CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Griswold v. Connecticut, 381 U.S. 479 (1965)

In NAACP v. Alabama, 357 U. S. 449, 357 U. S. 462 we protected the **"freedom to associate and privacy in one's associations,"** noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a constitutionally valid association, we held, was invalid

"as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association."

Ibid. In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. In like context, we have protected forms of "association" that are not political in the customary sense, but pertain to the social, legal, and economic benefit of the members. NAACP v. Button, 371 U. S. 415, 371 U. S. 430-431. In Schware v. Board of Bar Examiners, 353 U. S. 232, we held it not permissible to bar a lawyer from practice because he had once been a member of the Communist Party. The man's "association with that Party" was not shown to be "anything more than a political faith in a political party" (id. at 353 U. S. 244), and was not action of a kind proving bad moral character. Id. at 353 U. S. 245-246.

Those cases involved more than the "right of assembly" -- a right that extends to all, irrespective of their race or ideology. De Jonge v. Oregon, 299 U. S. 353. The right of "association," like the right of belief (Board of Education v. Barnette, 319 U. S. 624), is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. ***Association in that context is a form of expression of opinion, and, while it is not expressly included in the First Amendment, its existence is necessary in making the express guarantees fully meaningful.***

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We deal with a right of privacy older than the Bill of Rights -- older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See Poe v. Ullman, 367 U. S. 497, 367 U. S. 516-522 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment, in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner, is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment, in its Self-Incrimination Clause, enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. ***The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."*** *Emphasis added*

The Fourth and Fifth Amendments were described in Boyd v. United States, 116 U. S. 616, 116 U. S. 630, as protection against all governmental invasions "of the sanctity of a man's home and the privacies of life." * We recently referred

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in Mapp v. Ohio, 367 U. S. 643, 367 U. S. 656, to the Fourth Amendment as creating a "right to privacy, no less important than any other right carefully an particularly reserved to the people." See Beaney, The Constitutional Right to Privacy, 1962 Sup.Ct.Rev. 212; Griswold, The Right to be Let Alone, 55 Nw.U.L.Rev. 216 (1960).

We have had many controversies over these penumbral rights of "privacy and repose." See, e.g., Breard v. Alexandria, 341 U. S. 622, 341 U. S. 626, 341 U. S. 644; Public Utilities Comm'n v. Pollak, 343 U. S. 451; Monroe v. Pape, 365 U. S. 167; Lanza v. New York, 370 U. S. 139; Frank v. Maryland, 359 U. S. 360; Skinner v. Oklahoma, 316 U. S. 535, 316 U. S. 541. These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.

In a long series of cases, this Court has held that, where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose.

"Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling,"

Bates v. Little Rock, 361 U. S. 516, 361 U. S. 524. The law must be shown "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." McLaughlin v. Florida, 379 U. S. 184, 379 U. S. 196. See Schneider v. Irvington, 308 U. S. 147, 308 U. S. 161.