

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” *Speiser v. Randall, 357 U.S. 513 (1958)*



“It cannot be gainsaid that a discriminatory denial of a tax exemption for engaging in speech is a limitation on free speech.” **“It is settled that speech can be effectively limited by the exercise of the taxing power. To deny an exemption to claimants who engage in certain forms of speech is, in effect, to penalize them for such speech.”** Page 357 U. S. 518-519
A discriminatory denial of a tax exemption for engaging in speech is a limitation on free speech. Pp. 357 U. S. 518-520.

But while the fairness of placing the burden of proof on the taxpayer in most circumstances is

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recognized, this Court has not hesitated to declare a summary tax collection procedure a violation of due process when the purported tax was shown to be in reality a penalty for a crime. *Lipke v. Lederer*, 259 U. S. 557; cf. *Helwig v. United States*, 188 U. S. 605.

"It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. **The power to create presumptions is not a means of escape from constitutional restrictions.**" *Bailey v. State of Alabama*, 219 U. S. 219, 239.

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If the aim of the law is not to apprehend criminals, but to penalize advocacy, it likewise must fall. Since the time that Alexander Hamilton wrote concerning these oaths, the Bill of Rights was adopted; and then, much later, came the Fourteenth Amendment. As a result of the latter, a rather broad range of liberties was newly guaranteed to the citizen against state action. **Included were those contained in the First Amendment -- the right to speak freely, the right to believe what one chooses, the right of conscience.** *Stromberg v. California*, 283 U. S. 359; *Murdock v. Pennsylvania*, 319 U. S. 105; *Staub v. City of Baxley*, 355 U. S. 313. Today what one thinks or believes, what one utters and says, have the full protection

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of the First Amendment.