

with the merchants. Individuals were designated to watch stores and identify blacks patronizing the stores; their names were then announced at meetings and published. Persuasion of others included social pressures and threats of social ostracism. Acts of violence did occur from time to time, directed in the main at blacks who did not observe the boycott.

The state Supreme Court imposed joint and several liability upon leaders and participants in the boycott, and upon the NAACP, for all of the merchants' lost earnings during a seven-year period on the basis of the common law tort of malicious interference with the merchants' business, holding that the existence of acts of physical force and violence and the use of force, violence, and threats to achieve the ends of the boycott deprived it of any First Amendment protection.

Reversing, the Court observed that the goals of the boycotters were legal and that most of their means were constitutionally protected; although violence was not protected, its existence alone did not deprive the other activities of First Amendment coverage. Thus, speeches and nonviolent picketing, both to inform the merchants of grievances and to encourage other blacks to join the boycott, were protected activities, and association for those purposes was also protected.<sup>1492</sup> That some members of the group might have engaged in violence or might have advocated violence did not result in loss of protection for association, absent a showing that those associating had joined with intent to further the unprotected activities.<sup>1493</sup> Nor was protection to be denied because nonparticipants had been urged to join by speech, by picketing, by identification, by threats of social ostracism, and by other expressive acts: "[s]peech does not lose its protected character . . . simply because it may embarrass others or coerce them into action."<sup>1494</sup> The boycott had a disruptive effect upon local economic conditions and resulted in loss of business for the merchants, but these consequences did not justify suppression of the boycott. Government may certainly regulate certain

<sup>1492</sup> NAACP v. Claiborne Hardware Co., 458 U.S. 886, 907–08 (1982).

<sup>1493</sup> 458 U.S. at 908.

<sup>1494</sup> 458 U.S. at 910. The Court cited *Thomas v. Collins*, 323 U.S. 516, 537 (1945), a labor picketing case, and *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971), a public issues picketing case, which had also relied on the labor cases. Compare *NLRB v. Retail Store Employees*, 447 U.S. 607, 618–19 (1980) (Justice Stevens concurring) (labor picketing that coerces or "signals" others to engage in activity that violates valid labor policy, rather than attempting to engage reason, prohibitable). To the contention that liability could be imposed on "store watchers" and on a group known as "Black Hats" who also patrolled stores and identified black patrons of the businesses, the Court did not advert to the "signal" theory. "There is nothing unlawful in standing outside a store and recording names. Similarly, there is nothing unlawful in wearing black hats, although such apparel may cause apprehension in others." 458 U.S. at 925.