

Constitutional Law Exam 8

Fact Pattern:

The He-Man Woman Haters Club (He-Man Club), headed by Alfalfa, was a charitable organization supporting the rights of men. It provided lobbying efforts for men's rights at all levels of government and had the motto that "all men are created equal." Because of the club's focus on men, membership in the club is limited to men.

The Federal Government allows charitable organizations to solicit from federal employees after making a request to the state government. When the He-Man Club made their request to solicit federal employees, however, they were rejected.

The He-Man club also began door-to-door solicitation campaigns within the State of Confusion. Alfalfa, however, was informed that in order to solicit door to door the He-Man Club must obtain a permit.

One day Darla tried to attend a meeting of the He-Man Club and was kicked out. The State of Confusion thereafter told Alfalfa that the He-Man Club was in violation of the State of Confusions non-discrimination policy.

Questions:

1. Is the Federal Government's enforcement of the Non-Discrimination Ordinance against the He-Man Club a violation of the club's right to free association?
2. Is the government's requirement that the He-Man Club obtain a permit under the terms of the Solicitation Ordinance a violation of the free speech clause of the First Amendment?
3. Is the government's refusal to include the He-Man Club on its list of organizations eligible to receive contributions from federal employees a violation of the free speech Clause of the First Amendment?

Example Answer

First Amendment Right to Association

The First Amendment to the constitution states in part, “Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . .”

Under the free speech clause, the Government may not control the content of expression. In addition, the U.S. Supreme Court has held that a government cannot compel anyone to speak, or endorse any particular words.

1. Is the Federal Government’s enforcement of the Non-Discrimination Ordinance against the He-Man Club a violation of the club’s right to free association?

Implicit in the right to engage in activities protected by the First Amendment is a right to associate with others in pursuit of a variety of political, social and other causes. Infringement on the right to associate for expressive purposes may be justified by a compelling government interest such as eliminating discrimination, where enforcement of the anti-discrimination provision did not materially interfere with the ideas the organization sought to express. This freedom of expressive association has been asserted on numerous occasions when governmental nondiscrimination laws have been applied to private groups and associations

The question presented is whether the purposes, goals, and activities of He-Man Club constitute expressive associational activities warranting protection by the First Amendment. If so, does mandating the inclusion of women in its membership, interfere with the club’s functions and activities.

It seems likely that the advocacy of “men’s rights” with respect to matters of custody would be viewed as activities warranting protection under the First Amendment. The He-Man Club is not a purely business or social organization; rather it is plainly an advocacy organization holding a particular position on matters of public interest. In light of the objectives of He-Man Club, if it can be shown that allowing women in the club would unreasonably interfere with the club’s expressive associational rights, the constitutional challenge would be successful.

On the other hand, it is entirely possible that at least some women may share the views and beliefs of He-Man Club since it cannot be assumed that a person’s gender will control their belief. If it can be shown that that inclusion of women would not impermissibly infringe upon the expressive associational rights of He-Man Club members, the constitutional challenge will not be successful.

On balance it is more likely that the club's right to free association is being affected by the ordinance. The ordinance will likely be struck down as an infringement on the club's right to free association.

2. Is the government's requirement that the He-Man Club obtain a permit under the terms of the Solicitation Ordinance a violation of the Free Speech Clause of the First Amendment?

Free Speech Clause of the First Amendment

The First Amendment to the constitution states in part, "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . ."

Under the free speech clause, the Government may not control the content of expression. In addition, the U.S. Supreme Court has held that a government cannot compel anyone to speak, or endorse any particular words.

An ordinance requiring a permit in order to engage in door-to-door canvassing and solicitation violates the Free Speech Clause of the First Amendment as there is not an appropriate balance between the affected speech and the governmental interest purported to be served by the ordinance. Moreover, the breadth of the permit requirement, applying to all types and varieties of speech, both commercial and non-commercial is overbroad. In essence, the ordinance is requiring that a citizen first obtain a permit prior to speaking with his or her neighbors.

The government's requirement that the He-Man Club obtain a permit under the terms of the Solicitation Ordinance is likely a violation of the Free Speech Clause of the First Amendment.

3. Is the government's refusal to include the He-Man Club on its list of organizations eligible to receive contributions from Federal Employees a violation of the Free Speech Clause of the first amendment?

Free Speech Clause of the First Amendment

The First Amendment to the constitution states in part, "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . ."

Under the free speech clause, the Government may not control the content of expression. In addition, the U.S. Supreme Court has held that a government cannot compel anyone to speak, or endorse any particular words.

Solicitation of funds in support of a cause has long been recognized as a form of protected speech. Furthermore, the Supreme Court has recognized that this right may be asserted with respect to participation in governmental workplace solicitation campaigns, in which employees are permitted to designate the recipient charitable organizations to which funds are directed through a payroll deduction plan. A federal charitable fund raising campaign is a nonpublic forum for the expression of speech. Such a forum is subject to control over access based upon the subject matter and the identity of the speaker, so long as the distinctions drawn are reasonable in light of the purpose to be served by the forum and are viewpoint neutral.

On its face, the government's process of including non-profit charitable organizations on the list of organizations for which payroll deductions are allowed is viewpoint neutral; that is, the only criteria is that the group be a non-profit charitable organization, regardless of the views espoused by that organization. Even a facially neutral policy, however, will not protect a decision to exclude an organization from the forum if it is motivated by a desire to suppress a particular point of view.

Here the He-Man Club was a charitable organization, since their request was still rejected we are left to assume that the application was rejected because of the club's viewpoints.

The government's refusal to include the He-Man Club on its list of organizations eligible to receive contributions from Federal Employees is likely a violation of the Free Speech Clause of the First Amendment.