St. Mary's Law Journal

Volume 13 | Number 2 Article 7

6-1-1982

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Diana K. Miller

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Recommended Citation

Diana K. Miller, *Suppression of Demonstration Permits Represents Invalid Prior Restraint on Free Speech, for Which Temporary Injunctive Relief Appropriate.*, 13 St. Mary's L.J. (1982).

Available at: https://commons.stmarytx.edu/thestmaryslawjournal/vol13/iss2/7

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CONSTITUTIONAL LAW—First Amendment—Suppression of Demonstration Permits Represents Invalid Prior Restraint on Free Speech, for Which Temporary Injunctive Relief Appropriate.

Iranian Muslim Organization v. City of San Antonio,
615 S.W.2d 202 (Tex. 1981).

On December 3, 1979, approximately one month after the seizure of American hostages in Iran, a representative of the Iranian Muslim Organization submitted applications for parade permits to the City of San Antonio (City)[1] in order to conduct demonstrations against the housing of the deposed Shah of Iran at Lackland Air Force Base. Consequently, representatives of local groups, including the Ku Klux Klan and the Americans for Freedom, applied for permits in order to protest against the Iranians. The San Antonio City Council authorized rejection of all applications for parade permits[2] and declared any subsequent permit requests concerning the Iranian controversy would be denied.[3] The district court denied the Iranians' petitions for injunctive relief.[4] The Court of Civil Appeals in San Antonio affirmed,[5] and the Iranians' application for writ of error was granted by the Texas Supreme Court.[6] Held—*Reversed and*

1. *See* Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 204 (Tex. 1981). Both applications were filed by Ali Seyed Fanai Khayat on behalf of the Iranian Muslim Organization (IMO), an unincorporated group of Iranian students residing in the United States. *See id.* at 210 n.2.

2. *See id.* at 204-05. Prior to an open council meeting, five Iranians initiated a hunger strike to protest the Shah's stay in San Antonio. *See id.* at 205. The spontaneous demonstration was permitted by city officials to the extent of providing police surveillance to assure the safety of the strikers. *See id.* at 213 (Barrow, J., dissenting). Following three days of a well-publicized display, a heightened probability of public disorder and physical injury to the Iranians motivated police officers to disrupt the demonstration by taking the five participants into protective custody. *See id.* at 205.

3. *See id.* at 205.

4. *See id.* at 204-05. The IMO petitioned the court to enjoin the City from inhibiting their rights of free speech and assembly, and temporarily direct the City to issue the requested permits. *See id.* at 204-05.

5. *See* Iranian Muslim Org. v. City of San Antonio, 604 S.W.2d 379, 381 (Tex. Civ. App.—San Antonio 1980), *rev'd and rem'd,* 615 S.W.2d 202, 205 (Tex. 1981). The court of civil appeals held that the lower court did not abuse its discretion in refusing to grant temporary injunction since the departure of the Shah defeated proof of irreparable injury. *See id.* at 381.

6. *See* Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 202 (Tex. 1981).

remanded. Suppression of demonstration permits represents an invalid prior restraint on free speech, for which temporary injunctive relief is appropriate.[7]

Courts have consistently held that the exercise of first amendment freedoms, although not an absolute right, is fundamental to the concept of liberty embraced by our society.[8] Verbal communication, such as speech-making and leafletting, has been traditionally recognized as protected speech in its purest form.[9] The protection of the first amendment, however, is not restricted to verbal expression.[10] Peaceful picketing and parading are nonverbal methods of expression also entitled to first amendment protection.[11] Constitutional safeguards available to "speech plus,"[12] however, are not equivalent to those given pure speech.[13]

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7. *See id.* at 207-08.

8. *See, e.g.*, Kovacs v. Cooper, 336 U.S. 77, 90 (1949) (Frankfurter, J., concurring) (progress of society requires open debate); Murdock v. Pennsylvania, 319 U.S. 105, 115 (1943) (first amendment rights in preferred position); Cantwell v. Connecticut, 310 U.S. 296, 304 (1940) (state regulation of speech to further permissible interests must not unduly abridge right to free speech); *cf.* U.S. CONST. amend. I. *See generally* McKay, *The Preference For Freedom*, 34 N.Y.U.L. REV. 1182, 1187-93, 1222 (1959).

