CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Sherbert v. Verner, 374 U.S. 398 (1963)

[Footnote 5]

In a closely analogous context, this Court said:

". . . the fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free speech question. **Under some circumstances, indirect 'discouragements' undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions or taxes.** A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature." (Emphasis added)

American Communications Assn. v. Douds, 339 U. S. 382, 339 U. S. 402. Cf. Smith v. California, 361 U. S. 147, 361 U. S. 153-155.

"The result turns not on the degree of injury, which may indeed be nonexistent by ordinary standards. ***The harm is the interference with the individual's scruples or conscience -- an important area of privacy*** *which the First Amendment fences off from government*. The interference here is as plain as it is in Soviet Russia, ***where a churchgoer is given a second-class citizenship*****,** resulting in harm, though perhaps not in measurable damages." Page 374 U. S. 412-413 (Emphasis added)

The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such, Cantwell v. Connecticut, 310 U. S. 296, 310 U. S. 303. Government may neither compel affirmation of a repugnant belief, Torcaso v. Watkins, 367 U. S. 488; nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, Fowler v. Rhode Island, 345 U. S. 67; nor employ the taxing power to inhibit the dissemination of particular religious views, Murdock v. Pennsylvania, 319 U. S. 105; Follett v. McCormick, 321 U. S. 573; cf. Grosjean v. American Press Co., 297 U. S. 233.

On the other hand,

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the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for "even when the action is in accord with one's religious convictions, [it] is not totally free from legislative restrictions." Braunfeld v. Brown, 366 U. S. 599, 366 U. S. 603. The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order. See, e.g., Reynolds v. United States, 98 U. S. 145; Jacobson v. Massachusetts, 197 U. S. 11; Prince v. Massachusetts, 321 U. S. 158; Cleveland v. United States, 329 U. S. 14.

We turn first to the question whether the disqualification for benefits imposes any burden on the free exercise of appellant's religion. We think it is clear that it does. In a sense, the consequences of such a disqualification to religious principles and practices may be only an indirect result of welfare legislation within the State's general competence to enact; it is true that no criminal sanctions directly compel appellant to work a six-day week. But this is only the beginning, not the end, of our

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inquiry. [Footnote 5] For

"[i]f the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect."

Braunfeld v. Brown, supra, at 366 U. S. 607. Here, not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.

It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege. [Footnote 6] American

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Communications Assn. v. Douds, 339 U. S. 382, 339 U. S. 390; Wieman v. Updegraff, 344 U. S. 183, 344 U. S. 191-192; Hannegan v. Esquire, Inc., 327 U. S. 146, 327 U. S. 155-156. For example, in Flemming v. Nestor, 363 U. S. 603, 363 U. S. 611, the Court recognized with respect to Federal Social Security benefits that

"[t]he interest of a covered employee under the Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause."

In Speiser v. Randall, 357 U. S. 513, we emphasized that conditions upon public benefits cannot be sustained if they so operate, whatever their purpose, a to inhibit or deter the exercise of First Amendment freedoms. We there struck down a condition which limited the availability of a tax exemption to those members of the exempted class who affirmed their loyalty to the state government granting the exemption. While the State was surely under no obligation to afford such an exemption, we held that the imposition of such a condition upon even a gratuitous benefit inevitably deterred or discouraged the exercise of First Amendment rights of expression, and thereby threatened to "produce a result which the State could not command directly." 357 U.S.

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at 357 U. S. 526. "To deny an exemption to claimants who engage in certain forms of speech is, in effect, to penalize them for such speech." Id. at 357 U. S. 518. Likewise, to condition the availability of benefits upon this appellant's willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties.
This holding but reaffirms a principle that we announced a decade and a half ago, namely that no State may

"exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation."

Everson v. Board of Education, 330 U. S. 1, 330 U. S. 16.

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MR. JUSTICE DOUGLAS, concurring.

This case is resolvable not in terms of what an individual can demand of government, but solely in terms of what government may not do to an individual in violation of his religious scruples. The fact that government cannot exact from me a surrender of one iota of my religious scruples does not, of course, mean that I can demand of government a sum of money, the better to exercise them. For the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.