

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – “Contemplation of Justice”

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)



“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.” 319 U. S. 642 (Emphasis added)

“Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good, as well as by evil, men.”

“Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.” (Emphasis added)

“It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.”

“But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.” (Emphasis added)

Thoughts, Words and Actions for Plaintiff’s Quintessential Rights of the First Amendment:
Truths that manifest Life, Liberty & Pursuit of Happiness pursuant to the Free Exercise Clause

“Symbolism is a primitive but effective way of communicating ideas.”

“We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power, and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”

“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections. [p639]”

MR. JUSTICE MURPHY, concurring:

I agree with the opinion of the Court and join in it.

“The complaint challenges an order of the State Board of Education which requires teachers and pupils to participate in the prescribed salute to the flag. For refusal to conform with the requirement, the State law prescribes expulsion. [p645] The offender is required by law to be treated as unlawfully absent from school, and the parent or guardian is made liable to prosecution and punishment for such absence. Thus, not only is the privilege of public education conditioned on compliance with the requirement, but noncompliance is virtually made unlawful. In effect, compliance is compulsory, and not optional. It is the claim of appellees that the regulation is invalid as a restriction on religious freedom and freedom of speech, secured to them against State infringement by the First and Fourteenth Amendments to the Constitution of the United States.”

“A reluctance to interfere with considered state action, the fact that the end sought is a desirable one, the emotion aroused by the flag as a symbol for which we have fought and are now fighting again -- all of these are understandable. But there is before us the right of freedom to believe, freedom to worship one's Maker according to the dictates of one's conscience, a right which the Constitution specifically shelters. Reflection has convinced me that, as a judge, I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches.”

“The right of freedom of thought and of religion, as guaranteed by the Constitution against State action, *includes both the right to speak freely and the right to refrain from speaking at all*, except insofar as essential operations of government may require it for the preservation of an orderly society -- as in the case of compulsion to give evidence in court.” (Emphasis added)

BLACK, J., Concurring Opinion

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS, concurring:

“No well ordered society can leave to the individuals an absolute right to make final decisions, unassailable by the State, as to everything they will or will not do. The First Amendment does not go so far. Religious faiths, honestly held, do not free individuals from responsibility to conduct themselves obediently to laws which are either imperatively necessary to protect society as a whole from grave [p644] and pressingly imminent dangers or which, without any general prohibition, merely regulate time, place or manner of religious activity. Decision as to the constitutionality of particular laws which strike at the substance of religious tenets and practices must be made by this Court. The duty is a solemn one, and, in meeting it, we cannot say that a failure, because of religious scruples, to assume a particular physical position and to repeat the words of a patriotic formula creates a grave danger to the nation. Such a statutory exaction is a form of test oath, and the test oath has always been abhorrent in the United States.”

“Words uttered under coercion are proof of loyalty to nothing but self-interest. Love of country must spring from willing hearts and free minds, inspired by a fair administration of wise laws enacted by the people's elected representatives within the bounds of express constitutional prohibitions. These laws must, to be consistent with the First Amendment, permit the widest toleration of conflicting viewpoints consistent with a society of free men.”

*Thoughts, Words and Actions for Plaintiff's Quintessential Rights of the First Amendment:
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