

Does the Constitution Ca

when regulation is indirect. That is, do they apply when the regulation is sought to be accomplished by withholding the federal financial carrot rather than applying the federal punitive stick.

This question was raised by Judge MacKinnon in his thoughtful dissent in *AFL-CIO v. Kahn*.²⁶ There, even if the statute was construed to comprehend the setting of wage norms, there was ab-

direct regulation. This seems to me one of the paramount unresolved constitutional issues in the area of regulation by withholding the federal carrot.

V. INTERPRETING THE STATUTE

Finally, there is the question of canons of construction. It has been a truism to say that laws are to be construed narrowly if

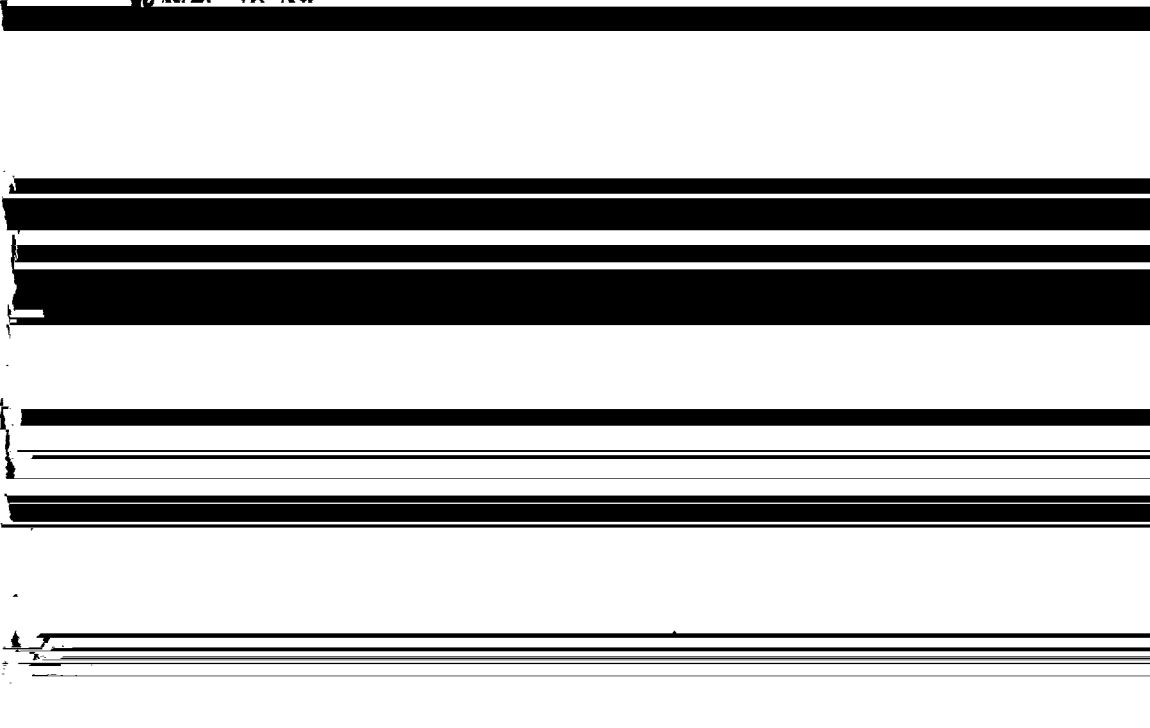
a broader construction would raise constitutional doubts. This was recently reiterated by the Supreme Court in *National Cable Television Association v. United States* in order to avoid the question of the possibly unconstitutional breadth of the legislative delegation.²⁹ Does this canon apply when the regulatory power is

exercised by conditioning the eligibility for federal funds rather than by overt regulatory exercise of the police power? This question, too, seems to remain unanswered.

Another canon of statutory interpretation is that a criminal statute is to be construed narrowly. I have always supposed that this

which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.³⁵

It will not surprise you that I have a special sensitivity to the activities of thought, assembly, and expression which are them



selves the subject of special constitutional protection. Academic freedom and institutional self-determination rely on all three. There is even some suggestion in the eloquent words of Justice Frankfurter in the *Sweezy* case that the freedom of universities themselves are the subject of special constitutional concern.³⁶

