CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

NAACP v. Button, 371 U.S. 415 (1963)

Held: The activities of petitioner, its affiliates and legal staff shown on this record are modes of expression and association protected by the First and Fourteenth Amendments which Virginia may not prohibit, under its power to regulate the legal profession, as improper solicitation of legal business violative of Chapter 33 and the Canons of Professional Ethics. Pp. 371 U. S. 417-445.

(a) Although petitioner is a corporation, it may assert its right and that of its members and lawyers to associate for the purpose of assisting persons who seek legal redress for infringement of their constitutionally guaranteed rights. P. 371 U. S. 428.

(b) Abstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion. P. 371 U. S. 429.

(c) In the context of petitioner's objectives, litigation is not a means of resolving private differences; it is a form of political expression, and a means for achieving the lawful objectives of equality of treatment by all governments, federal, state and local, for the members of the Negro community. Pp. 371 U. S. 429-430.

(d) In order to find constitutional protection for the kind of cooperative, organizational activity disclosed by this record, it is not necessary to subsume such activity under a narrow, literal conception of freedom of speech, petition or assembly, for there is no longer any doubt that the First and Fourteenth Amendments protect certain forms of orderly group activity. Pp. 371 U. S. 430-431.

The Virginia Supreme Court of Appeals held that the chapter's purpose "was to strengthen the existing statutes to further control the evils of solicitation of legal business. . . ." 202 Va. at 154, 116 S.E.2d at 65. The

Page 371 U. S. 425

court held that the activities of NAACP, the Virginia Conference, the Defense Fund, and the lawyers furnished by them, fell within, and could constitutionally be proscribed by, the chapter's expanded definition of improper solicitation of legal business, and also violated Canons 35 and 47 of the American Bar Association's Canons of Professional Ethics, which the court had

Page 371 U. S. 426

adopted in 1938. [Footnote 8]

We reverse the judgment of the Virginia Supreme Court of Appeals. We hold that the activities of the NAACP, its affiliates and legal staff shown on this record are modes of expression and association protected by the First and

Page 371 U. S. 429

Fourteenth Amendments which Virginia may not prohibit, under its power to regulate the legal profession, as improper solicitation of legal business violative of Chapter 33 and the Canons of Professional Ethics. [Footnote 11]

We meet at the outset the contention that "solicitation" is wholly outside the area of freedoms protected by the First Amendment. To this contention there are two answers. The first is that a State cannot foreclose the exercise of constitutional rights by mere labels. The second is that abstract discussion is not the only species of communication which the Constitution protects; the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion. Thomas v. Collins, 323 U. S. 516, 323 U. S. 537; Herndon v. Lowry, 301 U. S. 242, 301 U. S. 259-264. Cf. Cantwell v. Connecticut, 310 U. S. 296; Stromberg v. California, 283 U. S. 359, 283 U. S. 369; Terminiello v. Chicago, 337 U. S. 1, 337 U. S. 4. In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. [Footnote 12] Just as it was true of the

Page 371 U. S. 430

opponents of New Deal legislation during the 1930's, [Footnote 13] for example, no less is it true of the Negro minority today. And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.

We need not, in order to find constitutional protection for the kind of cooperative, organizational activity disclosed by this record, whereby Negroes seek through lawful means to achieve legitimate political ends, subsume such activity under a narrow, literal conception of freedom of speech, petition or assembly. For there is no longer any doubt that the First and Fourteenth Amendments protect certain forms of orderly group activity. Thus, we have affirmed the right "to engage in association for the advancement of beliefs and ideas." NAACP v. Alabama, supra, at 357 U. S. 460. We have deemed privileged, under certain circumstances, the efforts of a union official to organize workers. Thomas v. Collins,supra. We have said that the Sherman Act does not apply to certain concerted activities of railroads,

"at least insofar as those activities comprised mere solicitation of governmental action with respect to the passage and enforcement of laws,"

because "such a construction of the Sherman Act would raise important constitutional questions," specifically, First Amendment questions. Eastern R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S.

Page 371 U. S. 431

127, 138. And we have refused to countenance compelled disclosure of a person's political associations in language closely applicable to the instant case:

"Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups. . . ."

Sweezy v. New Hampshire, 354 U. S. 234, 354 U. S. 250-251 (plurality opinion). Cf. De Jonge v. Oregon, 299 U. S. 353, 299 U. S. 364-366.

. For standards of permissible statutory vagueness are strict in the area of free expression. See Smith v. California, 361 U. S. 147, 361 U. S. 151; Winters v. New York, 333 U. S. 507, 333 U. S.