9. *See* Cantwell v. Connecticut, 310 U.S. 296, 303-04 (1940) (peaceful dissemination of religious ideas and materials cannot be prohibited by law); Lovell v. Griffin, 303 U.S. 444, 451-52 (1938) (distribution of religious information by circulars or otherwise is a fundamental personal liberty which states may not invade). *See generally* N. DORSEN, P. BENDER & B. NEUBORNE, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES 1, 431-32 (4th ed. 1976).

10. *See, e.g.*, Brown v. Louisiana, 383 U.S. 131, 141-42 (1966) (rights embraced under first and fourteenth amendments include right to protest in peaceful and orderly manner in public forums); NAACP v. Button, 371 U.S. 415, 429-31 (1963) (forms of "orderly group activity" are protected by first and fourteenth amendments); Garner v. Louisiana, 368 U.S. 157, 201-02 (1961) (Harlan, J., concurring) (Supreme Court never confined right of free speech to verbal expression).

11. *See, e.g.*, Shuttlesworth v. City of Birmingham, 394 U.S. 147, 152 (1969) (picketing and parading not "pure speech" but protected under first amendment); Gregory v. City of Chicago, 394 U.S. 111, 112 (1969) (peaceful and orderly civil rights demonstration within protected sphere of conduct); Cox v. Louisiana, 379 U.S. 536, 546 (1965) (civil rights march constitutionally protected free speech and assembly).

12. *See* Shuttlesworth v. City of Birmingham, 394 U.S. 147, 152 (1969) (orderly parading not pure means of communication, although falls within protected category of free speech); Cox v. Louisiana, 379 U.S. 536, 546 (1965) (protests communicated by means of public demonstration valid expression of free speech and assembly).

13. *See, e.g.*, Shuttlesworth v. City of Birmingham, 394 U.S. 147, 152 (1969) (communication of ideas by symbolic medium adds dimension that may conflict with public interests); Cox v. Louisiana, 379 U.S. 536, 555 (1965) (public demonstrations represent more conduct than speech, therefore, afforded less constitutional protection than spoken or printed communication); Hague v. CIO, 307 U.S. 496, 515-16 (1939) (Roberts, J., concurring) (access to public streets and parks not immune from permissible government regulation in order to preserve community peace and order). *See generally* Blasi, *Prior Restraints on Demonstrations*, 68 MICH. L. REV. 1481, 1484-1503 (1970).

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Although public streets and sidewalks are natural forums available to citizens for communicating ideas,[14] the United States Supreme Court has recognized that more assertive forms of nonverbal communication may create substantial interference with legitimate social interests.[15] Such forms of expressive conduct, therefore, may be subjected to government regulation as to its time, place, or manner, without reference to its content.[16] The Supreme Court has, however, repeatedly warned administrative officials that permit statutes and ordinances regulating the exercise of first amendment rights may not be used as a device to censor speech based upon content.[17]

Content regulation by prior restraint[18] is one of two means employed by government officials to suppress the communication of information.[19]

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14. *See, e.g.,* Lehman v. City of Shaker Heights, 418 U.S. 298, 302-03 (1974); Shuttlesworth v. City of Birmingham, 394 U.S. 147, 152 (1969); Hague v. CIO, 307 U.S. 496, 515 (1939) (Roberts, J., concurring). *See generally* Kalven, *The Concept of The Public Forum: Cox v. Louisiana,* 1965 SUP. CT. REV. 1, 11-13.

15. *See* Cox. v. Louisiana, 379 U.S. 536, 554 (1965) (controlling traffic on public highways necessary governmental responsibility); Cox v. New Hampshire, 312 U.S. 569, 574 (1941) (imposition of time, place, and manner regulations valid limit on exercise of free speech in order to assure public safety and access to streets). *See generally* Gorlick, *Right To A Forum,* 71 DICK. L. REV. 273, 277-80 (1967); Kalven, *The Concept Of The Public Forum: Cox v. Louisiana,* 1965 SUP. CT. REV. 1, 13-15.

