action was not protected association, regardless of the probability of success.[562] In *Brandenburg*, however, the Court reformulated these and other rulings to mean "that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[563] The Court has not revisited these issues since *Brandenburg*, so the long-term significance of the decision is yet to be determined.[564]

Freedom of Belief

The First Amendment does not expressly speak in terms of liberty to hold such beliefs as one chooses, but in both the religion and the expression clauses, it is clear, liberty of belief is the foundation of the liberty to practice what religion one chooses and to express oneself as one chooses.[565] "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."[566] Speaking in the context of religious freedom, the Court said that, although the freedom to act on one's beliefs could be limited, the freedom to believe what one will "is absolute."[567] But matters are not so simple.

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[562] Yates v. United States, 354 U.S. 298 (1957); Scales v. United States, 367 U.S. 203 (1961); Noto v. United States, 367 U.S. 290 (1961). *See also* Bond v. Floyd, 385 U.S. 116 (1966); Watts v. United States, 394 U.S. 705 (1969).

[563] 395 U.S. at 447. Subsequent cases relying on *Brandenburg* indicate the standard has considerable bite, but do not elaborate sufficiently enough to begin filling in the outlines of the test. Hess v. Indiana, 414 U.S. 105 (1973); NAACP v. Claiborne Hardware Co., 458 U.S. 886, 928 (1982). *But see* Haig v. Agee, 453 U.S. 280, 308–09 (1981).

[564] In Stewart v. McCoy, 537 U.S. 993 (2002), Justice Stevens, in a statement accompanying a denial of certiorari, wrote that, while *Brandenburg's* "requirement that the consequence be 'imminent' is justified with respect to mere advocacy, the same justification does not necessarily adhere to some speech that performs a teaching function. . . . Long range planning of criminal enterprises—which may include oral advice, training exercises, and perhaps the preparation of written materials—involve speech that should not be glibly characterized as mere 'advocacy' and certainly may create significant public danger. Our cases have not yet considered whether, and if so to what extent, the First Amendment protects such instructional speech." Id. at 995.

[565] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943); Cantwell v. Connecticut, 310 U.S. 296, 303–04 (1940); United States v. Ballard, 322 U.S. 78 (1944); Torcaso v. Watkins, 367 U.S. 488 (1961); American Communications Ass'n v. Douds, 339 U.S. 382, 408 (1950); Bond v. Floyd, 385 U.S. 116, 132 (1966); Speiser v. Randall, 357 U.S. 513 (1958); Baird v. State Bar of Arizona, 401 U.S. 1, 5–6 (1971), and id. at 9–10 (Justice Stewart concurring).

[566] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).

[567] Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).