NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC. et al. v. LEE, SUPERINTENDENT OF PORT AUTHORITY POLICE certiorari to the united states court of appeals for the second circuit No. 91-155. Argued March 25, 1992-Decided June 26, 1992

The Port Authority of New York and New Jersey, which owns and operates three major airports in the New York City area and controls certain terminal areas at the airports (hereinafter terminals), adopted a regulation forbidding, inter alia, the repetitive solicitation of money within the terminals. However, solicitation is permitted on the sidewalks outside the terminal buildings. Petitioner International Society for Krishna Consciousness, Inc., a not-for-profit religious corporation whose members, among other things, solicit funds in public places to support their movement, brought suit seeking declaratory and injunctive relief under 42 U.S.C. 1983, alleging that the regulation deprived them of their First Amendment rights. The District Court granted petitioner summary judgment, concluding that the terminals were public fora, and that the regulation banning solicitation failed because it was not narrowly tailored to support a compelling state interest. The Court of Appeals reversed as here relevant. It determined that the terminals are not public fora, and found that the ban on solicitation was reasonable.

Held:

1. An airport terminal operated by a public authority is a non-public forum, and thus a ban on solicitation need only satisfy a reasonableness standard. Pp.4-10.

(a) The extent to which the Port Authority can restrict expressive activity on its property depends on the nature of the forum.

Regulation of traditional public fora or designated public fora survives only if it is narrowly drawn to achieve a compelling state interest, but limitations on expressive activity conducted on any other government-owned property need only be reasonable to survive. Perry Education Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 45, 46. Pp.4-5.

(b) Neither by tradition nor purpose can the terminals be described as public fora. Airports have not historically been

made available for speech activity. Given the lateness with which the modern air terminal has made its appearance, it hardly qualifies as a property that has "immemorially . . . time out of mind" been held in the public trust and used for the purposes of expressive activity. See Hague v. Committee for Industrial Organization, 307 U.S. 496, 515. Nor have airport operators opened terminals to such activities, see Cornelius v. NAACP Legal Defense and Educational Fund, 473 U.S. 788, 802, as evidenced by the operators' frequent and continuing litigation in this area. Pp.6-7.

(c) That speech activities may have historically occurred at "transportation nodes" such as rail and bus stations, wharves, and Ellis Island is not relevant. Many of these sites traditionally have had private ownership. In addition, equating airports with other transportation centers would not take into account differences among the various facilities that may affect the extent to which such facilities can accommodate expressive activity. It is unsurprising to find differences among the facilities. The Port Authority, other airport builders and managers, and the Federal Government all share the view that terminals are dedicated to the facilitation of efficient air travel, not the solicitation of contributions. Pp.7-10.

2. The Port Authority's ban on solicitation is reasonable. Solicitation may have a disruptive effect on business by slowing the path of both those who must decide whether to contribute and those who must alter their paths to avoid the solicitation. In addition, a solicitor may cause duress by targeting the most vulnerable persons or commit fraud by concealing his affiliation or shortchanging purchasers. The fact that the targets are likely to be on a tight schedule, and thus are unlikely to stop and complain to authorities, compounds the problem. The Port Authority has determined that it can best achieve its legitimate interest in monitoring solicitation activity to assure that travelers are not interfered with unduly by limiting solicitation to the sidewalk areas outside the terminals.

That area is frequented by an overwhelming percentage of airport users, making petitioner's access to the general public quite complete.

Moreover, it would be odd to conclude that the regulation is unreasonable when the Port Authority has otherwise assured access to a universally travelled area. While the inconvenience caused by petitioner may seem small, the Port Authority could reasonably worry that the incremental effects of having one group and then another seek such access could prove quite disruptive. Pp.10-12. 925 F.2d 576, affirmed in part.

Rehnquist, C. J., delivered the opinion of the Court, in which White, O'Connor, Scalia, and Thomas, JJ., joined. O'Connor, J., filed a concurring opinion. Kennedy, J., filed an opinion concurring in the judgment, in Part I of which Blackmun, Stevens,

and Souter, JJ., joined. Souter, J., filed a dissenting opinion, in which Blackmun and Stevens, JJ., joined.

Chief Justice Rehnquist delivered the opinion of the Court.

In this case we consider whether an airport terminal operated by a public authority is a public forum and whether a regulation prohibiting solicitation in the interior of an airport terminal violates the First Amendment.

The relevant facts in this case are not in dispute. Petitioner International Society for Krishna Consciousness, Inc. (ISKCON) is a not-for-profit religious corporation whose members perform a ritual known as sankirtan. The ritual consists of -`going into public places, disseminating religious literature and soliciting funds to support the religion."' 925 F. 2d 576, 577 (CA2 1991). The primary purpose of this ritual is raising funds for the movement. Ibid.

