

594 F Supp. 502

CA 87-3085 P.I.O. v. Sabu (b) 11/25/87 3:45

Pl: P.I.O. in DC since 1978 distributes info. re: Mideast news. Mr. Rahman, a US citizen, is a FARA agent 9/15/87 DOS designated P.I.O. a "messenger" required to cease and desist operations. Const. basis for closing P.I.O. but DOS claimed position 9/15/87 that P.I.O. was a case filed 11/13/87. P.I.O. "unlawfully and unlawfully seek a P.I. restraining Gov't from enforcing Dec. 1 closing order." Pl: why not 65(b)?

Pl: don't know basis for designating all of P.I.O.

J: legal claims?

Pl: 1. arbitrary & capricious contrary to FMA agent contrary to 1st A. contract
contrary to due process / Bob Shaber.
J: discovery on these claims... P.I.O.

DOS: can combine w/ merits

used facts supplied by Pl.

J: why not treat as s.j. assume Pl as agent of P.I.O.

Pl: admitting all facts? not for purposes in FMA p.

J: assume material facts.

J: Pl's ask

Pl: material fact: govt closing because it disagrees w/ content of message.

Govt now contends that

govt action is "symbolic show gesture of disapproval" for P.I.O. can't do this b/c licensing & U.S. citizen's 1st A. rights

P.I.O. does not have ³⁶³ ₃₂ ⁷⁹² ₁₀₂₀ "substantial ownership or
effectively controls" ₃₂ ⁷⁹² ₁₀₂₀ term defined previously.
X (20) X (20)

IT's argument

Rahman only paid office of 6 or 7 other employees
disseminate info. to public

DOS original position was no const. basis for closing PLO.
but DOS changed position 9/15/87 that PLO was a
"foreign mission." PLO "substantially owned &
controlled" by PLO and was a for. mis.

1. PLO not for. mis.

2. PLO has no diplomatic status, immunity
or relationship on behalf of PLO.

PLO exercising 1ST A rts. in favor of PLO cause.

PLO receives money from PLO and is an agent
of PLO, but not a diplomat.

- Salary paid by League of Arab States.

- office lease paid by PLO

Revealed once every 6 mos pursuant to FARA
laying this out.

Govt assumes that because IT an agent of PLO
then he is a diplomat for purposes in FMA.

East v. Keene, closing a group test

Vierek

FARA constitutional because disclosure led to
more speech, did not censor.

Govt now contends that

→ for. policy as "symbolic ~~gesture~~ gesture of disapproval
for PLO." Can't do this by censoring a U.S.
citizen's 1st A. rights.

FMA does not apply: "substantial ownership or
effective control." Never defined previously.

1st A & due process concerns.

FMA:

law firms in DC that get £ from foreign entities would may be "missions" for purposes of FMA. statutory framework gives no guidance on these terms, not to apply to US citizens. PLO is not a mission.

- I. FMA ever challenged?
II. not in this context.

Sense of Congress in 1977 that every govt "has a 1st A rt. to have an info office." re: Rhodesia Gov't Info Office.

Gov't bottom line: any US citizen who speaks in support of a for organ. or govt. if US Gov't decides that in a symbolic gesture it can censor that citizen.

Gov't's Argument..

Issue: can Pres. ~~has~~ take a stand against terrorism by closing a group that supports such terrorism.

auth.: FMA and delegation of Pres. power under Article II.

Foreign mission not protected by 1st A. individual is not affected. It can say or do whatever he wishes.

only directed at PLO as a "foreign mission"

Threshold:

It: must show that PLO not a foreign mission,

Adams. case (D.C. Cir.)

Holiday Tours: "possibility of success"

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Adams v. Vance

4 elements of p.i.: "extraordinary burden" showing

Threshold:

PLO sufficiently linked to PLO to sustain DOS determination that PLO a foreign ms.

Facts

1. PLO a registered agent of PLO not "exclusively."
 2. Director of PLO says he meets w/ PLO directly
 3. \$350k budget comes from PLO and PNF. Palestine National Front = the financial wing of PLO
 4. Rahman's home and cars bought from PLO \$.
- ∴ DOS entitled to make determination that PLO a foreign mission and to take a stand against terrorism can shut down PLO.

Because PLO as for. mis. of PLO; that's enough

- I. Officers and directors have no const rts?
- II. they have rts and will continue to allow them to exercise

✓ ✗ Only prohibits PLO from acting as a foreign mission of PLO

- 1. fact of exclusive
- 2. associational standing problem?
- 3. haven't addressed.

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1st A. concerns.

does not offend or implicate established.

J. why?

A. PLO steps into shoes of PLO, out of const. rts., framework.

J. for. political entities have ~~not~~ const. rts.

A. in an emergency embassy can be disclosed.
even though US citizens work there.

Manyland v. Barry: const. protects indivs., not indiv. representing foreign states.

DS admit PLO undertakes no activity on own behalf, but on behalf of PLO

→ DS brought forth no evidence that they are not a foreign mission or evidence that is inconsistent w/ DOS funding that they are a foreign mission

J. Arab League source of funds?

A. off's salary yes, but budget from PLO.

II's Response

P.I. standard: Adams v. Vance,

not controlling

Gov't persuade case that PLO is an agent of PLO.

nothing Gov't says converts PLO into a "foreign mission"
not an embassy, not a consulate

J. assuming PLO "foreign mission" any const. prohibition

J: combine PI w/ments (1960)

D: yes, modified facts in brief and stated.

Barker v. U.S. (1933-1970)

II: if facts in PI papers. A practical due process requirement of notice and a hearing before a person may be deprived of the use of his property."

D's facts due 12:00 noon 11/27/87

II to respond in writing by 4:00 pm 11/27/87

Balancing Test:

A govt regulation is sufficiently justified if it furthers an important or substantial governmental interest and if the burden of restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.
(S v. Abrego 391 U.S. 307 (1968))

Hargrave, 452 U.S. at 30

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Clinchette v. Mantle, 408 U.S. 703 (1970)

Swindach 89 S.Ct. 1820 (1969)

Buddie 91 S.Ct. 786 (1971)

Fuentes 92 S.Ct. 1983 (1972)

"importance of satisfying the procedural due process requirements of notice and a hearing before a person may be deprived of the use of his property."

Balancing Test:

A govt regulation is sufficiently justified... if it furthers an important or substantial governmental interest... and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

U.S. v. O'Brien, 391 U.S. 367 (1968)

Haig v. Agee, 453 U.S. at 308

L.R.A.

Kleindienst v. Mandel, 408 U.S. 753 (1972)

S. Rep. No. 97-379 (4/8/82)

"(F)oreign missions and their personnel do not possess the status of private persons or organizations within the United States." p. 2

"(T)he authority to conduct activities in the United States, which clearly may be withheld altogether, will be subject to a wide range of conditions under this title." p. 6

"(The) element of reciprocity, while not necessarily determinative in all cases, is a key feature of the system envisioned by this title." p. 6

"Section 202 (a)(4) defines a 'foreign mission' as any official mission to the United States involving diplomatic, consular or other government activities of a foreign government or another foreign organization (other than an international organization) which has been granted privileges and immunities under U.S. law." p. 7