

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” *Whitney v. California, 274 U.S. 357 (1927)*



Thus, all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States. The right of free speech, the right to teach, and the right of assembly are, of course, fundamental rights. See *Meyer v. Nebraska*, 262 U. S. 390; *Pierce v. Society of Sisters*, 268 U. S. 510; *Gitlow v. New York*, 268 U. S. 652, 268 U. S. 666; *Farrington v. Tokushige*, 273 U. S. 284. These may not be denied or abridged. But, although the rights of free speech and assembly are fundamental, they are not, in their nature, absolute. Their exercise is subject to restriction if the particular restriction proposed is required in order to protect the State from destruction or from serious injury, political, economic, or moral. *That the necessity which is essential to a valid restriction does not exist unless speech would produce, or is intended to produce, a clear and imminent danger of some substantive evil which the State constitutionally may seek to prevent has been settled.* See *Schenck v. United States*, 249 U. S. 47, 249 U. S. 52.

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Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that, in its government, the deliberative forces should prevail over the arbitrary. They valued liberty both as an end, and as a means. They believed liberty to be the secret of happiness, and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that, without free speech and assembly, discussion would be futile; that, with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty, and that this should be a fundamental principle of the American government. [Footnote 2]