Respondent Walter Lee, now deceased, was the police superintendent of the Port Authority of New York and New Jersey and was charged with enforcing the regulation at issue. The Port Authority owns and operates three major airports in the greater New York City area: John F. Kennedy International Airport (Kennedy), La Guardia Airport (La Guardia), and Newark International Airport (Newark). The three airports collectively form one of the world's busiest metropolitan airport complexes. They serve approximately 8% of this country's domestic airline market and more than 50% of the trans-Atlantic market. By decade's end they are expected to serve at least 110 million passengers annually. Id., at 578.

The airports are funded by user fees and operated to make a regulated profit. Id., at 581. Most space at the three airports is leased to commercial airlines, which bear primary responsibility for the leasehold. The Port Authority retains control over unleased portions, including La Guardia's Central Terminal Building, portions of Kennedy's International Arrivals Building, and Newark's North Terminal Building (we refer to these areas collectively as the "terminals"). The terminals are generally accessible to the general public and contain various commercial establishments such as restaurants, snack stands, bars, newsstands, and stores of various types. Id., at 578. Virtually all who visit the terminals do so for purposes related to air travel. These visitors principally include passengers, those meeting or seeing off passengers, flight crews, and terminal employees. Ibid.

The Port Authority has adopted a regulation forbidding within the terminals the repetitive solicitation of money or distribution of literature. The regulation states: "1. The following conduct is prohibited within the interior areas of buildings or structures at an air terminal if conducted by a person to or with passers-by in a continuous or repetitive manner: "(a) The sale or distribution of any merchandise, including but not limited to

jewelry, food stuffs, candles, flowers, badges and clothing. "(b) The sale or distribution of flyers, brochures, pamphlets, books or any other printed or written material. "(c) Solicitation and receipt of funds." Id., at 578-579.

The regulation governs only the terminals; the Port Authority permits solicitation and distribution on the sidewalks outside the terminal buildings. The regulation effectively prohibits petitioner from performing sankirtan in the terminals. As a result, petitioner brought suit seeking declaratory and injunctive relief under 42 U. S. C. 1983, alleging that the regulation worked to deprive them of rights guaranteed under the First Amendment. The District Court analyzed the claim under the "traditional public forum" doctrine. It concluded that the terminals were akin to public streets, 721 F. Supp. 572, 577 (SDNY 1989), the quintessential traditional public fora. This conclusion in turn meant that the Port Authority's terminal regulation could be sustained only if it was narrowly tailored to support a compelling state interest. Id., at 579. In the absence of any argument that the blanket prohibition constituted such narrow tailoring, the District Court granted petitioner summary judgment. Ibid.

/* In Constitutional law classes in law schools, the instructors note that the type of review that the court finds applicable decides the case. Thus, if the case is reviewed under a standard of reasonableness, the government wins in virtually every case, but if the standard is "narrowly drawn to support a compelling interest" the government usually loses. */

The Court of Appeals affirmed in part and reversed in part. 925 F. 2d 576 (1991). Relying on our recent decision in United States v. Kokinda, 497 U. S. ___ (1990), a divided panel concluded that the terminals are not public fora. As a result, the restrictions were required only to satisfy a standard of reasonableness. The Court of Appeals then concluded that, presented with the issue, this Court would find that the ban on solicitation was reasonable, but the ban on distribution was not. Petitioner sought certiorari respecting the Court of Appeals' decision that the terminals are not public fora and upholding the solicitation ban. Respondent cross-petitioned respecting the court's holding striking down the distribution ban. We granted both petitions, 502 U. S. ___ (1992), to resolve whether airport terminals are public fora, a question on which the Circuits have split and on which we once before granted certiorari but ultimately failed to reach. Board of Airport Comm'rs of Los Angeles v. Jews for Jesus, Inc., 482 U. S. 569 (1987).

It is uncontested that the solicitation at issue in this case is a form of speech protected under the First Amendment. Heffron v. International Society for Krishna Consciousness, Inc., 452 U. S. 640 (1981); Kokinda, supra, at ___ (citing Schaumburg v. Citizens for a Better Environment, 444 U. S. 620, 629 (1980)); Riley v. National Federation of Blind of N.C., Inc., 487 U. S. 781, 788-789 (1988). But it is also well settled that the

government need not permit all forms of speech on property that it owns and controls. United States Postal Service v. Council of Greenburgh Civic Assns., 453 U. S. 114, 129 (1981); Greer v. Spock, 424 U. S. 828 (1976). Where the government is acting as a proprietor, managing its internal operations, rather than acting as lawmaker with the power to regulate or license, its action will not be subjected to the heightened review to which its actions as a lawmaker may be subject. Kokinda, supra, at ___ (plurality opinion) (citing Cafeteria & Restaurant Workers v. McElroy, 367 U. S. 886, 896 (1961)). Thus, we have upheld a ban on political advertisements in city- operated transit vehicles, Lehman v. City of Shaker Heights, 418 U. S. 298 (1974), even though the city permitted other types of advertising on those vehicles. Similarly, we have permitted a school district to limit access to an internal mail system used to communicate with teachers employed by the district. Perry Education Assn. v. Perry Local Educators' Ass'n, 460 U. S. 37 (1983).

