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WEDNESDAY, JULY 27, 2005

Once More Into The Breach

by Michael in New York on [7/27/2005 04:34:00 PM](#)

Okay, how about THIS article in The New Yorker. Jeffrey Toobin has a fine piece about **one of the first big cases the Supreme Court will face in October**. It's about gay rights, in a way, and Judge Roberts would probably be voting with Scalia, Thomas, et al.

In short, it's about the Solomon Amendment -- it demands that any college or university that accepts federal money must allow military recruiters on campus, even if those recruiters violate campus policy and insist on discriminating against the university's students.

The practice of refusing to allow recruiters for businesses on campus when they made clear they would discriminate against blacks or Jews or women began in law schools and was remarkably effective. It didn't end prejudice or discrimination but major companies and law firms that wanted access to the best and the brightest had to end their explicit bans on minorities. This practice really flourished on gay rights. Since the military bans gays from serving openly, they've been banned from many campuses around the country.

So whose rights prevail? The right of the federal government to attach strings to money it gives to universities? Or the right of universities to free speech and the ability to reject hate and discrimination against its students?

Here's my beef. Toobin writes:

Even though the FAIR case is rooted in the law schools' attempt to address discrimination on the basis of sexual orientation, the case is not, strictly speaking, about gay rights. It is, rather, a First Amendment case, about whether the Solomon Amendment impinges on the right to freedom of speech at universities, and whether **the government has the right to use the leverage of federal aid to insist that the military be treated like other employers.**

That's certainly the point of view of the Bush administration:

The theme of the government's brief in the case, which was filed last week, is equality: the amendment simply puts the government on a level playing field with other potential employers.

But isn't this case about the exact opposite? Bush wants the military treated DIFFERENTLY from every other employer. Every other employer must abide by certain basic university policies and agree not to discriminate against its students. No other employer can walk on campus and say to them, "Don't bring us any black students. We won't hire them." Or behave similarly with women or gays or Jews or Muslims or any other group you can name.

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