16. *See* Grayned v. City of Rockford, 408 U.S. 104, 115 (1972) (governmental power to restrict or regulate use of public forums proper, but not because of message); Police Dep't of Chicago v. Mosley, 408 U.S. 92, 95-99 (1972) (permit scheme may be implemented to further governmental interests, but not as device to restrict expression because of subject matter); *cf.* Adderley v. Florida, 385 U.S. 39, 48 (1966) (first amendment rights to public protest and propagandize not interpreted by courts as absolute). "Limited discretion, under properly drawn statutes or ordinances, concerning the time, place, duration, or manner of use of the streets for public assemblies may be vested in administrative officials . . . ." Cox v. Louisiana, 379 U.S. 536, 558 (1965).

17. *See, e.g.,* Police Dep't. of Chicago v. Mosley, 408 U.S. 92, 97 (1972) (condemning permit scheme providing broad discretion in public officials to suppress protected expression at will); Shuttlesworth v. City of Birmingham, 394 U.S. 147, 151 (1969) (ordinance requiring permit subject to uncontrolled discretion of official is unconstitutional censorship); Staub v. City of Baxley, 355 U.S. 313, 321-25 (1958) (licensing schemes contingent upon unbridled discretion of public officials represent form of prior restraint).

18. *See, e.g.,* National Socialist Party of America v. Village of Skokie, 432 U.S. 43, 43-44 (1977) (per curiam) (suppression of information prior to communication may take effect in form of injunction); Organization For A Better Austin v. Keefe, 402 U.S. 415, 418-19 (1971) (injunction issued for purpose of quashing leaflet distribution); Texas Aeronautics Comm'n v. Betts, 469 S.W.2d 394, 398 (Tex. 1971) (temporary restraining order, issued *ex parte,* acts on information or expression prior to communication).

19. *Compare* National Socialist Party of America v. Village of Skokie, 432 U.S. 43, 44 (1977) (per curiam) (prior restraint in form of injunction against marching and distributing literature suppresses subject matter prior to its communication) *and* Concerned Jewish Youth v. McGuire, 621 F.2d 471, 472-78 (2d Cir. 1980) (permit restrictions on size and location of protest valid because of governmental concerns of safety and security to public and

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Prior restraint serves to act on information before it is communicated to the public.[20] This form of restriction is based on the theory that certain forms of speech are intended to, or will inevitably produce, a clear and present danger of some substantive harm which the state may constitutionally suppress or regulate.[21] Because prior restraint of freedom of speech is considered to be a severe deprivation of first amendment rights,[22] any application of prior restraint on free speech is subject to strict judicial scrutiny and bears a "heavy presumption against its constitutional validity."[23]

There are few exceptions to the doctrine of immunity from prior restraint. National security interests, obscenity, incitement to violent overthrow, and prejudice to the sixth amendment right to an impartial jury

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private property), *cert. denied*, ___U.S.___, 101 S. Ct. 1352, ___ L. Ed. 2d ___ (1981) *with* Feiner v. New York, 340 U.S. 315, 315-19 (1951) (upheld disorderly conduct conviction on grounds that speaker exceeded limits of argument or advocacy and encouraged lawless incitement) *and* Chaplinsky v. New Hampshire, 315 U.S. 568, 569-70 (1942) (appellant engaged in unprotected "fighting words" and subsequently convicted for violation of state penal laws). The Supreme Court's refined interpretation of the orthodox "clear and present danger" doctrine provides a balancing formula for appropriating permissible subsequent punishment when speech advocates imminent lawless action. *See* Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) (per curiam); *cf.* Hess v. Indiana, 414 U.S. 105, 105-07 (1973) (*Brandenburg* incitement standard is grounds for reversing disorderly conduct conviction). "[A] free society prefers to punish the few who abuse rights of speech *after* they break the law than to throttle them and all others beforehand. It is always difficult to know in advance what an individual will say, and the line between legitimate and illegitimate speech is often so finely drawn that the risks of freewheeling censorship are formidable . . . . " Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 559 (1975). The overall preference of subsequent punishment over prior restraint as a means to assure public order and avoid violence stems from the argument that, in the former case, the public has at least been exposed to the ideas or information. *See* J. NOWAK, R. ROTUNDA & J. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 741-42 (1978).

20. *See* National Socialist Party of America v. Village of Skokie, 432 U.S. 43, 43-44 (1977) (per curiam) (injunction prohibiting parading and distribution of pamphlets inciting contempt against Jews reversed); Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 541-44 (1976) (court order restraining publication or broadcast coverage of accused's confession until jury impaneled in multiple murder case); Organization For A Better Austin v. Keefe, 402 U.S. 415, 418-19 (1971) (injunction prohibiting public distribution of informational leaflets critical of petitioner's practices impermissible prior restraint of speech).

