CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Speiser v. Randall, 357 U.S. 513 (1958)

"It cannot be gainsaid that a discriminatory denial of a tax exemption for engaging in speech is a limitation on free speech." ***"It is settled that speech can be effectively limited by the exercise of the taxing power.*** Grosjean v. American Press Co., 297 U.S. 233. **To deny an exemption to claimants who engage in certain forms of speech is, in effect, to penalize them for such speech."** Page 357 U. S. 518-519

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But while the fairness of placing the burden of proof on the taxpayer in most circumstances is

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recognized, this Court has not hesitated to declare a summary tax collection procedure a violation of due process when the purported tax was shown to be in reality a penalty for a crime. Lipke v. Lederer, 259 U. S. 557; cf. Helwig v. United States, 188 U. S. 605.

"It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions."
Bailey v. State of Alabama, 219 U. S. 219, 239.

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If the aim of the law is not to apprehend criminals, but to penalize advocacy, it likewise must fall. Since the time that Alexander Hamilton wrote concerning these oaths, the Bill of Rights was adopted; and then, much later, came the Fourteenth Amendment. As a result of the latter, a rather broad range of liberties was newly guaranteed to the citizen against state action. **Included were those contained in the First Amendment -- the right to speak freely, the right to believe what one chooses, the right of conscience**. Stromberg v. California, 283 U. S. 359; Murdock v. Pennsylvania, 319 U. S. 105; Staub v. City of Baxley, 355 U. S. 313. Today what one thinks or believes, what one utters and says, have the full protection

of the First Amendment. It is only his actions that government may examine and penalize. When we allow government to probe his beliefs and withhold from him some of the privileges of citizenship because of what he thinks, we do indeed "invert the order of things," to use Hamilton's phrase. All public officials -- state and federal -- must take an oath to support the Constitution by the express command of Article VI of the Constitution. And see Gerende v. Election Board, 341 U. S. 56. But otherwise the domains of conscience and belief have been set aside and protected from government intrusion. Board of Education v. Barnette, 319 U. S. 624. What a man thinks is of no concern to government. "The First Amendment gives freedom of mind the same security as freedom of conscience." Thomas v. Collins, 323 U. S. 516, 323 U. S. 531. Advocacy and belief go hand in hand. For there can be no true freedom of mind if thoughts are secure only when they are pent up.

In Murdock v. Pennsylvania, supra, we stated,

"Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful."

319 U.S. at 319 U. S. 116. If the Government may not impose a tax upon the expression of ideas in order to discourage them, it may not achieve the same end by reducing the individual who expresses his views to second-class citizenship by withholding tax benefits granted others. When government denies a tax exemption because of the citizen's belief, it penalizes that belief. That is different only in form, not substance, from the "taxes on knowledge" which have had a notorious history in the English-speaking world. See Grosjean v. American Press Co., 297 U. S. 233, 297 U. S. 246-247.

We deal here with a type of advocacy which, to say the least, lies close to the "constitutional danger zone." Yates v. United States, 354 U. S. 298, 354 U. S. 319. Advocacy which is in no way brigaded with action should always be protected

by the First Amendment. That protection should extend even to the ideas we despise. As Mr Justice Holmes wrote in dissent in Gitlow v. New York, 268 U. S. 652, 268 U. S. 673,

"If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way."

It is time for government -- state or federal -- to become concerned with the citizen's advocacy when his ideas and beliefs move into the realm of action.

MR. JUSTICE BLACK, whom MR. JUSTICE DOUGLAS joins, concurring

"First Amendment provides the only kind of security system that can preserve a free government -- one that leaves the way wide open for people to favor, discuss, advocate, or incite causes and doctrines however obnoxious and antagonistic such views may be to the rest of us."
Yates v. United States, 354 U. S. 298, 354 U. S. 344 (separate opinion).