509-510, 333 U. S. 517-518; Herndon v. Lowry, 301 U. S. 242; Stromberg v. California, 283 U. S. 359; United States v. C.I.O., 335 U. S. 106, 335 U. S. 142 (Rutledge, J., concurring). Furthermore, the instant decree may be invalid if it prohibits privileged exercises of First Amendment rights whether or not the record discloses that the petitioner has engaged in privileged conduct. For, in appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar. Thornhill v. Alabama, 310 U. S. 88, 310 U. S. 97-98; Winters v. New York, supra, at 333 U. S. 518-520. Cf. Staub v. City of Baxley, 355 U. S. 313. It makes no difference that the instant case was not a criminal prosecution, and not based on a refusal to comply with a licensing requirement. The

Page 371 U. S. 433

objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. [Footnote 14] Cf. Marcus v. Search Warrant, 367 U. S. 717, 367 U. S. 733. These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. Cf. Smith v. California, supra, at 361 U. S. 151-154; Speiser v. Randall, 357 U. S. 513, 357 U. S. 526. Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. Cantwell v. Connecticut, 310 U. S. 296,3 310 U. S. 11.

It is apparent, therefore, that Chapter 33, as construed, limits First Amendment freedoms. As this Court said in Thomas v. Collins, 323 U. S. 516, 323 U. S. 537, "Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts."

In NAACP v. Alabama ex rel. Patterson, 357 U. S. 449, 357 U. S. 461, we said,

"In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action."

Later, in Bates v. Little Rock, 361 U. S. 516, 361 U. S. 524, we said,

"[w]here there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling."

Most recently, in Louisiana ex rel. Gremillion v. NAACP, 366 U. S. 293, 366 U. S. 297, we reaffirmed this principle:

". . . regulatory measures . . . no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights."

Malicious intent was of the essence of the common law offenses of fomenting or stirring up litigation. [Footnote 18] And whatever may be or may have been true of suits against

Page 371 U. S. 440

government in other countries, the exercise in our own, as in this case, of First Amendment rights to enforce constitutional rights through litigation, as a matter of law, cannot be deemed malicious. Even more modern, subtler regulations of unprofessional conduct or interference with professional relations, not involving malice, would not touch the activities at bar; regulations which reflect hostility to stirring up litigation have been aimed chiefly at those who urge recourse to the courts for private gain, serving no public interest. [Footnote 19] Hostility still exists to stirring

Page 371 U. S. 441

up private litigation where it promotes the use of legal machinery to oppress: as, for example, to so discord in a family; [Footnote 20] to expose infirmities in land titles, as by hunting up claims of adverse possession; [Footnote 21] to harass large companies through a multiplicity of small claims; [Footnote 22] or to oppress debtors as by seeking out unsatisfied judgments. [Footnote 23] For a member of the bar to participate, directly or through intermediaries, in such misuses of the legal process is conduct traditionally condemned as injurious to the public. And beyond this, for a lawyer to attempt to reap gain by urging another to engage in private litigation has also been condemned: that seems to be the import of Canon 28, which the Virginia Supreme Court of Appeals has adopted as one of its Rules. [Footnote 24]

Resort to the courts to seek vindication of constitutional rights is a different matter from the oppressive, malicious, or avaricious use of the legal process for purely private gain. Lawsuits attacking racial discrimination, at least in Virginia, are neither very profitable nor very popular. They are not an object of general competition among Virginia lawyers; [Footnote 27] the problem is rather one of an apparent dearth of lawyers who are willing to undertake such litigation. There has been neither claim nor

Page 371 U. S. 444

proof that any assisted Negro litigants have desired, but have been prevented from retaining, the services of other counsel. We realize that an NAACP lawyer must derive personal satisfaction from participation in litigation on behalf of Negro rights, else he would hardly be inclined to participate at the risk of financial sacrifice. But this would not seem to be the kind of interest or motive which induces criminal conduct.

A final observation is in order. Because our disposition is rested on the First Amendment as absorbed in the Fourteenth, we do not reach the considerations of race or racial discrimination which are the predicate of petitioner's challenge to the statute under the Equal Protection Clause. That the petitioner happens to be engaged in activities of expression and association on behalf of the rights of Negro children to equal opportunity is constitutionally irrelevant to the ground of our decision. The course of our decisions in the First Amendment area makes plain that its protections would apply as fully to those who would arouse our society against the objectives of the petitioner.

See, e.g., Near v. Minnesota, 283 U. S. 697; Terminiello v. Chicago, 337 U. S. 1; Kunz v. New York, 340 U. S. 290. For the Constitution protects expression

Page 371 U. S. 445

and association without regard to the race, creed, or political or religious affiliation of the members of the group which invokes its shield, or to the truth, popularity, or social utility of the ideas and beliefs which are offered.

Reversed .

Petitioner also claims that Chapter 33, as construed, denies equal protection of the laws, and is so arbitrary and irrational as to deprive petitioner of property without due process of law.

[Footnote 11]

It is unclear -- and immaterial -- whether the Virginia court's opinion is to be read as holding that NAACP's activities violated the Canons because they violated Chapter 33, or as reinforcing its holding that Chapter 33 was violated by finding an independent violation of the Canons. Our holding that petitioner's activities are constitutionally protected applies equally whatever the source of Virginia's attempted prohibition.

