your argument here. The Court held that there could be reasonably banned at Jefferson Memorial communicative conduct that "has the effect, intent, or propensity to draw a crowd or onlookers."

This says *nothing* about things, like libertarian dancing, that has the effect, intent, or propensity to repel crowds or onlookers. I mean, if it makes people turn away, with that queasy feeling in their stomachs, how is that banned behavior?

Joe Carter

January 28th, 2010 | 1:52 pm

Joseph *This says nothing about things, like libertarian dancing, that has the effect, intent, or propensity to repel crowds or onlookers.*

Hmm. . . that's a good point. If this gets appealed and goes to the Supreme Court Scalia will probably overturn it on that basis.

(For the record, other than her affection for shimming in front of statues, I've only heard good things about Oberwetter. And if I was forced to watch a libertarian dance—*shiver*—I'd rather it be her than, say, Ron Paul.)

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