

in plain language a long list of activities would clearly be valid.<sup>772</sup> The issue in *Letter Carriers*, however, was whether the language that Congress had enacted, forbidding employees to take “an active part in political management or in political campaigns,”<sup>773</sup> was unconstitutional on its face, either because the statute was too imprecise to allow government employees to determine what was forbidden and what was permitted, or because the statute swept in under its coverage conduct that Congress could not forbid as well as conduct subject to prohibition or regulation. With respect to vagueness, plaintiffs contended and the lower court had held that the quoted proscription was inadequate to provide sufficient guidance and that the only further elucidation Congress had provided was in a section stating that the forbidden activities were the same activities that the Commission had as of 1940, and reaching back to 1883, “determined are at the time of the passage of this act prohibited on the part of employees . . . by the provisions of the civil-service rules. . . .”<sup>774</sup> This language had been included, it was contended, to deprive the Commission of power to alter thousands of rulings it had made that were not available to employees and that were in any event mutually inconsistent and too broad.

The Court held, on the contrary, that Congress had intended to confine the Commission to the boundaries of its rulings as of 1940 but had further intended the Commission by a process of case-by-case adjudication to flesh out the prohibition and to give content to it. The Commission had done that. It had regularly summarized in understandable terms the rules that it applied, and it was authorized as well to issue advisory opinions to employees uncertain of the propriety of contemplated conduct. “[T]here are limitations in the English language with respect to being both specific and manageable brief,” said the Court, but it thought the prohibitions as elaborated in Commission regulations and rulings were “set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interests.”<sup>775</sup> There were conflicts, the Court conceded, between some of the things forbidden and some of the protected expressive activities, but these were at most marginal. Thus, some conduct arguably protected did under some circumstances so partake of partisan activities as to be properly proscribable. But the Court would not invalidate the entire statute for this degree of

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<sup>772</sup> 413 U.S. at 556.

<sup>773</sup> 413 U.S. at 554, 570 n.17.

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