

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” United States v. Seeger, 380 U.S. 163 (1965)



Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's "Supreme Being" or the truth of his concepts. ***But these are inquiries foreclosed to Government.*** As MR. JUSTICE DOUGLAS stated in *United States v. Ballard*, 322 U. S. 78, 322 U. S. 86 (1944):

"Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others."

Local

Page 380 U. S. 185

boards and courts in this sense are not free to reject beliefs because they consider them "incomprehensible." Their task is to decide whether the beliefs professed by a registrant are sincerely held, and whether they are, in his own scheme of things, religious.

But we hasten to emphasize that, while the "truth" of a belief is not open to question, there remains the significant question whether it is "truly held." This is the threshold question of sincerity which must be resolved in every case.

Justice when he said in the same opinion that even the word "God" had myriad meanings for men of faith:

"[P]utting 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."

At 283 U. S. 634.

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

Within that phrase would come all sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent.

In a similar vein, Harlan Fiske Stone, later Chief Justice, drew from the Nation's past when he declared that

"both morals and sound policy require that the state should not violate the conscience of the individual. All our history gives confirmation to the view that liberty of conscience has a moral and social value which makes it worthy of preservation at the hands of the state. So deep in its significance and vital, indeed, is it to the integrity of man's moral and spiritual nature that nothing short of the self-preservation of the state should warrant its violation; and it may well be questioned whether the state which preserves its life by a settled policy of violation of the conscience of the individual will not in fact ultimately lose it by the process."

"Stone, *The Conscientious Objector*, 21 Col.Univ.Q. 253, 269 (1919)."

Our question, therefore, is the narrow one: does the term "Supreme Being," as used in § 6(j), mean the orthodox God or the broader concept of a power or being, or a faith, "to which all else is subordinate or upon which all else is ultimately dependent"? Webster's New International Dictionary (Second Edition). In considering this question, we resolve it solely in relation to the language of § 6(j), and not otherwise.

Few would quarrel, we think, with the proposition that in no field of human endeavor has the tool of language proved so inadequate in the communication of ideas as it has in dealing with the fundamental questions of man's predicament in life, in death, or in final judgment and retribution. This fact makes the task of discerning the intent of Congress in using the phrase "Supreme Being" a complex one. Nor is it made the easier by the richness and variety of spiritual life in our country. Over 250 sects inhabit our land. Some believe in a purely personal God, some in a supernatural deity; others think of religion as a way of life envisioning, as its ultimate goal, the day when all men can live together in perfect understanding and peace. There are those who think of God as the depth of our being; others, such as the Buddhists, strive for a state of lasting rest through self-denial and inner purification; in Hindu philosophy, the Supreme Being is

Page 380 U. S. 175

the transcendental reality which is truth, knowledge and bliss.

In spite of the elusive nature of the inquiry, we are not without certain guidelines. In amending the 1940 Act, Congress adopted almost intact the language of Chief Justice Hughes in *United States v. Macintosh*, supra:

"The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation."

At 283 U. S. 633-634. (Emphasis supplied.)

MR. JUSTICE DOUGLAS, concurring.

If I read the statute differently from the Court, I would have difficulties. For then those who embraced one religious faith, rather than another, would be subject to penalties; and that kind of discrimination, as we held in *Sherbert v. Verner*, 374 U. S. 398, would violate the Free Exercise Clause of the First Amendment. It would also result in a denial of equal protection by preferring some religions over others -- an invidious discrimination that would run afoul of the Due Process Clause of the Fifth Amendment. See *Bolling v. Sharpe*, 347 U. S. 497.