These cases reflect, either implicitly or explicitly, a -forum-based- approach for assessing restrictions that the government seeks to place on the use of its property. Cornelius v. NAACP Legal Defense and Educational Fund, Inc., 473 U. S. 788, 800 (1985). Under this approach, regulation of speech on government property that has traditionally been available for public expression is subject to the highest scrutiny. Such regulations survive only if they are narrowly drawn to achieve a compelling state interest. Perry, supra, at 45. The second category of public property is the designated public forum, whether of a limited or unlimited character - property that the state has opened for expressive activity by part or all of the public. Ibid. Regulation of such property is subject to the same limitations as that governing a traditional public forum. Id., at 46. Finally, there is all remaining public property. Limitations on expressive activity conducted on this last category of property must survive only a much more limited review. The challenged regulation need only be reasonable, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view. Ibid.

The parties do not disagree that this is the proper framework. Rather, they disagree whether the airport terminals are public fora or nonpublic fora. They also disagree whether the regulation survives the -reasonableness- review governing nonpublic fora, should that prove the appropriate category. Like the Court of Appeals, we conclude that the terminals are nonpublic fora and that the regulation reasonably limits solicitation.

The suggestion that the government has a high burden in justifying speech restrictions relating to traditional public fora made its first appearance in Hague v. Committee for Industrial Organization, 307 U. S. 496, 515, 516 (1939). Justice Roberts, concluding that individuals have a right to use "streets and parks for communication of views," reasoned that such a right

flowed from the fact that "streets and parks . . . have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." We confirmed this observation in Frisby v. Schultz, 487 U. S. 474, 481 (1988), where we held that a residential street was a public forum.

/* One might argue that this analysis is circular. Airports have not existed since "times immemorial" therefore they are not dedicated as a public forum. That means that any new area, perhaps a lunar shuttle terminal will not be a public forum either. */

Our recent cases provide additional guidance on the characteristics of a public forum. In Cornelius we noted that a traditional public forum is property that has as "a principal purpose . . . the free exchange of ideas." 473 U. S., at 800. Moreover, consistent with the notion that the government "like other property owners - -has power to preserve the property under its control for the use to which it is lawfully dedicated," Greer, supra, at 836, the govern- ment does not create a public forum by inaction. Nor is a public forum created "whenever members of the public are permitted freely to visit a place owned or operated by the Government." Ibid. The decision to create a public forum must instead be made "by intentionally opening a nontraditional forum for public discourse." Cornelius, supra, at 802. Finally, we have recognized that the location of property also has bearing because separation from acknowledged public areas may serve to indicate that the separated property is a special enclave, subject to greater restriction. United States v. Grace, 461 U. S. 171, 179-180 (1983).

These precedents foreclose the conclusion that airport terminals are public fora. Reflecting the general growth of the air travel industry, airport terminals have only recently achieved their contemporary size and character. See H.V. Hubbard, M. McClintock, & F.B. Williams, Airports: Their Location, Administration and Legal Basis, 8 (1930) (noting that the United States had only 807 airports in 1930). But given the lateness with which the modern air terminal has made its appearance, it hardly qualifies for the description of having - immemorially . . . time out of mind- been held in the public trust and used for purposes of expressive activity. Hague, supra, at 515. Moreover, even within the rather short history of air transport, it is only "[i]n recent years [that] it has become a common practice for various religious and non-profit organizations to use commercial airports as a forum for the distribution of literature, the solicitation of funds, the proselytizing of new members, and other similar activities." 45 Fed. Reg. 35314 (1980). Thus, the tradition of airport activity does not demonstrate that airports have historically been made available for speech activity.

/* This seems to ingore that fact that persons travelled by horse until the railroads came. Places like Grand Central Station (alebit not government owned) were once the hubs of activity of travel. Airports were not crowded in the 1930's, so persons seeking a public audience would not go there. Now that airports are crowded.... */

Nor can we say that these particular terminals, or airport terminals generally, have been intentionally opened by their operators to such activity; the frequent and continuing litigation evidencing the operators' objections belies any such claim. See n.2, supra. In short, there can be no argument that society's time-tested judgment, expressed through acquiescence in a continuing practice, has resolved the issue in petitioner's favor.