21. *See* Chaplinsky v. New Hampshire, 315 U.S. 568, 571-72 (1942) (certain classes of speech are "fighting words" which by their mere utterance tend to cause breach of peace and may be prevented). *But cf.* Cohen v. California, 403 U.S. 15, 15-19 (1971) (public communication of questionable taste cannot be suppressed or speaker punished merely because onlookers may be offended).

22. *See* Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976) (prior restraint has irreversible sanction and freezes speech immediately).

23. Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 558 (1976); *see* Carroll v. President and Commr's of Princess Anne, 393 U.S. 175, 181 (1968); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963).

trial are four categories of harm which would justify the imposition of prior restraint on speech.[24] An unsubstantiated fear that offended bystanders may disrupt a peaceful demonstration, however, is not a valid consideration in deciding upon permit applications or issuing injunctions against public protests.[25]

Courts may issue a temporary injunction in order to "prevent irreparable injury" to the rights of the petitioner.[26] Some courts have held that "any delay in the exercise of first amendment rights constitutes irreparable injury to those seeking such exercise . . . ."[27] Absent acceptable justification for refusal,[28] therefore, the existence of irreparable injury, joined with other prerequisites,[29] mandates a temporary injunction.[30]

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24. *See, e.g.*, Gannett Co. v. DePasquale, 443 U.S. 368, 391-94 (1979); New York Times Co. v. United States, 403 U.S. 713, 714 (1971) (per curiam); Near v. Minnesota, 283 U.S. 697, 716 (1931). Justice Stewart set out the standard to be applied to test the validity of a prior restraint for reasons of national security. The test requires a showing of "direct, immediate, and irreparable damage to our Nation *or its people*." *See* New York Times Co. v. United States, 403 U.S. 713, 730 (1971) (Stewart, J., concurring) (emphasis added).

25. *See, e.g.*, Cox v. Louisiana, 379 U.S. 536, 550-02 (1965) (suppression of civil rights protest not justified by mere subjective fear of public disorder); Edwards v. South Carolina, 372 U.S. 229, 229-34 (1963) (presence of hostile spectators does not justify dispersal of lawful civil rights demonstration); Sellers v. Johnson, 163 F.2d 877, 881 (8th Cir. 1947) (free speech may not be abridged because critics threaten to react with force or because peace officers fear breach of peace). The Supreme Court has suggested that the proper procedure for law enforcement officers to follow when concerned that violence may occur is to warn administrators to enable them to take appropriate preventive steps. *See* Police Dep't. of Chicago v. Mosley, 408 U.S. 92, 100-01 (1972); Bachellar v. Maryland, 397 U.S. 564, 567 (1970); Gregory v. City of Chicago, 394 U.S. 111, 120-21 (1969) (Black, J., concurring); Tinker v. Des Moines School District, 393 U.S. 503, 508 (1969). *See also* Note, *Parade Ordinances and Prior Restraints*, 30 OHIO ST. L. J. 856, 858 (1969).

26. *See, e.g.*, Shamloo v. Mississippi State Bd. of Trustees, 620 F.2d 516, 525 (5th Cir. 1980) (trial court abused discretion by refusing to issue preliminary injunction to preserve rights of Iranians); Johnson v. Radford, 449 F.2d 115, 116 (5th Cir. 1971) (grant or denial of temporary injunction rests in discretion of trial court); R. B. Derebery v. Two-Way Water Supply Corp., 590 S.W.2d 647, 649 (Tex. Civ. App.—Dallas 1979, writ ref'd n.r.e.) (preliminary mandatory injunction acts to preserve status quo between parties pending litigation on merits of cause). *But cf.* Haynie v. General Leasing Co., 538 S.W.2d 244, 245 (Tex. Civ. App.—Dallas 1976, no writ) (temporary injunction should be issued only in cases where infringement causes serious injury); Arvin Harrell Co. v. Southwestern Bell Tel. Co., 385 S.W.2d 696, 697 (Tex. Civ. App.—Austin 1964, no writ) (temporary mandatory injunction affects the status quo and may properly be granted only in cases of extreme hardship).

