CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Board of Airport Comm. of the City of LA. v. Jews for Jesus, Inc. 482 U.S. 569 (1987)

In balancing the government's interest in limiting the use of its property against the interests of those who wish to use the property for expressive activity, the Court has identified three types of fora: the traditional public forum, the public forum created by government designation, and the nonpublic forum. *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45-46 (1983). **The proper First Amendment analysis differs depending on whether the area in question [p573] falls in one category rather than another**. In a traditional public forum or a public forum by government designation, we have held that First Amendment protections are subject to heightened scrutiny:

In these quintessential public forums, the government may not prohibit all communicative activity. For the State to enforce a content-based exclusion, it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. . .

The State may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

Under the First Amendment overbreadth doctrine, an individual whose own speech or conduct may be prohibited is permitted to challenge a statute on its face because it also threatens others not before the court -- those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid.

Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 503 (1985). A statute may be invalidated on its face, however, only if the overbreadth is "substantial." *Houston v. Hill, ante* at 458-459; *New York v. Ferber*, 458 U.S. 747, 769 (1982); *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). The requirement that the overbreadth be substantial arose from our recognition that application of the overbreadth doctrine is, "manifestly, strong medicine," *Broadrick v. Oklahoma, supra*, at 613, and that 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.

City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 801 (1984).