

CONTROLLING LEGAL PRINCIPLES

*Free Exercise Clause Decision – The “Contemplation of Justice”
Lebron v. National R.R. Passenger Corp., 115 S.Ct. 961, 393 (1995)*



The Constitution constrains governmental action "by whatever instruments or in whatever modes that action may be taken."

Ex parte Virginia, 100 U. S. 339, 346-347 (1880).

Our traditional rule is that "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee v. Escondido*, 503 U. S. 519, 534 (1992); see also *Dewey v. Des Moines*, 173 U. S. 193, 198 (1899).

The Constitution constrains governmental action by whatever instruments or in whatever modes that action may be taken, *Ex parte Virginia*, 100 U. S. 339, 346-347, and under whatever congressional label, *Cherry Cotton Mills, Inc. v. United States*, 327 U. S. 536, 539. *National Railroad Passenger Corporation v. Boston & Maine Corp.*, 503 U. S. 407, 410, and *National Railroad Passenger Corporation v. Atchison, T. & S.*

We have held once, *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), and said many times, that actions of private entities can sometimes be regarded as governmental action for constitutional purposes. See, e.g., *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, 483 U.S. 522, 546 (1987); *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 172 (1972).

We hold that where, as here, the Government creates a corporation by special law, for the furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of the directors of that corporation, the corporation is part of the Government for purposes of the First Amendment.

Thoughts, Words and Actions for Plaintiff's Quintessential Rights of the First Amendment:
Truths that manifest Life, Liberty & Pursuit of Happiness pursuant to the Free Exercise Clause

The Constitution constrains governmental action "by whatever instruments or in whatever modes that action may be taken." *Ex parte Virginia*, 100 U. S. 339, 346-347 (1880). And under whatever congres-

393

sional label. As we said of the Reconstruction Finance Corporation in deciding whether debts owed it were owed the United States Government: "That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is " *Cherry Cotton Mills, Inc. v. United States*, 327 U. S. 536, 539 (1946). Emphasis added

But it is not for Congress to make the final determination of Amtrak's status as a Government entity for purposes of determining the constitutional rights of citizens affected by its actions. If Amtrak is, by its very nature, what the Constitution regards as the Government, congressional pronouncement that it is not such can no more relieve it of its First Amendment restrictions than a similar pronouncement could exempt the Federal Bureau of Investigation from the Fourth Amendment. The Constitution constrains governmental action "by whatever instruments or in whatever modes that action may be taken." *Ex parte Virginia*, 100 U. S. 339, 346-347 (1880). And under whatever congres-

393

sional label. As we said of the Reconstruction Finance Corporation in deciding whether debts owed it were owed the United States Government: "That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is " *Cherry Cotton Mills, Inc. v. United States*, 327 U. S. 536, 539 (1946).