27. *See* A Quaker Action Group v. Hickel, 421 F.2d 1111, 1116 (D.C. Cir. 1969); Southwestern Newspapers Corp. v. Curtis, 584 S.W.2d 362, 365 (Tex. Civ. App.—Amarillo 1979, no writ).

28. *See* Gannett Co. v. DePasquale, 443 U.S. 368, 391-94 (1979) (right to impartial jury trial); Near v. Minnesota, 283 U.S. 697, 716 (1931) (national security, obscenity, incitement to overthrow government).

29. *See* Southwestern Newspapers Corp. v. Curtis, 584 S.W.2d 362, 365 (Tex. Civ. App.—Amarillo 1979, no writ). The other three requisite elements entitling the applicant to

Time is of the essence in conveying certain non-verbal messages to the public.[31] In such instances, government restraint has been found to stifle the communicative activity, or at least diminish its impact.[32] When significant governmental interests in preserving public peace and safety justify the denial of temporary injunctive relief, "alternative channels of communication of information" must be available to the speaker.[33] Nevertheless, the harm flowing from a content ban is impossible to rectify.[34] The Supreme Court has, therefore, recognized the necessity of providing strict procedural safeguards, specifically immediate appellate review, when the state imposes a prior restraint on first amendment rights.[35]

In *Iranian Muslim Organization v. City of San Antonio*[36] the Texas Supreme Court found the impending controversy to be "capable of repetition, yet evading review."[37] While conceding that city officials may impose reasonable restrictions as to time, place, and manner on the exercise of first amendment rights,[38] the majority noted the permit denial to the Iranians and others was content-oriented.[39] The majority rejected the various arguments proposed by the city to justify the infringement on the

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a preliminary injunction are: (1) substantial probability plaintiff will prevail on the merits, (2) impending injury (irreparable harm) to plaintiff outweighs that to the defendant, and (3) granting the temporary injunction will not conflict with public interests. *Id.* at 365.

30. *Id.* at 365; *accord* Canal Auth. of Florida v. Callaway, 489 F.2d 567, 572-73 (5th Cir. 1974).

31. *See* Concerned Jewish Youth v. McGuire, 621 F.2d 471, 472-73 (2d Cir. 1980), *cert. denied*, ___U.S.___, 101 S. Ct. 1352, ___ L. Ed. 2d ___ (1981); Shamloo v. Mississippi State Bd. of Trustees, 620 F.2d 516, 518-24 (5th Cir. 1980).

32. *See* Shamloo v. Mississippi State Bd. of Trustees, 620 F.2d 516, 523-24 (5th Cir. 1980) (unconstitutional denial of exercise of free speech seriously injures rights of aggrieved party); A Quaker Action Group v. Hickel, 421 F.2d 1111, 1116 (D.C. Cir. 1969) (any delay in assertion of free speech constitutes irreparable injury).

33. Virginia Bd. of Pharmacy v. Virginia Consumer Council, 425 U.S. 748, 771 (1976); *see* Lehman v. City of Shaker Heights, 418 U.S. 298, 302-03 (1974); Concerned Jewish Youth v. McGuire, 621 F.2d 471, 472-73 (2d Cir. 1980), *cert. denied*, ___U.S.___, 101 S. Ct. 1352, ___ L. Ed. 2d ___ (1981). It is not clear, however, what factors would constitute sufficient justification to overcome the burden of a prior restraint on expressive conduct, particularly in times of national unrest. *Cf.* Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 592 (1976) (Brennan, J., concurring) (even the defined exceptions will be "extremely difficult to justify").

34. *See* Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 556-58 (1975).

35. *See, e.g.*, National Socialist Party of America v. Village of Skokie, 432 U.S. 43, 44 (1977) (per curiam); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 558-62 (1975); Freedman v. Maryland, 380 U.S. 51, 58 (1965).

36. 615 S.W.2d 202 (Tex. 1981).

37. *Id.* at 209.

38. *Id.* at 205.

