AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Democratic Rights/Free Speech

**Edwards v. South Carolina, 372 U.S. 229** (1963)

*In 1961, African-American high school and college students gathered at the Zion Baptist Church in Columbia, South Carolina, and marched to the statehouse in small groups with petitions and signs calling for greater civil rights. They were met by police officers who told the students that the statehouse grounds were open to the public so long as they were peaceful and directed the group to gather in a parking area. A large group of onlookers also congregated in the area, and the police eventually announced that everyone would need to leave within fifteen minutes. At that point, the students refused to leave but began singing and clapping. When time expired, 187 students were arrested and charged with breach of the peace and given small fines or short jail sentences. The state supreme court affirmed their conviction. The U.S. Supreme Court unanimously reversed, holding that their conviction in these circumstances was a violation of the First Amendment.*

JUSTICE STEWART delivered the opinion of the Court.

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It has long been established that these First Amendment freedoms are protected by the Fourteenth Amendment from invasion by the States. The circumstances in this case reflect an exercise of these basic constitutional rights in their most pristine and classic form. The petitioners felt aggrieved by laws of South Carolina which allegedly "prohibited Negro privileges in this State." They peaceably assembled at the site of the State Government and there peaceably expressed their grievances "to the citizens of South Carolina, along with the Legislative Bodies of South Carolina." Not until they were told by police officials that they must disperse on pain of arrest did they do more. Even then, they but sang patriotic and religious songs after one of their leaders had delivered a "religious harangue." There was no violence or threat of violence on their part, or on the part of any member of the crowd watching them. Police protection was "ample."

This, therefore, was a far cry from the situation in *Feiner* v. *New York* (1951), where two policemen were faced with a crowd which was "pushing, shoving and milling around," where at least one member of the crowd "threatened violence if the police did not act," where "the crowd was pressing closer around petitioner and the officer," and where "the speaker passes the bounds of argument or persuasion and undertakes incitement to riot." And the record is barren of any evidence of "fighting words."

We do not review in this case criminal convictions resulting from the evenhanded application of a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed. If, for example, the petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case. . . .

The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views. "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. . . . There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups." *Terminiello v. Chicago* (1949). . . .

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*Reversed*.

JUSTICE CLARK, dissenting.

. . . . Petitioners, of course, had a right to peaceable assembly, to espouse their cause and to petition, but in my view the manner in which they exercised those rights was by no means the passive demonstration which this Court relates; rather, as the City Manager of Columbia testified, "a dangerous situation was really building up" which South Carolina's courts expressly found had created "an actual interference with traffic and an imminently threatened disturbance of the peace of the community.” Since the Court does not attack the state courts' findings and accepts the convictions as "binding" to the extent that the petitioners' conduct constituted a breach of the peace, it is difficult for me to understand its understatement of the facts and reversal of the convictions.

The priceless character of First Amendment freedoms cannot be gainsaid, but it does not follow that they are absolutes immune from necessary state action reasonably designed for the protection of society. . . . For that reason it is our duty to consider the context in which the arrests here were made. Certainly the city officials would be constitutionally prohibited from refusing petitioners access to the State House grounds merely because they disagreed with their views. But here South Carolina's courts have found: "There is no indication whatever in this case that the acts of the police officers were taken as a subterfuge or excuse for the suppression of the appellants' views and opinions." . . .

. . . . It was only after the large crowd had gathered, among which the City Manager and Chief of Police recognized potential trouble-makers, and which together with the students had become massed on and around the "horseshoe" so closely that vehicular and pedestrian traffic was materially impeded, that any action against the petitioners was taken. Then the City Manager, in what both the state intermediate and Supreme Court found to be the utmost good faith, decided that danger to peace and safety was imminent. . . .

. . . . The question thus seems to me whether a State is constitutionally prohibited from enforcing laws to prevent breach of the peace in a situation where city officials in good faith believe, and the record shows, that disorder and violence are imminent, merely because the activities constituting that breach contain claimed elements of constitutionally protected speech and assembly. To me the answer under our cases is clearly in the negative.

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