Petitioner attempts to circumvent the history and practice governing airport activity by pointing our attention to the variety of speech activity that it claims historically occurred at various "transportation nodes" such as rail stations, bus stations, wharves, and Ellis Island. Even if we were inclined to accept petitioner's historical account describing speech activity at these locations, an account respondent contests, we think that such evidence is of little import for two reasons. First, much of the evidence is irrelevant to public fora analysis, because sites such as bus and rail terminals traditionally have had private ownership. See United Transportation Union v. Long Island R. Co., 455 U. S. 678, 687 (1982); H.R. Grant & C.W. Bohi, The Country Railroad Station in America, 11-15 (1978); United States Dept. of Transportation, The Intercity Bus Terminal Study 31 (Dec. 1984). The development of privately owned parks that ban speech activity would not change the public fora status of publicly held parks. But the reverse is also true. The practices of privately held transportation centers do not bear on the government's regulatory authority over a publicly owned airport.

Second, the relevant unit for our inquiry is an airport, not "transportation nodes" generally. When new methods of transportation develop, new methods for accommodating that transportation are also likely to be needed. And with each new step, it therefore will be a new inquiry whether the transportation necessities are compatible with various kinds of expressive activity. To make a category of -transportation nodes,- therefore, would unjustifiably elide what may prove to be critical differences of which we should rightfully take account. The -security magnet,- for example, is an airport commonplace that lacks a counterpart in bus terminals and train stations. And public access to air terminals is also not infrequently restricted - just last year the Federal Aviation Administration required airports for a 4-month period to limit access to areas normally publicly accessible. See 14 CFR 107.11(f) (1991) and United States Dept. of Transportation News Release, Office of the Assis- tant Secretary for Public Affairs, January 18, 1991. To

blithely equate airports with other transportation centers, therefore, would be a mistake.

The differences among such facilities are unsurprising since, as the Court of Appeals noted, airports are commercial establishments funded by users fees and designed to make a regulated profit, 925 F. 2d, at 581, and where nearly all who visit do so for some travel related purpose. Id., at 578. As commercial enterprises, airports must provide services attractive to the marketplace. In light of this, it cannot fairly be said that an airport terminal has as a principal purpose "promoting the free exchange of ideas." Cornelius v. NAACP Legal Defense and Educational Fund, Inc., 473 U.S. 788 (1985). To the contrary, the record demonstrates that Port Authority management considers the purpose of the terminals to be the facilitation of passenger air travel, not the promotion of expression. Sloane Affidavit, -11, 2 App. 464; Defendant's Civil Rule 3(g) Statement, -39, 2 App. 453. Even if we look beyond the intent of the Port Authority to the manner in which the terminals have been operated, the terminals have never been dedicated (except under the threat of court order) to expression in the form sought to be exercised here: i.e., the solicitation of contributions and the distribution of literature.

The terminals here are far from atypical. Airport builders and managers focus their efforts on providing terminals that will contribute to efficient air travel. See, e.g., R. Horonjeff & F. McKelvey, Planning and Design of Airports 326 (3d. ed. 1983)("[t]he terminal is used to process passengers and baggage for the interface with aircraft and the ground transportation modes"). The Federal Government is in accord; the Secretary of Transportation has been directed to publish a plan for airport development necessary "to anticipate and meet the needs of civil aeronautics, to meet requirements of the national defense . . . and to meet identified needs of the Postal Service." 49 U.S.C. App. 2203(a)(1) (emphasis added); see also, 45 Fed. Reg. 35317 (1980) ("[t]he purpose for which the [Dulles and National airport] terminal[s] was built and maintained is to process and serve air travelers efficiently"). Although many airports have expanded their function beyond merely contributing to efficient air travel, few have included among their purposes the designation of a forum for solicitation and distribution activities. See supra, at 7. Thus, we think that neither by tradition nor purpose can the terminals be described as satisfying the standards we have previously set out for identifying a public forum.

The restrictions here challenged, therefore, need only satisfy a requirement of reasonableness. We reiterate what we stated in Kokinda, the restriction "`need only be reasonable; it need not be the most reasonable or the only reasonable limitation.'- 496 U. S., at ___ (plurality opinion) (quoting Cornelius, supra, at 808). We have no doubt that under this standard the prohibition on solicitation passes muster.

We have on many prior occasions noted the disruptive effect that solicitation may have on business. "Solicitation requires action by those who would respond: The individual solicited must decide whether or not to contribute (which itself might involve reading the solicitor's literature or hearing his pitch), and then, having decided to do so, reach for a wallet, search it for money, write a check, or produce a credit card." Kokinda, supra, at ___; see Heffron, 452 U. S., at 663 (Blackmun, J., concurring in part and dissent- ing in part). Passengers who wish to avoid the solicitor may have to alter their path, slowing both themselves and those around them. The result is that the normal flow of traffic is impeded. Id., at 653. This is especially so in an airport, where "air travelers, who are often weighted down by cumbersome baggage . . . may be hurrying to catch a plane or to arrange ground transportation." 925 F. 2d, at 582. Delays may be particularly costly in this setting, as a flight missed by only a few minutes can result in hours worth of subsequent inconvenience.

