

A woman belonged to a subversive organization that advocated for the United States to preemptively attack certain foreign countries. The organization usually used leafleting and public speeches to advance this view, but it sometimes engaged in violent demonstrations against the embassies and consuls of those countries. Although the woman had never participated in a violent demonstration, she was criminally prosecuted for being a member of the organization. In her defense, the woman claimed that her association with the organization was protected by the First Amendment.

Which of the following would the prosecution need to prove to overcome that defense?

- A. The woman continued to provide material aid to the organization through the payment of dues after the violent demonstrations.
- B. The woman expressed public support of the organization after the violent demonstrations.
- C. The woman joined the organization with the specific intent of furthering its illegal activities.
- D. The woman provided material aid to the organization through the payment of dues before the violent demonstrations.

## Explanation:

### Freedom of association

<b>General rule</b>	Infringing upon right to associate <i>barred</i> unless: <ul style="list-style-type: none"><li>• necessary to achieve compelling interest</li></ul>
<b>Subversive organization</b>	Punishing member of subversive organization <i>permitted</i> if person: <ul style="list-style-type: none"><li>• is active member</li><li>• knows of organization's illegal objectives <i>and</i></li><li>• specifically intends to further them</li></ul>
<b>Loyalty oath</b>	Requiring loyalty oath for public employment <i>permitted</i> unless: <ul style="list-style-type: none"><li>• overbroad – infringes on constitutionally protected behavior <i>or</i></li><li>• vague – reasonable person would not understand oath</li></ul>
<b>Forced inclusion</b>	Interfering with organization's discriminatory policy <i>barred</i> unless: <ul style="list-style-type: none"><li>• no significant burden on organization's mission <i>and</i></li><li>• necessary to achieve compelling interest</li></ul>
<b>Electoral process</b>	Imposing restriction on electoral process: <ul style="list-style-type: none"><li>• ordinary – <i>permitted</i> if rationally related to legitimate interest</li><li>• severe – <i>barred</i> unless necessary to achieve compelling interest</li></ul>

The **First Amendment** protects against government interference with a person's **right to associate** with *any* group or organization. But since this right is **not absolute**, the **government can punish** (ie, criminally prosecute or deny public employment to) persons who:

- are **active members** of a **subversive organization**
- know of the organization's **illegal objectives** *and*
- **specifically intend to further** those objectives.

Therefore, to overcome the woman's freedom-of-association defense, the prosecution would have to prove that she joined the subversive organization with the specific intent of furthering its illegal activities.

**(Choices A & D)** Payment of dues does not show that the woman was an *active* member of that organization since even passive (ie, nonparticipating) members pay dues.

**(Choice B)** The woman cannot be convicted for merely expressing public support for the organization. But she could be convicted for intentionally furthering its illegal objectives.

**Educational objective:**

The government can interfere with the First Amendment freedom of association by punishing persons who (1) are active members of a subversive organization, (2) know of the organization's illegal objectives, and (3) specifically intend to further those objectives.

**References**

- Scales v. United States, 367 U.S. 203, 229 (1961) (explaining when a person can be criminally prosecuted for membership in a subversive organization).

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