39. *Id.* at 206.

exercise of free speech,[40] and labeled the city's actions "a prior restraint."[41] The court adhered to the orthodox views regarding the fear of violence in public protests,[42] holding the city had "failed to meet its 'heavy burden' to justify the imposition of a prior restraint on the exercise of free speech."[43] Relying on both state and federal precedents, the majority stated that the trial court may not deny a temporary injunction when it is evident irreparable injury has resulted from a significant denigration of a constitutional right.[44] Ultimately, the lower courts' judgments denying temporary injunctive relief were reversed.[45]

Justice Barrow agreed with the majority's general view regarding prior restraints on free speech,[46] but maintained the good faith efforts on behalf of city officials combined with the inflammatory emotional atmosphere justified prior restraint.[47] The dissent also emphasized that the issue was moot and, therefore, urged its dismissal.[48]

The *Iranian Muslim Organization* court neglected to offer guidelines to determine what would constitute acceptable justification in order to avoid future excessive restraints of public expression.[49] Recognizing the general

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40. *Id.* at 206-07. City officials argued the denial of parade permits was not content-oriented in light of the seizure of fifty American hostages abroad, threats of violence, and the Iranians' failure to introduce into evidence proof of compliance with requirements of the parade ordinance. *Id.* at 206-07.

41. *Id.* at 206-07.

42. *Id.* at 206-07 (fear of public disorder created by violent bystanders not constitutionally valid consideration in regulating public demonstrations). *See, e.g.,* Police Dep't. of Chicago v. Mosley, 408 U.S. 92, 101 (1972); Tinker v. Des Moines School District, 393 U.S. 503, 508 (1969); Cox v. Louisiana, 379 U.S. 536, 550-52 (1965).

43. Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 208 (Tex. 1981) (fact that alternative channels for expressive conduct were not established rendered city's actions content-based).

44. *See id.* at 208 (citing Shamloo v. Mississippi State Bd. of Trustees, 620 F.2d 516, 525 (5th Cir. 1980)); Quaker Action Group v. Hickel, 421 F.2d 1111, 1116 (D.C. Cir. 1969); Southwestern Newspapers Corp. v. Curtis, 584 S.W.2d 362, 365 (Tex. Civ. App.—Amarillo 1979, no writ).

45. *See* Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 209 (Tex. 1981). Holding that the underlying controversy between the parties is one "capable of repetition," the majority argued that the issue on appeal was not moot. *Id.* at 209. The dissent, however, argued that the reasons for the previous ban on permits regarding the Iranian conflict no longer existed; therefore, permits would be issued to the Iranians upon request, defeating any necessity for injunctive relief. *Id.* at 214 (Barrow, J., dissenting).

46. *See id.* at 209 (prior restraints on first amendment free speech are presumed unconstitutional) (Barrow, Greenhill, McGee, Denton, J.J., dissenting).

47. *See id.* at 209-13 (Barrow, J., dissenting).

48. *See id.* at 214 (Barrow, J., dissenting).

49. *See* Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 206-07 (Tex. 1981). The majority adopted a narrow interpretation of precedent Supreme Court rulings concerning the fear of hostile audience and did not elaborate on the significance, if any, of surrounding facts, except to say that the demonstrations were to be peaceful. *See id.* at 205-

principles favoring communication of expressive conduct, the Texas Supreme Court should set forth criteria which define the role local officials should play in such delicate situations.[50] The degree of preparation required to assure protection to demonstrators and the public, the point at which the activity should be allowed to proceed before suppression may be proper, and appropriate measures for disrupting such conduct are important problems encountered during public demonstrations deserving judicial consideration.[51] The court should specify that public officials may not disrupt lawful demonstration, unless there is an "imminent threat of violence," police have made diligent attempts to protect the demonstrators, police have made a reasonable request to interrupt the demonstration, and the demonstrators fail to comply with the police's request.[52]

As the Texas Supreme Court in *Iranian Muslim Organization* noted, the lack of adequate procedural safeguards pending appellate review defeats the effectiveness of public protests.[53] Such an injury can not be remedied adequately by subsequent permission to demonstrate.[54] The present judicial process essentially facilitates the State's ability to subvert first amendment protections associated with nonverbal communication.[55] When an authorized official wrongfully rejects a permit, the applicant's

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50. *See* New York Times Co. v. United States, 403 U.S. 713, 714 (1971) (Blackmun, J., dissenting) (need for standards to harmonize rights of press and government); Concerned Jewish Youth v. McGuire, 621 F.2d 471, 479 (2d Cir. 1980) (Mansfield, J., dissenting) (the more severe infringement on constitutionally protected rights, the "greater the need for carefully considered and articulated standards."), *cert. denied*, __U.S.__, 101 S. Ct. 1352, __ L. Ed. 2d __ (1981) .

