CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

United States v. Robel, 389 U.S. 258 (1967)

The statute quite literally establishes guilt by association alone, without any need to establish that an individual's association poses the threat feared by the Government in proscribing it. [Footnote 13] The inhibiting effect on the exercise of First Amendment rights is clear.

It has become axiomatic that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v. Button*, 371 U. S. 415, 371 U. S. 438 (1963); *see Aptheker v. Secretary of State*, 378 U. S. 500, 378 U. S. 512-513; *Shelton v. Tucker*, 364 U. S. 479, 364 U. S. 488 (1960).

The task of writing legislation which will stay within those bounds has been committed to Congress. Our decision today

Page 389 U. S. 268

simply recognizes that, when legitimate legislative **concerns are expressed in a statute which imposes a substantial burden on protected First Amendment activities, Congress must achieve its goal by means which have a "less drastic" impact on the continued vitality of First Amendment freedoms.** [Footnote 20] *Shelton v. Tucker, supra; cf. United States v. Brown*, 381 U. S. 437, 381 U. S. 461 (1965). The Constitution and the basic position of First Amendment rights in our democratic fabric demand nothing less. *Emphasis added*

[Footnote 20]

We have ruled only that the Constitution requires that the conflict between congressional power and individual rights be accommodated by legislation drawn more narrowly to avoid the conflict. There is, of course, nothing novel in that analysis. Such a course of adjudication was enunciated by Chief Justice Marshall when he declared:

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

M'Culloch v. Maryland, 4 Wheat. 316, 17 U. S. 421 (1819) (emphasis added). In this case, the means chosen by Congress are contrary to the "letter and spirit" of the First Amendment.

MR. JUSTICE BRENNAN, concurring in the result.

We are concerned solely with determining whether the statute before us has exceeded the bounds imposed by the Constitution when First Amendment rights are at stake. The task of writing legislation which will stay within those bounds has been committed to Congress. Our decision today

Page 389 U. S. 268

simply recognizes that, when legitimate legislative concerns are expressed in a statute which imposes a substantial burden on protected First Amendment activities, Congress must achieve its goal by means which have a "less drastic" impact on the continued vitality of First Amendment freedoms. [Footnote 20] Shelton v. Tucker, supra; cf. United States v. Brown, 381 U. S. 437, 381 U. S. 461 (1965). The Constitution and the basic position of First Amendment rights in our democratic fabric demand nothing less.

But the operative fact upon which the job disability depends is the exercise of an individual's right of association, which is protected by the provisions of the First Amendment. [Footnote 7]

[Footnote 7]

Our decisions leave little doubt that the right of association is specifically protected by the First Amendment. E.g., Aptheker v. Secretary of State, supra, at 378 U. S. 507; Gibson v. Florida Legislative Investigation Committee, 372 U. S. 539, 372 U. S. 543 (1963); Bates v. City of Little Rock, 361 U. S. 516, 361 U. S. 522-523 (1960); NAACP v. Alabama ex rel. Patterson, 357 U. S. 449, 357 U. S. 460 (1958). See generally Emerson, Freedom of Association and Freedom of Expression, 74 Yale L.J. 1 (1964).

Yet, this concept of "national defense" cannot be deemed an end in itself, justifying any exercise of legislative power designed to promote such a goal. Implicit in the term "national defense" is the notion of defending those values and ideals which set this Nation apart. ***For almost two centuries, our country has taken singular pride in the democratic ideals enshrined in its Constitution, and the most cherished of those ideals have found expression in the First Amendment. It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties -- the freedom of association -- which makes the defense of the Nation worthwhile.*** *Page 389 U. S. 264- 265* *Emphasis added*