CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Freedman v. Maryland, 380 U.S. 51 (1965)

There is a heavy presumption against the constitutional validity of prior restraints of expression. *Bantam Books, Inc. v. Sullivan*, 372 U. S. 58, 370 U. S. 70. P. 380 U. S. 57.

In the area of freedom of expression, it is well established that one has standing to challenge a statute on the ground that it delegates overly broad licensing discretion to an administrative office, whether or not his conduct could be proscribed by a properly drawn statute, and whether or not he applied for a license.

"One who might have had a license for the asking may . . . call into question the whole scheme of licensing when he is prosecuted for failure to procure it."

Thornhill v. State of Alabama, 310 U. S. 88, 310 U. S. 97; *see Staub v. City of Baxley*, 355 U. S. 313, 355 U. S. 319; *Saia v. New York*, 334 U. S. 558; *Thomas v. Collins*, 323 U. S. 516; *Hague v. CIO*, 307 U. S. 496; *Lovell v. City of Griffin*, 303 U. S. 444, 303 U. S. 452-453. **Standing is recognized in such cases because of the**

". . . danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application."

NAACP v. Button, 371 U. S. 145, 371 U. S. 433; *see also* Amsterdam, Note, The Void for Vagueness Doctrine in the Supreme Court, 109 U.Pa.L.Rev. 67, 75- 76, 80-81, 96-104 (1960). Although we have no occasion to decide whether the vice of overbroadness infects the Maryland statute, [Footnote 3] we think that appellant's assertion of a similar

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danger in the Maryland apparatus of censorship -- one always fraught with danger and viewed with suspicion -- gives him standing to make that challenge.