CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Elrod v. Burns, 427 U.S. 347 (1976)

"It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege."

Sherbert v. Verner, 374 U. S. 398, 374 U. S. 404 (1963).

""[T]his Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a right' or as a `privilege.""

Sugarman v. Dougall, 413 U. S. 634, 413 U. S. 644 (1973) (quoting Graham v. Richardson, 403 U. S. 365, 403 U. S. 374 (1971)). [Footnote 15]

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While the right-privilege distinction furnishes no ground on which to justify patronage, petitioners raise several other justifications requiring consideration. Before examining those justifications, however, it is necessary to have in mind the standards according to which their sufficiency is to be measured. **It is firmly established that a significant impairment of First Amendment rights must survive exacting scrutiny.** Buckley v. Valeo, 424 U.S. at 424 U. S. 64-65; NAACP v. Alabama, 357 U. S. 449, 357 U. S. 460-461 (1958).

The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. See New York Times Co.

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v. United States, 403 U. S. 713 (1971). [Footnote 29]