In addition, face-to-face solicitation presents risks of duress that are an appropriate target of regulation. The skillful, and unprincipled, solicitor can target the most vulnerable, including those accompanying children or those suffering physical impairment and who cannot easily avoid the solicitation. See, e. g., International Society for Krishna Consciousness, Inc. v. Barber, 506 F. Supp. 147, 159-163 (NDNY 1980), rev'd on other grounds 650 F. 2d 430 (CA2 1981). The unsavory solicitor can also commit fraud through concealment of his affiliation or through deliberate efforts to shortchange those who agree to purchase. 506 F. Supp., 159-163. See 45 Fed. Reg. 35314-35315 (1980). Compounding this problem is the fact that, in an airport, the targets of such activity frequently are on tight schedules. This in turn makes such visitors unlikely to stop and formally complain to airport authorities. As a result, the airport faces considerable difficulty in achieving its legitimate interest in monitoring solicitation activity to assure that travelers are not interfered with unduly.

The Port Authority has concluded that its interest in monitoring the activities can best be accomplished by limiting solicitation and distribution to the sidewalk areas outside the terminals. Sloane Supp. Affidavit, -11, 2 App. 514. This sidewalk area is frequented by an overwhelming percentage of airport users, see id., at -14, 2 App. 515-516 (noting that no more than 3% of air travelers passing through the terminals are doing so on intraterminal flights, i. e. transferring planes). Thus the resulting access of those who would solicit the general public is quite complete. In turn we think it would be odd to conclude that the Port Authority's terminal regulation is unreasonable despite the Port Authority having otherwise assured access to an area universally traveled.

The inconveniences to passengers and the burdens on Port Authority officials flowing from solicitation activity may seem small, but viewed against the fact that "pedestrian congestion is

one of the greatest problems facing the three terminals," 925 F. 2d, at 582, the Port Authority could reasonably worry that even such incremental effects would prove quite disruptive. Moreover, "the justification for the Rule should not be measured by the disorder that would result from granting an exemption solely to ISKCON." Heffron, supra, at 652. For if petitioner is given access, so too must other groups. "Obviously, there would be a much larger threat to the State's interest in crowd control if all other religious, nonreligious, and noncommercial organizations could likewise move freely." 452 U. S., at 653. As a result, we conclude that the solicitation ban is reasonable.

For the foregoing reasons, the judgment of the Court of Appeals sustaining the ban on solicitation in Port Authority terminals is Affirmed.

Justice Kennedy, with whom Justice Blackmun, Justice Stevens, and Justice Souter join as to Part I, concurring in the judgment.

While I concur in the judgment affirming in this case, my analysis differs in substantial respects from that of the Court. In my view the airport corridors and shopping areas outside of the passenger security zones, areas operated by the Port Authority, are public forums, and speech in those places is entitled to protection against all government regulation inconsistent with public forum principles. The Port Authority's blanket prohibition on the distribution or sale of literature cannot meet those stringent standards, and I agree it is invalid under the First and Fourteenth Amendments. The Port Authority's rule disallowing in- person solicitation of money for immediate payment, however, is in my view a narrow and valid regulation of the time, place, and manner of protected speech in this forum, or else is a valid regulation of the nonspeech element of expressive conduct. I would sustain the Port Authority's ban on solicitation and receipt of funds.

I

An earlier opinion expressed my concern that "[i]f our public forum jurisprudence is to retain vitality, we must recognize that certain objective characteristics of Government property and its customary use by the public may control" the status of the property. United States v. Kokinda, 497 U. S. 720, 737 (1990) (Kennedy, J., concurring in judgment). The case before us does not heed that principle. Our public forum doctrine ought not to be a jurisprudence of categories rather than ideas or convert what was once an analysis protective of expression into one which grants the government authority to restrict speech by fiat. I believe that the Court's public forum analysis in this case is inconsistent with the values underlying the speech and press clauses of the First Amendment.

Our public forum analysis has its origins in Justice Roberts' rather sweeping dictum in Hague v. Committee for Industrial Organization, 307 U. S. 496, 515 (1939); see also ante, at 6. The

