

## CONTROLLING LEGAL PRINCIPLES

### *Free Exercise Clause Decision – The “Contemplation of Justice” City Council v. Taxpayers for Vincent, 466 U.S. 789 (1984)*



The Court

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has repeatedly held that such a statute may be challenged on its face even though a more narrowly drawn statute would be valid as applied to the party in the case before it. [Footnote 17] This exception from the general rule is predicated on

**"a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression."**

Broadrick v. Oklahoma, 413 U. S. 601, 413 U. S. 612 (1973).

"[T]here comes a point where that effect -- at best a prediction -- cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe. To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a

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statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." Broadrick v. Oklahoma, 413 U.S. at 413 U. S. 615 (citation omitted). [Footnote 18]

"The requirement of substantial overbreadth is directly derived from the purpose and nature of the doctrine. While a sweeping statute, or one incapable of limitation,

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has the potential to repeatedly chill the exercise of expressive activity by many individuals, the extent of deterrence of protected speech can be expected to decrease with the declining reach of the regulation." New York v. Ferber, 458 U. S. 747, 458 U. S. 772 (1982) (footnote omitted).

In short, there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds. See *Erznoznik v. City of Jacksonville*, 422 U. S. 205, 422 U. S. 216 (1975). See also *Ohralik v. Ohio State Bar Assn.*, 436 U. S. 447, 436 U. S. 462, n. 20 (1978); *Parker v. Levy*, 417 U. S. 733, 417 U. S. 760-761 (1974).