CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Cornelius v. NAACP Leg. Def. Fund, 473 U.S. 788 (1985)

The Court, of course, has recognized that the

"First Amendment prohibits Congress from 'abridging freedom of speech, or of the press,' and its ramifications are not confined to the 'public forum.'"

Although, as an initial matter, a speaker must seek access to public property or to private property devoted to public use to evoke First Amendment

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concerns, forum analysis is not completed merely by identifying the Government property at issue.

Rather, in defining the forum, the focus should be on the access sought by the speaker.

The Court recognizes that its decisions regarding the right of a citizen to engage in expressive activity on public property generally have divided public property into three categories -- public forums, limited public forums, and nonpublic forums. The Court also concedes, as it must, that

"a public forum . . . created by government designation of a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects"

is a limited public forum. Ante at 473 U. S. 802 (emphasis added).

The public forum doctrine arose out of the Court's efforts to address the recurring and troublesome issue of when the First Amendment gives an individual or group the right to engage in expressive activity on government property. See, e.g., Perry Education Assn. v. Perry Local Educators' Assn., 460 U. S. 37 (1983); Widmar v. Vincent, 454 U. S. 263 (1981); Southeastern Promotions, Ltd. v. Conrad, 420 U. S. 546 (1975); Tinker v. Des Moines Independent Community School District, 393 U. S. 503 (1969); Brown v. Louisiana, 383 U. S. 131 (1966); Hague v. CIO, 307 U. S. 496 (1939).