doctrine was not stated with much precision or elaboration, though, until our more recent decisions in Perry Education Assn. v. Perry Local Educators' Assn., 460 U. S. 37 (1983), and Cornelius v. NAACP Legal Defense & Educational Fund, Inc., 473 U. S. 788 (1985). These cases describe a three part analysis to designate government- owned property as either a traditional public forum, a designated public forum, or a nonpublic forum. Perry, supra, at 45-46; ante, at 5. The Court today holds that traditional public forums are limited to public property which have as -`a principal purpose . . . the free exchange of ideas'- ; ante, at 6 (quoting Cornelius, supra, at 800), ante, at 1 (opinion of O'Connor, J.); and that this purpose must be evidenced by a long-standing historical practice of permitting speech. Ante, at 7; ante, at 1-2 (opinion of O'Connor, J.). The Court also holds that designated forums consist of property which the government intends to open for public discourse. Ante, at 6, citing Cornelius, supra, at 802; ante, at 2 (opinion of O'Connor, J.). All other types of property are, in the Court's view, nonpublic forums (in other words, not public forums), and government-imposed restrictions of speech in these places will be upheld so long as reasonable and viewpoint-neutral. Under this categorical view the application of public-forum analysis to airport terminals seems easy. Airports are of course public spaces of recent vintage, and so there can be no time-honored tradition associated with airports of permitting free speech. Ante, at 7. And because governments have often attempted to restrict speech within airports, it follows a fortiori under the Court's analysis that they cannot be so-called -designated- forums. Ibid. So, the Court concludes, airports must be nonpublic forums, subject to minimal First Amendment protection.

This analysis is flawed at its very beginning. It leaves the government with almost unlimited authority to restrict speech on its property by doing nothing more than articulating a non-speech-related purpose for the area, and it leaves almost no scope for the development of new public forums absent the rare approval of the government. The Court's error lies in its conclusion that the public-forum status of public property depends on the government's defined purpose for the property, or on an explicit decision by the government to dedicate the property to expressive activity. In my view, the inquiry must be an objective one, based on the actual, physical characteristics and uses of the property. The fact that in our public-forum cases we discuss and analyze these precise characteristics tends to support my position. Perry, supra, at 46-48; Cornelius, supra, at 804-806; Kokinda, supra, at 727-729 (plurality opinion).

The First Amendment is a limitation on government, not a grant of power. Its design is to prevent the government from controlling speech. Yet under the Court's view the authority of the government to control speech on its property is paramount, for in almost all cases the critical step in the Court's analysis is a classification of the property that turns on the government's own definition or decision, unconstrained by an

independent duty to respect the speech its citizens can voice there. The Court acknowledges as much, by reintroducing today into our First Amendment law a strict doctrinal line between the proprietary and regulatory functions of government which I thought had been abandoned long ago. Ante, at 4-5; compare Davis v. Massachusetts, 167 U. S. 43 (1897); with Hague v. Committee for Industrial Organization, supra, at 515; Schneider v. State, 308 U. S. 147 (1939); Grayned v. City of Rockford, 408 U. S. 104, 115-116 (1972).

The Court's approach is contrary to the underlying purposes of the public forum doctrine. The liberties protected by our doctrine derive from the Assembly, as well as the Speech and Press Clauses of the First Amendment, and are essential to a functioning democracy. See Kalven, The Concept of the Public Forum: Cox v. Louisiana, 1965 S. Ct. Rev. 1, 14, 19. Public places are of necessity the locus for discussion of public issues, as well as protest against arbitrary government action. At the heart of our jurisprudence lies the principle that in a free nation citizens must have the right to gather and speak with other persons in public places. The recognition that certain government- owned property is a public forum provides open notice to citizens that their freedoms may be exercised there without fear of a censorial government, adding tangible reinforcement to the idea that we are a free people.

A fundamental tenet of our Constitution is that the government is subject to constraints which private persons are not. The public forum doctrine vindicates that principle by recognizing limits on the government's control over speech activities on property suitable for free expression. The doctrine focuses on the physical characteristics of the property because government ownership is the source of its purported authority to regulate speech. The right of speech protected by the doctrine, however, comes not from a Supreme Court dictum but from the constitutional recognition that the government cannot impose silence on a free people.

The Court's analysis rests on an inaccurate view of history. The notion that traditional public forums are property which have public discourse as their principal purpose is a most doubtful fiction. The types of property that we have recognized as the quintessential public forums are streets, parks, and sidewalks. Cornelius, 473 U. S., at 802; Frisby v. Schultz, 487 U. S. 474, 480-481 (1988). It would seem apparent that the principal purpose of streets and sidewalks, like airports, is to facilitate transportation, not public discourse, and we have recognized as much. Schneider v. State, supra, at 160. Similarly, the purpose for the creation of public parks may be as much for beauty and open space as for discourse. Thus under the Court's analysis, even the quintessential public forums would appear to lack the necessary elements of what the Court defines as a public forum.

The effect of the Court's narrow view of the first category of public forums is compounded by its description of the second

purported category, the so-called -designated- forum. The requirements for such a designation are so stringent that I cannot be certain whether the category has any content left at all. In any event, it seems evident that under the Court's analysis today few if any types of property other than those already recognized as public forums will be accorded that status.

