

## CONTROLLING LEGAL PRINCIPLES

### *Free Exercise Clause Decision – “Contemplation of Justice”*

*United States v. Macintosh, 283 U.S. 605 (1931)*



MR. CHIEF JUSTICE HUGHES, *dissenting*

The essence of religion is belief in a relation to God involving duties superior to those

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arising from any human relation. As was stated by Mr. Justice Field in *Davis v. Beason*, 133 U. S. 333, 133 U. S. 342:

"The term 'religion' **has reference to one's views of his relations to his Creator**, and to the obligations they impose of reverence for his being and character, and of obedience to his will."

(Emphasis added)

This case and court held:

1. A petition for naturalization presents a case for the exercise of the judicial power, to which the United States is a proper, and always a possible, adverse party. P. 283 U. S. 615.
2. Naturalization is a privilege, to be given, qualified, or withheld as Congress may determine, and which the alien may claim as of right only upon compliance with the terms which Congress imposes. *Id.*
3. That admission to citizenship is regarded by Congress as a serious matter is apparent from the conditions and precautions by which it has carefully surrounded the subject. *Id.*

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4. In specifically requiring that the court shall be satisfied that the applicant, during his residence in the United States, has behaved as a man of good moral character, attached to the principles of

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the Constitution of the United States, etc., it is obvious that Congress regarded the fact of good character and the fact of attachment to the principles of the Constitution as matters of the first importance. P. 283 U. S. 616.

5. The statute specifically requires examination of the applicant and witnesses in open court and under oath, and authorizes the government to cross-examine concerning any matter touching or in any way affecting the right to naturalization, in order that the court and the government may discover whether the applicant is fitted for citizenship, and, to that end, by actual inquiry, ascertain, among other things, whether he has intelligence and good character; whether his oath to support and defend the Constitution and laws of the United States, and to bear true faith and allegiance to the same will be taken without mental reservation or purpose inconsistent therewith; whether his views are compatible with the obligations and duties of American citizenship; whether he will upon his own part observe the laws of the land; whether he is willing to support the government in time of war, as well as in time of peace, and to assist in the defense of the country, not to the extent or in the manner that he may choose, but to such extent and in such manner as he lawfully may be required to do. These, at least, are matters which are of the essence of the statutory requirements, and in respect of which the mind and conscience of the applicant may be probed by pertinent inquiries, as fully as the court, in the exercise of a sound discretion, may conclude is necessary. P. 283 U. S. 616.

6. The applicant in the case at bar is unwilling to take the oath of allegiance, except with these important qualifications: that he will do what he judges to be in the best interests of the country only insofar as he believes it will not be against the best interests of humanity in the long run; that he will not assist in the defense of the country by force of arms or give any war his moral support unless he believes it to be morally justified, however necessary the war might seem to the government of the day; that he will hold himself free to judge of the morality and necessity of the war, and, while he does not anticipate engaging in propaganda against the prosecution of a war declared and considered justified by the government, he prefers to make no promise even as to that, and that he is convinced that the individual citizen should have the right to withhold his military services when his best moral judgment

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impel him to do so. *Held* that he cannot be admitted to citizenship under the statute. *United States v. Schwimmer*, 279 U. S. 644, 279 U. S. 649. P. 283 U. S. 619.

7. Whether any citizen shall be exempt from services in the armed forces of the nation in time of war is dependent upon the will of Congress, and not upon the scruples of the individual, except as Congress provides. P. 283 U. S. 623.

8. The privilege of the native-born conscientious objector to avoid bearing arms comes not from the Constitution, but from the Acts of Congress; a naturalized citizen can have no greater privilege. *Id.*

9. It is not within the province of the courts to make bargains with those who seek naturalization. They must accept the grant and take the oath in accordance with the terms fixed by the law, or

forego the privilege of citizenship. If one qualification of the oath be allowed, the door is opened for others, with utter confusion as the probable result. P. 283 U. S. 626.

10. The Naturalization Act is to be construed with definite purpose to favor and support the government, and the United States is entitled to the benefit of any doubt which remains in the mind of the court as to any essential matter of fact. *Id.*

11. The burden is upon the applicant to show that his views are not opposed to the principle that it is a duty of citizenship, by force of arms when necessary, to defend the country against all enemies, and that his opinions and beliefs would not prevent or impair the true faith and allegiance required by the Act. *Id.*

42 F.2d 845 reversed; D.C. affirmed.

Certiorari, 282 U.S. 832, to review a judgment which reversed a judgment denying a petition for naturalization and directed that the applicant be admitted to citizenship.

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MR. CHIEF JUSTICE HUGHES, *dissenting wrote:*

Much has been said of the paramount duty to the state, a duty to be recognized, it is urged, even though it conflicts with convictions of duty to God. Undoubtedly that duty to the state exists within the domain of power, for government may enforce obedience to laws regardless of scruples. When one's belief collides with the power of the state, the latter is supreme within its sphere, and submission or punishment follows. But, in the forum of conscience, duty to a moral power higher than the state has always been maintained. The reservation of that supreme obligation, as a matter of principle, would unquestionably be made by many of our conscientious and law-abiding citizens. The essence of religion is belief in a relation to God involving duties superior to those

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arising from any human relation. As was stated by Mr. Justice Field in *Davis v. Beason*, 133 U. S. 333, 133 U. S. 342:

"The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will."

One cannot speak of religious liberty, with proper appreciation of its essential and historic significance, without assuming the existence of a belief in supreme allegiance to the will of God. Professor Macintosh, when pressed by the inquiries put to him, stated what is axiomatic in religious doctrine. And, putting aside dogmas with their particular conceptions of deity, freedom of conscience itself implies respect for an innate conviction of paramount duty. The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field. What that field is, under our system of government, presents in part a question of constitutional law, and also, in part, one of legislative policy in avoiding unnecessary clashes with the dictates of conscience. There is abundant room for enforcing the requisite authority of law as

it is enacted and requires obedience, and for maintaining the conception of the supremacy of law as essential to orderly government, without demanding that either citizens or applicants for citizenship shall assume by oath an obligation to regard allegiance to God as subordinate to allegiance to civil power. The attempt to exact such a promise, and thus to bind one's conscience by the taking of oaths or the submission to tests, has been the cause of many deplorable conflicts. The Congress has sought to avoid such conflicts in this country by respecting our happy tradition. In no sphere of legislation has the intention to prevent such clashes been more conspicuous than in relation to the bearing of arms. It would require strong evidence

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that the Congress intended a reversal of its policy in prescribing the general terms of the naturalization oath. I find no such evidence.

