

FREE EXPRESSION FOUNDATION, INC. PRESS RELEASE

June 23, 2020

On June 17, 2020, the Free Expression Foundation, Inc. ("FEF"), filed an amicus curiae brief with the U.S. Ninth Circuit Court of Appeals in support of declaring the Anti-Riot Act of 1968 unconstitutional. A year ago, in a well-reasoned decision in the case of *U.S. v. Rundo, et al.*, District Court Judge Cormac Carney, influenced by one of FEF's prior amicus briefs, struck down the Act as an unconstitutionally overbroad regulation of protected speech and assembly. The government appealed.

Rundo is an important and interesting case, troublesome both factually and legally. Robert Rundo and three other California residents, members of an organization called the Rise Above Movement, had been invited to provide security at a Pro-Trump rally in Berkeley, California due to expected violence from Antifa extremists. The legal rally was held, Antifa showed up, attendees of the rally wore red MAGA hats, waived "Don't Tread on Me Flags," and shouted "Build the Wall." This, of course, got the Antifa worked up and scuffles broke out, between RAM members and Antifa, among others. A score of people, mostly Antifa and their friends, were detained by Berkeley police. Rundo was stopped by police but let go. Everyone went home. That would have been the end of the story except for the events at Charlottesville, Virginia.

The Charlottesville Unite the Right rally, which was attended by four different California RAM members, triggered a wave of highly negative media coverage with demands that "something be done about White extremist violence." After an urgent directive came down from Attorney General Jeff Sessions, the Justice department brushed off the long dormant Anti-Riot Act and launched coast-to-coast prosecutions of supposed sinister conspiracies to cause riots. And the Joint Terrorism Task Force ("JTTF") swung into action. The four California RAM members who had attended the Unite the Right rally, who had returned home and were peacefully going about their lives, were arrested and dragged off to federal court in Charlottesville, Virginia where, despite the stalwart efforts of the Federal Public Defender's office, they ended up with negotiated plea bargains of three to four years in prison. They faced up to 10 years. They remain in prison, where for many days they were kept in solitary confinement and ill-treated.

About the same time the Charlottesville RAM members were arrested, Rundo and the three other California RAM members were also arrested. In Rundo's case, about 15 JTTF agents broke into his apartment in the middle of the night, threw him up against a wall, ransacked his apartment including punching through walls, and took him off in handcuffs. He and the other RAM defendants (one was let out on bail) then languished in prison for nearly ten months, until through the efforts of the California Federal Public Defender's office and FEF, Judge Cormac Carney struck down the Act as unconstitutional and ordered the defendants released.

During all this belligerent activity by the government based on an unconstitutional statute neither the ACLU nor any other Civil Liberties group lifted a finger to help the alleged "right-wing extremists." In fact, these organizations turned a blind eye despite pleas for help. There is, accordingly, a certain irony that after the latest spate of arson and violence by Antifa types, the following letter was circulated by the American Civil Liberties Union:

Dear Comrades/FPDs/CJA lawyers:

The national ACLU has been following a recent spate of federal prosecutions under the Anti-Riot Act, 18 USC 2101 and 2102. This statute was enacted in 1968 and infamously used against the Chicago 7, but rarely since then. But in recent days, US Attorney's Offices have been charging people, including Black activists and protestors, under the statute.

The ACLU has long been interested in striking down the statute as unconstitutional because it criminalizes protected speech. We would like to (1) track current prosecutions under the Anti-Riot Act and (2) offer to file amicus briefs or participate as co-counsel for the limited purpose of briefing the First Amendment issues or simply assist behind the scenes in these cases.

If you catch one of these cases, we would love to hear about it. You can contact me at the email address below.

Cecillia D. Wang
Pronouns: she, her, hers
Deputy Legal Director
Director, Center for Democracy

The point to emphasize in all this is that the RAM young men, most innocent of any crime at all, have been railroaded into years of prison and stress-filled and unfair criminal trials by the profound neglect, distortions, and other failures of the media, the FBI, the Justice Department, and what could be called the Civil Liberties establishment -- those organizations that raise millions of

dollars pretending to defend Free Speech. (We should, however, be grateful for judges such as Judge Cormac Carney, who still are watchful guardians of the First Amendment and equal justice before the law.)

FEF, as the only amicus in the RAM cases so far, has now filed four amicus curiae briefs in support of striking down the Anti-Riot Act as unconstitutional and freeing the RAM defendants (in the Virginia case) and exonerating the RAM Defendants (in the California case): one in the California District Court, two in the Fourth Circuit, and one in the Ninth Circuit. A true friend of the court, FEF has supported the arguments of the defendants' counsel not by merely repeating them but by providing several different angles on the manifest defects in the Act, including, for example, by providing extensive research on the Act's legislative history directed at suppressing legitimate, if robust and unpopular, public dissent. In particular, FEF has presented an argument nearly unnoticed by any of the other parties that should drive a stake through the heart of this sinister statute: that the Act does not even properly describe a crime. This is so because the Act, originally enacted in 1968, was amended by Congress in 1996 in a way that makes complete gibberish of the statute. It reads now like a bad Monty Python skit. So our government has for decades been threatening, and now prosecuting, people for political reasons based on a statute that not only violates First Amendment principles in a host of ways but does not even state a crime.

It bears emphasis that the Anti-Riot Act is not only unconstitutional but unnecessary, as there are many other criminal laws on the books, state and federal, for prosecuting assaults and other bad conduct at group assemblies. Among the many problems with the Anti-Riot Act is that it gives enormous discretion to the government to pick its prosecutions based on political factors. And that is exactly what the government has done.

As noted, these RAM prosecutions are interesting and troublesome both factually and legally. FEF is a fledgling 501c3 non-profit that is trying to make them more interesting – by having the Anti-Riot Act on which they are based stricken all around the country, by an appeal to the Supreme Court if necessary -- and less troublesome to those who want to vigorously and fearlessly exercise their First Amendment rights.

FEF needs and will wisely use your financial assistance, which will be tax deductible in accordance with the tax laws. Here is FEF's website for donations: Freeexpressionfoundation.org. You may also send check or money order to FEF, P.O. Box 1479, Upper Marlboro, MD 20773.

For Liberty and the Rule of Law,

Paul Angel, Chairman of FEF

Glen Allen, Esq., Counsel for FEF