The Court's answer to these objections appears to be a recourse to history as justifying its recognition of streets, parks, and sidewalks, but apparently no other types of government property, as traditional public forums. Ante, at 7-8. The Court ignores the fact that the purpose of the public forum doctrine is to give effect to the broad command of the First Amendment to protect speech from governmen- tal interference. The jurisprudence is rooted in historic practice, but it is not tied to a narrow textual command limiting the recognition of new forums. In my view the policies underlying the doctrine cannot be given effect unless we recognize that open, public spaces and thorough- fares which are suitable for discourse may be public forums, whatever their historical pedigree and without concern for a precise classification of the property. There is support in our precedents for such a view. See Lehman v. City of Shaker Heights, 418 U. S. 298, 303 (1974) (plurality opinion); Hague, 307 U. S., at 515 (speaking of "streets and public places" as forums). Without this recognition our forum doctrine retains no relevance in times of fast-changing technology and increasing insularity. In a country where most citizens travel by automobile, and parks all too often become locales for crime rather than social intercourse, our failure to recognize the possibility that new types of government property may be appropriate forums for speech will lead to a serious curtailment of our expressive activity.

One of the places left in our mobile society that is suitable for discourse is a metropolitan airport. It is of particular importance to recognize that such spaces are public forums because in these days an airport is one of the few government-owned spaces where many persons have extensive contact with other members of the public. Given that private spaces of similar character are not subject to the dictates of the First Amendment, see Hudgens v. NLRB, 424 U. S. 507 (1976), it is critical that we preserve these areas for protected speech. In my view, our public forum doctrine must recognize this reality, and allow the creation of public forums which do not fit within the narrow tradi- tion of streets, sidewalks, and parks. We have allowed flexibility in our doctrine to meet changing technologies in other areas of constitutional interpretation, see, e.g., Katz v. United States, 389 U. S. 347 (1967), and I believe we must do the same with the First Amendment.

I agree with the Court that government property of a type which by history and tradition has been available for speech activity must continue to be recognized as a public forum. Ante, at 7. In my view, however, constitutional protection is not confined to these properties alone. Under the proper circumstances I would

accord public forum status to other forms of property, regardless of its ancient or contemporary origins and whether or not it fits within a narrow historic tradition. If the objective, physical characteristics of the property at issue and the actual public access and uses which have been permitted by the government indicate that expressive activity would be appropriate and compatible with those uses, the property is a public forum. The most important considerations in this analysis are whether the property shares physical similarities with more traditional public forums, whether the government has permitted or acquiesced in broad public access to the property, and whether expressive activity would tend to interfere in a significant way with the uses to which the government has as a factual matter dedicated the property. In conducting the last inquiry, courts must consider the consistency of those uses with expressive activities in general, rather than the specific sort of speech at issue in the case before it; otherwise the analysis would be one not of classification but rather of case-by-case balancing, and would provide little guidance to the State regarding its discretion to regulate speech. Courts must also consider the availability of reasonable time, place, and manner restrictions in undertaking this compatibility analysis. The possibility of some theoretical inconsistency between expressive activities and the property's uses should not bar a finding of a public forum, if those inconsistencies can be avoided through simple and permitted regulations.

The second category of the Court's jurisprudence, the so-called designated forum, provides little, if any, additional protection for speech. Where government property does not satisfy the criteria of a public forum, the government retains the power to dedicate the property for speech, whether for all expressive activity or for limited purposes only. See ante, at 5; Perry, 460 U. S., at 45-46; Southeastern Promotions, Ltd. v. Conrad, 420 U. S. 546 (1975). I do not quarrel with the fact that speech must often be restricted on property of this kind to retain the purpose for which it has been designated. And I recognize that when property has been designated for a particular expressive use, the government may choose to eliminate that designation. But this increases the need to protect speech in other places, where discourse may occur free of such restrictions. In some sense the government always retains authority to close a public forum, by selling the property, changing its physical character, or changing its principal use. Otherwise the State would be prohibited from closing a park, or eliminating a street or sidewalk, which no one has understood the public forum doctrine to require. The difference is that when property is a protected public forum the State may not by fiat assert broad control over speech or expressive activities; it must alter the objective physical character or uses of the property, and bear the attendant costs, to change the property's forum status.

Under this analysis, it is evident that the public spaces of the Port Authority's airports are public forums. First, the

District Court made detailed findings regarding the physical similarities between the Port Authority's airports and public streets. 721 F. Supp. 572, 576-577 (SDNY 1989). These findings show that the public spaces in the airports are broad, public thoroughfares full of people and lined with stores and other commercial activities. An airport corridor is of course not a street, but that is not the proper inquiry. The question is one of physical similarities, sufficient to suggest that the airport corridor should be a public forum for the same reasons that streets and sidewalks have been treated as public forums by the people who use them.

