CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Thomas v. Collins, 323 U.S. 516 (1945)

As applied in this case, the statute imposed a previous restraint upon appellant's rights of free speech and free assembly, in violation of the First and Fourteenth Amendments of the Federal Constitution. P. 323 U. S. 532.

A requirement that one register before making a public speech to enlist support for a lawful movement is incompatible with the guaranties of the First Amendment. P. 323 U. S. 540.

Restriction of the liberties guaranteed by the First Amendment can be justified only by clear and present danger to the public welfare. P. 323 U. S. 530.

The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not, in itself, suffice

Page 323 U. S. 517

to sustain a restriction of the liberties guaranteed by the First Amendment.

P. 323 U. S. 530.

Freedom of speech and of the press, and the rights a the people peaceably to assemble and to petition for redress of grievances, are cognate rights. P. 323 U. S. 530.

The First Amendment's safeguards are not inapplicable to business or economic activity. P. 323 U. S. 531.

Alternatively, the State says, § 5 would be valid if it were framed to include voluntary, unpaid organizers, and if no element of business were involved in the union's activity. The statute "is a registration statute, and nothing more," and confers only "ministerial, and not discretionary, powers" upon the Secretary of State. The requirement, accordingly, is regarded as one merely for previous identification, valid within the rule of City of Manchester v.

Page 323 U. S. 527

Leiby, 117 F.2d 661, and the dictum of Cantwell v. Connecticut, 310 U. S. 296, 310 U. S. 306. [Footnote 11]

In accordance with their different conceptions of the nature of the issues, the parties would apply different standards for determining them. Appellant relies on the rule which requires a showing of clear and present danger to sustain a restriction upon free speech or free assembly. [Footnote 12] Texas, consistently with its "business practice" theory, says the appropriate standard is that applied under the commerce clause to sustain the applications of state statutes regulating transportation made in Hendrick v. Maryland, 235 U. S. 610; Clark v. Paul Gray, Inc., 306 U. S. 583, and California v. Thompson, 313 U. S. 109. [Footnote 13] In short, the State would apply a "rational basis" test,

Page 323 U. S. 528

appellant one requiring a showing of "clear and present danger."

The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now, as always, delicate, is perhaps more so where the

Page 323 U. S. 530

usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable, democratic freedoms secured by the First Amendment. Cf. Schneider v. State, 308 U. S. 147; Cantwell v. Connecticut, 310 U. S. 296; Prince v. Massachusetts, 321 U. S. 158. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. Compare United States v. Carolene Products Co., 304 U. S. 144, 304 U. S. 152-153.

For these reasons, any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. [Footnote 19] The rational connection between the remedy provided and the evil to be curbed, which, in other contexts, might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with

peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, cf. De Jonge v. Oregon, 299 U. S. 353, 299 U. S. 364, and therefore are united in the First Article's assurance. Cf. 1 Annals of Congress 759-760.

Page 323 U. S. 531

This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience. Cf. Pierce v. Society of Sisters, 268 U. S. 510; Meyer v. Nebraska, 262 U. S. 390; Prince v. Massachusetts, 321 U. S. 158. Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and, with it, the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest.

But, in our system, where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment, in the

Page 323 U. S. 532

light of our constitutional tradition. Schneider v. State, 308 U. S. 147, 308 U. S. 161. And the answer, under that tradition, can be affirmative, to support an intrusion upon this domain, only if grave and impending public danger requires this.

These rights of assembly and discussion are protected by the First Amendment. Whatever would restrict them, without sufficient occasion, would infringe its safeguards. The occasion was clearly protected. The speech was an essential part of the occasion, unless all meaning and purpose were to be taken from it. And the invitations, both general and particular, were parts of the speech, inseparable incidents of the occasion and of all that was said or done.

Such a distinction offers no security for free discussion. In these conditions, it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. He must take care in every word to create no impression that he means, in advocating unionism's most central principle, namely, that workingmen should unite for collective bargaining, to urge those present to do so. The vice is not merely that invitation, in the circumstances shown here, is speech. It is also that its prohibition forbids or restrains discussion which is not or may not be invitation. The sharp line cannot be drawn surely or securely. The effort to observe it could not be free speech, free press,

Page 323 U. S. 536

or free assembly, in any sense of free advocacy of principle or cause. The restriction's effect, as applied, in a very practical sense was to prohibit Thomas not only to solicit members and memberships, but also to speak in advocacy of the cause of trade unionism in Texas, without having first procured the card. Thomas knew this, and faced the alternatives it presented. When served with the order, he had three choices: (1) to stand on his right and speak freely; (2) to quit,

refusing entirely to speak; (3) to trim, and even thus to risk the penalty. He chose the first alternative. **We think he was within his rights in doing so.**

The assembly was entirely peaceable, and had no other than a wholly lawful purpose. The statements forbidden were not in themselves unlawful, had no tendency to incite to unlawful action, involved no element of clear and present, grave and immediate danger to the public welfare. Moreover, the State has shown no justification for placing restrictions on the use of the word "solicit." We have here nothing comparable to the case where use of the word "fire" in a crowded theater creates a clear and present danger which the State may undertake to avoid or against which it may protect. Schenck v. United States, 249 U. S. 47. We cannot say that "solicit" in this setting is such a dangerous word. So far as free speech alone is concerned, there can be no ban or restriction or burden placed on the use of such a word except on showing of exceptional circumstances where the public safety, morality or health is involved or some other substantial interest of the community is at stake.

[Footnote 11]

"Without doubt, a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent,"

(emphasis added) citing for comparison Lewis Publishing Co. v. Morgan, 229 U. S. 288, 229 U. S. 306-310; Bryant v. Zimmerman, 278 U. S. 63, 278 U. S. 72. Cf. text infra at note 23

[Footnote 12]

Cf. Schenck v. United States, 249 U. S. 47; Mr. Justice Holmes dissenting in Abrams v. United States, 250 U. S. 616, 250 U. S. 624, and in Gitlow v. New York, 268 U. S. 652, 268 U. S. 672; Bridges v. California, 314 U. S. 252. A recent statement is that made in West Virginia State Board of Education v. Barnette, 319 U. S. 624, 319 U. S. 639:

"The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect."

[Footnote 13]

According to the brief,

"The analogy is that interstate commerce like freedom of religion, speech and press, is protected from undue burdens imposed by the States, yet the States still have authority to impose regulations which are reasonable in relation to the subject."

(Emphasis added.)

[Footnote 19] Cf. note 12 supra.