

## CONTROLLING LEGAL PRINCIPLES

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

*Rumsfeld v. Forum for Academic & Institutional Rights, Inc.* 547 U.S. 47 (2006)



We recently held that “ ‘the government may not deny a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech even if he has no entitlement to that benefit.’ ” *United States v. American Library Assn., Inc.*, 539 U. S. 194, 210 (2003) (quoting *Board of Comm’rs, Wabaunsee Cty. v. Umbehr*, 518 U. S. 668, 674 (1996) (some internal quotation marks omitted)). It is clear that a funding condition cannot be unconstitutional if it could be constitutionally imposed directly. See *Speiser v. Randall*, 357 U. S. 513, 526 (1958). *Some of this Court’s leading First Amendment precedents have established the principle that freedom of speech prohibits the government from telling people what they must say.* In *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 642 (1943) *The compelled-speech violation in each of our prior cases, however, resulted from the fact that the complaining speaker’s own message was affected by the speech it was forced to accommodate.*

*We have recognized a First Amendment right to associate for the purpose of speaking, which we have termed a “right of expressive association.”* See, e.g., *Boy Scouts of America v. Dale*, 530 U. S. 640, 644 (2000).

...correctly notes that the freedom of expressive association protects more than just a group’s membership decisions. For example, we have held laws unconstitutional that require disclosure of membership lists for groups seeking anonymity, *Brown v. Socialist Workers ’74 Campaign Comm. (Ohio)*, 459 U. S. 87, 101–102 (1982), or impose penalties or withhold benefits based on membership in a disfavored group, *Healy v. James*, 408 U. S. 169, 180–184 (1972). *Although these laws did not directly interfere with an organization’s composition, they made group membership less attractive, raising the same First Amendment concerns about affecting the group’s ability to express its message.* (Emphasis added)