[Footnote 12]

Murphy, The South Counterattacks: The Anti-NAACP Laws, 12 W.Pol.Q. 371 (1959). See Bentley, The Process of Government: A Study of Social Pressures (1908); Rosenblum, Law as a Political Instrument (1955); Peltason, Federal Courts in the Political Process (1955); Truman, The Governmental Process: Political Interests and Public Opinion (1955); Vose, The National Consumers' League and the Brandeis Brief, 1 Midw.J. of Pol.Sci. 267 (1957); Comment, Private Attorneys-General: Group Action in the Fight for Civil Liberties, 58 Yale L.J. 574 (1949).

[Footnote 13]

Cf. Opinion 148, Committee on Professional Ethics and Grievances, American Bar Association (1935), ruling that the Liberty League's program of assisting litigation challenging New Deal legislation did not constitute unprofessional conduct.

[Footnote 14]

Amsterdam, Note, The Void-for-Vagueness Doctrine in the Supreme Court, 109 U. of Pa.L.Rev. 67, 75-76, 80-81, 96-104 (1960).

See 4 Blackstone, Commentaries, 134-136. See generally Radin, Maintenance by Champerty, 24 Cal.L.Rev. 48 (1935).

[Footnote 18]

See, e.g., Commonwealth v. McCulloch, 15 Mass. 227 (1818): Brown v. Beauchamp, 5 T.B.Mon. 413 (Ky. 1827); Perkins, Criminal Law, 449 454 (1957); Note, 3 Race Rel. 1257-1259 (1958).

The earliest regulation of solicitation of legal business in England was aimed at the practice whereby holders of claims to land conveyed them to great feudal lords, who used their power or influence to harass the titleholders. See Winfield, The History of Conspiracy and Abuse of Legal Procedure, 152 (1921).

[Footnote 19]

See Comment: A Critical Analysis of Rules Against Solicitation by Lawyers, 25 U. of Chi.L.Rev. 674 (1958). But truly nonpecuniary arrangements involving the solicitation of legal business have been frequently upheld. See In re Ades, 6 F.Supp. 467 (D.C.D. Md.1934) (lawyer's volunteering his services to a litigant, without being asked, held not unprofessional where "important issues" were at stake); Gunnels v. Atlanta Bar Assn., 191 Ga. 366, 12 S.E.2d 602 (1940) (arrangement whereby a local bar association publicly offered to represent, free of charge, persons victimized by usurers, upheld). Of particular pertinence to the instant case is Opinion 148, supra. note 13. In the 1930's, a National Lawyers Committee was formed under the auspices of the Liberty League. The Committee proposed (1) to prepare and disseminate through the public media of communications opinions on the constitutionality of state and federal legislation (it appears, particularly New Deal legislation); (2) to offer counsel, without fee or charge, to anyone financially unable to retain counsel who felt that such legislation was violating his constitutional rights. The ABA's Committee on Professional Ethics and Grievances upheld the arrangement. Opinion 148, Opinions of the Committee on Professional Ethics and Grievances, American Bar Association, 308-312 (1957); see Comment, 36 Col.L.Rev. 993.

Also, for example, the American Civil Liberties Union has for many years furnished counsel in many cases in many different parts of the country, without governmental interference. Although this intervention is mostly in the form of amicus curiae briefs, occasionally counsel employed by the Union appears directly on behalf of the litigant. See Comment, Private Attorneys-General: Group Action in the Fight for Civil Liberties, 58 Yale L.J. 574, 576 (1949); ACLU Report on Civil Liberties 1951-1953, pp. 9-10.

[Footnote 20]

See Encouraging Divorce Litigation as Ground for Disbarment or Suspension, 9 A.L.R. 1500 (1920); "Heir-hunting" as Ground for Disciplinary Action Against Attorney, 171 A.L.R. 351, 352-355 (1947).

[Footnote 21]

See Backus v. Byron, 4 Mich. 535, 551-552 (1857).

[Footnote 22]

See Matter of Clark, 184 N.Y. 222, 77 N.E. 1 (1906); Gammons v. Johnson, 76 Minn. 76, 78 N.W. 1035 (1899).

[Footnote 23]

See Petition of Hubbard, 267 S.W.2d 743 (Ky.Ct.App. 1954).

[Footnote 24]

See 171 Va. p. xxix, following the American Bar Association's Canons of Professional Ethics, No. 28:

"It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. . . . It is disreputable . . . to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes. . . ."

[Footnote 25]

"The question presented, with its implications, involves problems of political, social and economic character that have long since assumed the proportions of national issues, on one side or the other which multitudes of patriotic citizens have aligned themselves. These issues transcend the range of professional ethics."

[Footnote 27]