51. *See* City of Chicago v. Gregory, 233 N.E.2d 422, 429 (Ill. 1968), *rev'd on other grounds*, 394 U.S. 111, 112-13 (1969).

52. *See id.* at 429.

53. Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 205-09 (Tex. 1981) (ban on parade permits stifled essence of expression in absence of "strict procedural safeguards"); *see* Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 559 (1975) (only prior restraint scheme employed under procedural safeguards may overcome constitutional infirmity).

54. *See* Southwestern Newspapers Corp. v. Curtis, 584 S.W.2d 362, 365 (Tex. Civ. App.—Amarillo 1979, no writ) (substantial deprivation of first amendment rights constitutes irreparable harm for which granting of temporary injunction after fact provides inefficient relief); *see also* Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 204-08 (Tex. 1981) (once ban on parade permits was effective, trial court's refusal to resolve impending injury increased harm).

55. *Cf.* Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 552-62 (1975) (rejection of application to use public facilities and court denials of injunctive relief sparked three year legal process for reversal); Poulos v. New Hampsire, 345 U.S. 395, 401 (1953) (refusal of license required applicant to pursue judicial relief, causing delay and constituting abridgment of free speech).

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only alternative is judicial relief.[56] A trial court's denial of a legal remedy requires the petitioner to persevere through further judicial proceedings until the impact of the speech is significantly diminished, or the demonstrator chooses to risk criminal or civil sanctions for violation of official orders.[57]

Iranian Muslim Organization extended constitutional protection to expressive conduct embracing unpopular views in a manner consistent with the United States Supreme Court's historic stance on first amendment issues.[58] The Texas Supreme Court failed, however, to offer any substantive standards for balancing between the broad individual right of free speech and the narrow prerogative of the government to suppress the exercise of such speech. The governmental duties to the public and the protestors arising from the existence of "heckler's veto"[59] must be reconciled with the primary purpose of the first amendment—to protect speech.[60] Until the court carefully defines the scope of the government's power to suppress nonverbal communications, improper governmental prohibition of unpopular public protests will inevitably reoccur[61] and judicial remedies for the resulting harm will remain inadequate.

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56. *See* National Socialist Party v. Village of Skokie, 432 U.S. 43, 43-45 (1977) (per curiam); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 552-62 (1975); Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 204-09 (Tex. 1981).

57. *See* Poulos v. New Hampshire, 345 U.S. 395, 401 (1953); Shamloo v. Mississippi State Bd. of Trustees, 620 F.2d 516, 519-24 (5th Cir. 1980); Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 204-09 (Tex. 1981).

58. *Compare* Street v. New York, 394 U.S. 576, 592 (1969) (public communication of ideas may not be suppressed because ideas offend listeners) *and* Cox v. Louisiana, 379 U.S. 536, 551 (1965) (hostility to assertion of constitutional rights does not merit its denial) *and* Terminiello v. Chicago, 337 U.S. 1, 4 (1949) (effective exercise of free speech invites dispute, angers people, and may cause unsettling effects) *with* Iraniam Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 204-09 (Tex. 1981) (fear of public disorder created by violent bystanders not proper consideration in regulating demonstrations).

59. *See* H. KALVEN, THE NEGRO AND THE FIRST AMENDMENT 140-45 (1965).

60. *Compare* Gregory v. City of Chicago, 394 U.S. 111, 120-21 (1969) (Black, J., dissenting) (demonstrators wrongfully arrested upon refusal to comply with officers' orders to disperse to prevent public disorder) *with* Feiner v. New York, 340 U.S. 315, 315-19 (1951) (disorderly conduct conviction upheld on grounds that speaker encouraged lawless activity). *See generally* Shea, *"Don't Bother to Smile When You Call Me That"—Fighting Words and the First Amendment*, 63 KY. L.J. 1, 1-7 (1975).

61. *See* Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 546-47 (1976) (impending controversy has potential for repetition because restrictive order may be imposed again and litigants may clash while performing respective duties); Iranian Muslim Org. v. City of San Antonio, 615 S.W.2d 202, 209 (Tex. 1981) (officials could restrain activity in future).

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