

Instructor: Mr. Freeman

1. A group of irate taxpayers gathered on the sidewalk outside City Hall during a City Council meeting to protest a proposed increase in the city income tax. They began chanting, cheering, and singing. When members of City Council refused to come outside to meet the protesters, 50 of them entered the City Council meeting and began to chant, cheer, and sing, causing the City Council meeting to recess. When the protesters both outside and inside refused to leave, both groups were separately arrested for trespass and subsequently were separately convicted. The convictions of both groups finally were reviewed by the United States Supreme Court. What results, and why?

BEST ANSWER

The issue before the court will be whether the actions by the irate taxpayers are protected by the freedom of speech. In the case before the court, there is a mixed amount of speech and conduct. When speech and conduct are mixed, the government has a right to regulate the expression because it is not pure speech. The first thing the court must look at is the forum the speech is being expressed. Justice White in Perry Ed. outlined the three forums, traditional public, designated public, and non-public forums. In a traditional public forum, it is government-owned property that is traditionally open for expression. Designed public forum is where the government designates a place for expression which can be revoked if they wish. A non-public forum is not open to the public to do as they wish. If the forum is a non-public forum, the test to use is also from White. First, look to see whether the regulation is viewpoint neutral and if so, whether the regulations rationally related to a legitimate government interest. If it is a traditional or designated public forum, the court will first look to see if the regulation is content neutral, then ask if the regulation is substantially related to an important government interest, then see if there are other avenues open to protest. The court is likely to declare the protest outside the City Hall a protest on a traditional public forum. City Hall traditionally is a place where individuals can go to voice complaints and make government work. The court is likely to find the trespass regulation content neutral since it applies to everyone as well as find alternative avenues for expression like by phone or across the street. The problem is the government interest in keeping trespassers off the land is not substantial enough to override a citizen's right to be heard in a traditional public forum; thus the outdoor protesters would not be convicted. However, the chambers of a council are not a traditional or designated public forum. The workings in the chamber are important and cannot constantly be interrupted with protests. Thus, the Court will convict the indoor protesters because the trespass ordinance is viewpoint neutral because no one is allowed to trespass as well as keeping the peace within the council to be productive is rationally related to the government's police powers of keeping the peace. The indoor trespass would be upheld as a legitimate time, place, manner regulation and the outdoor regulation would not be upheld.

2. The State of Franklin enacted a "child pornography" statute that prohibits the production, sale, purchase, or possession of films or photographs that depict children under the age of 16 years of age engaged in sexual conduct, defined as "actual or simulated sexual intercourse, sexual bestiality, or oral sexual activity." During the course of a lawful search of Allen's home pursuant to a valid search warrant, police officers found "child pornography" and arrested Allen for possession of child pornography. Allen raised a first amendment defense to the statute. The United States Supreme Court finally decided the case. What result, and why?

BEST ANSWER

This invokes both freedom of expression and the right to privacy. Normally, the constitution prevents "thought control" as illustrated by the Georgia case in class. However, the principle illustrated in Feiber in relation to child pornography is more important and is directed at Conduct, not Content. The states are able to do this pursuant to their police powers and are clearly given much more leeway/defense when it comes to regulations focused/oriented at children. Here, the government interest in the physical/psychological well-being of a child under 16 being depicted in a visual way is very significant and is furthered by the statute. These things produce a permanent record of the activity and can be harmful for many years. The material need not be obscene, as defined by the Miller test either. We must therefore, balance Allen's right to private possession of these types of films in his home against the government interest. The government interest prevails as being more important. The government is given the latitude to not only proscribe the production, but also the distribution and possession of it. It is commerce clause in that they can block the channels as a means to an end. The child pornography conviction is valid and constitutional. As this is directed at conduct, the means by which it is made with children and its fruits, the 1st Amendment does not protect Allen. Had this been an "Adult Film," his private possession would be OK. However, it is in fact "child pornography" as defined by an applicable and valid statute and his conviction will be upheld. (It is unprotected conduct and the means by which it is produced, distributed, and possessed.)

3. During the course of a hotly-contested and contentious race for mayor of Capital City, a reporter for Capital City Star asked the state Department of Taxation for permission for the reporter to copy the last five years' state income tax returns of both candidates. When the Tax Department refused, the Star filed suit to compel the state to allow the paper to copy the tax returns, citing the first amendment. The case was finally decided by the United States Supreme Court. What result, and why?

BEST ANSWER

The issue is whether the Tax Department is required to disclose state income tax returns to the Star? The disclosure of income tax returns is impermissible since access to them is not needed in the tax process. This is similar to the case where a judge attempted to close off the courtroom to the public. A state must have a compelling reason to close off courtrooms to the media unless access to that activity is not implicit in that judicial process. Open courtrooms have been traditionally held open to the public because public access to that procedure is implicit. Access to tax returns is not implicit in the tax process and access to them would not be justified since the public has no implicit right to them. There is no 1st Amendment violation since access to tax returns is not of the judicial process. Similarly, there is no access to jury deliberations since access is not relevant to the jury deliberation process. Access to tax returns is not relevant to the tax process. This is not a prior restraint on the press since the government isn't saying what you can't print, only that they will not supply the information. However, once the press gets the information, it cannot be prohibited from being published. That would be a prior restraint. The government is not required to disclose information that is not relevant to the process of the subject. It is likely the Court will determine that the tax records do not need to be disclosed since it is not part of the tax process.