

## CONTROLLING LEGAL PRINCIPLES

*Free Exercise Clause Decision – The “Contemplation of Justice”*

*Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002)*



*The mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it.*

***The government "cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts."*** Stanley v. Georgia, 394 U. S. 557, 566 (1969).

*First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. **The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.***

*To preserve these freedoms, and to protect speech for its own sake, the Court's First Amendment cases draw vital distinctions between words and deeds, between ideas and conduct. See Kingsley Int'l Pictures Corp., 360 U. S., at 689; see also Bartnicki v. Vopper, 532 U. S. 514, 529 (2001)*

***The government may not prohibit speech because it increases the chance an unlawful act will be committed "at some indefinite future time."*** Hess v. Indiana, 414 U. S. 105, 108 (1973) (per curiam). The government may suppress speech for advocating the use of force or a violation of law only if "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Brandenburg v. Ohio, 395 U. S. 444, 447 (1969) (per curiam).

***The Government may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected merely because it resembles the latter.*** The Constitution requires the reverse. "[T]he possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted ...." Broadrick v. Oklahoma, 413 U. S., at 612. The overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process. (*Emphasis added*)