Second, the airport areas involved here are open to the public without restriction. Ibid. Plaintiffs do not seek access to the secured areas of the airports, nor do I suggest that these areas would be public forums. And while most people who come to the Port Authority's airports do so for a reason related to air travel, either because they are passengers or because they are picking up or dropping off passengers, this does not distinguish an airport from streets or sidewalks, which most people use for travel. See supra, at ---. Further, the group visiting the airports encompasses a vast portion of the public: In 1986 the Authority's three airports served over 78 million passengers. It is the very breadth and extent of the public's use of airports that makes it imperative to protect speech rights there. Of course, airport operators retain authority to restrict public access when necessary, for instance to respond to special security concerns. But if the Port Authority allows the uses and open access to airports that is shown on this record, it cannot argue that some vestigial power to change its practices bars the conclusion that its airports are public forums, any more than the power to bulldoze a park bars a finding that a public forum exists so long as the open use does.

Third, and perhaps most important, it is apparent from the record, and from the recent history of airports, that when adequate time, place, and manner regulations are in place, expressive activity is quite compatible with the uses of major airports. The Port Authority's primary argument to the contrary is that the problem of congestion in its airports' corridors makes expressive activity inconsistent with the airports' primary purpose, which is to facilitate air travel. The First Amendment is often inconvenient. But that is besides the point. Inconvenience does not absolve the government of its obligation to tolerate speech. The Authority makes no showing that any real impediments to the smooth functioning of the airports cannot be cured with reasonable time, place, and manner regulations. In fact, the history of the Authority's own airports, as well as other major airports in this country, leaves little doubt that such a solution is quite feasible. The Port Authority has for many years permitted expressive activities by the plaintiffs and others, without any apparent interference with its ability to meet its transportation purposes. App. 462, 469-470; see also ante, at 8 (opinion of O'Connor, J.). The Federal Aviation Authority, in its operation of the airports of the Nation's

capital, has issued rules which allow regulated expressive activity within specified areas, without any suggestion that the speech would be incompatible with the airports' business. 14 CFR 159.93, 159.94 (1992). And in fact expressive activity has been a commonplace feature of our Nation's major airports for many years, in part because of the wide consensus among the Courts of Appeals, prior to the decision in this case, that the public spaces of airports are public forums. See, e.g., Chicago Area Military Project v. Chicago, 508 F. 2d 921 (CA7), cert. denied, 421 U. S. 992 (1975); Fernandes v. Limmer, 663 F. 2d 619 (CA5 1981), cert. dism'd, 458 U. S. 1124 (1982); United States Southwest Africa/Namibia Trade & Cultural Council v. United States, 228 U. S. App. D.C. 191, 708 F. 2d 760 (1983); Jews for Jesus, Inc. v. Board of Airport Com- m'rs, 785 F. 2d 791 (CA9 1986), aff'd on other grounds, 482 U. S. 569 (1987); Jamison v. St. Louis, 828 F. 2d 1280 (CA8 1987), cert. denied, 485 U. S. 987 (1988). As the District Court recognized, the logical consequence of Port Authority's congestion argument is that the crowded streets and sidewalks of major cities cannot be public forums. 721 F. Supp., at 578. These problems have been dealt with in the past, and in other settings, through proper time, place, and manner restrictions; and the Port Authority does not make any showing that similar regulations would not be effective in its airports. The Port Authority makes a half-hearted argument that the special security concerns associated with airports suggest they are not public forums; but this position is belied by the unlimited public access the Authority allows to its airports. This access demonstrates that the Port Authority does not consider the general public to pose a serious security threat, and there is no evidence in the record that persons engaged in expressive activities are any different.

The danger of allowing the government to suppress speech is shown in the case now before us. A grant of plenary power allows the government to tilt the dialogue heard by the public, to exclude many, more marginal voices. The first challenged Port Authority regulation establishes a flat prohibition on "[t]he sale or distribution of flyers, brochures, pamphlets, books or any other printed or written material," if conducted within the airport terminal, "in a continuous or repetitive manner." We have long recognized that the right to distribute flyers and literature lies at the heart of the liberties guaranteed by the Speech and Press Clauses of the First Amendment. See, e.g., Schneider v. State, 308 U. S. 147 (1939); Murdock v. Pennsylvania, 319 U. S. 105 (1943). The Port Authority's rule, which prohibits almost all such activity, is among the most restrictive possible of those liberties. The regulation is in fact so broad and restrictive of speech, Justice O'Connor finds it void even under the standards applicable to government regulations in nonpublic forums. Ante, at 7-8. I have no difficulty deciding the regulation cannot survive the far more stringent rules applicable to regulations in public forums. The regulation is not drawn in narrow terms and it does not leave open ample alternative channels for communication. See Ward v. Rock Against Racism, 491 U. S. 781, 791 (1989). The Port

Authority's concerns with the problem of congestion can be addressed through narrow restrictions on the time and place of expressive activity, see ante, at 8 (opinion of O'Connor, J.). I would strike down the regulation as an unconstitutional restriction of speech.