The legislative history of this Act leaves much in the dark. But it is, in my opinion, not a tour de force if we construe the words "Supreme Being" to include the cosmos, as well as an anthropomorphic entity. If it is a tour de force so to hold, it is no more so than other instances where we have gone to extremes to construe an Act of Congress to save it from demise on constitutional grounds. In a more extreme case than the present one, we said that the words of a statute may be strained "in the candid service of avoiding a serious constitutional doubt." *United States v. Rumely*, 345 U. S. 41, 345 U. S. 47. [Footnote 2/1]

Page 380 U. S. 189

The words "a Supreme Being" have no narrow technical meaning in the field of religion. Long before the birth of our Judeo-Christian civilization, the idea of God had taken hold in many forms. Mention of only two -- Hinduism and Buddhism -- illustrates the fluidity and evanescent scope of the concept. In the Hindu religion, the Supreme Being is conceived in the forms of several cult Deities. The chief of these, which stand for the Hindu Triad, are Brahma, Vishnu and Siva. Another Deity, and the one most widely worshipped, is Sakti, the Mother Goddess, conceived as power, both destructive and creative. Though Hindu religion encompasses the worship of many Deities, it believes in only one single God, the eternally existent One Being, with his manifold attributes and manifestations. This idea is expressed in Digveda, the earliest sacred text of the Hindus, in verse 46 of a hymn attributed to the mythical seer Dirghatamas (*Rigveda*, I, 164):

"They call it Indra, Mitra, Varuna and Agni"

"And also heavenly beautiful Garutman:"

"The Real is One, though sages name it variously --"

"They call it Agni, Yama, Matarisvan."

See Smart, *Reasons and Faiths* p. 35, n. 1 (1958); 32 *Harvard Oriental Series* pp. 434-435. (Lanman, ed. 1925). See generally 31 and 32 *id.*; Editors of *Life Magazine*, *The World's Great Religions* Vol. 1, pp. 17-48 (1963).

Indian philosophy, which comprises several schools of thought, has advanced different theories of the nature of the Supreme Being. According to the Upanisads, Hindu sacred texts, the Supreme Being is described as the power which creates and sustains everything, and to which the created things return upon dissolution. The word which is commonly used in the Upanisads to indicate the Supreme Being is Brahman. Philosophically, the

Page 380 U. S. 190

Supreme Being is the transcendental Reality which is Truth, Knowledge, and Bliss. It is the source of the entire universe. In this aspect, Brahman is Isvara, a personal Lord and Creator of the universe, an object of worship. But, in the view of one school of thought, that of Sankara, even this is an imperfect and limited conception of Brahman which must be transcended: to think of Brahman as the Creator of the material world is necessarily to form a concept infected with illusion, or maya -- which is what the world really is, in highest truth. Ultimately, mystically, Brahman must be understood as without attributes, as neti neti (not this, not that). See Smart, *op. cit.*, supra, p. 133.

Buddhism -- whose advent marked the reform of Hinduism -- continued somewhat the same concept. As stated by Nancy Wilson Ross,

"God -- if I may borrow that word for a moment -- the universe, and man are one indissoluble existence, one total whole. Only THIS-capital THIS -- is. Anything and everything that appears to use as an individual entity or phenomenon, whether it be a planet or an atom, a mouse or a man, is but a temporary manifestation of THIS in form; every activity that takes place, whether it be birth or death, loving or eating breakfast, is but a temporary manifestation of THIS in activity. When we look at things this way, naturally we cannot believe that each individual person has been endowed with a special and individual soul or self. Each one of us is but a cell, as it were, in the body of the Great Self, a cell that comes into being, performs its functions, and passes away, transformed into another manifestation. Though we have temporary individuality, that temporary, limited individuality is not either a true self or our true self. Our true self is the Great Self; our true body is the Body of Reality, or the Dharmakaya, to give it its technical Buddhist name."

The World of Zen, p. 18 (1960).

Page 380 U. S. 191

Does a Buddhist believe in "God" or a "Supreme Being"? That, of course, depends on how one defines "God," as one eminent student of Buddhism has explained:

"It has often been suggested that Buddhism is an atheistic system of thought, and this assumption has given rise to quite a number of discussions. Some have claimed that, since Buddhism knew no God, it could not be a religion; others, that, since Buddhism obviously was a religion which knew no God, the belief in God was not essential to religion. These discussions assume that God is an unambiguous term, which is by no means the case."

Conze, Buddhism, pp. 38-39 (1959). Dr. Conze then says that, if "God" is taken to mean a personal Creator of the universe, then the Buddhist has no interest in the concept. Id., p. 39. But if "God" means something like the state of oneness with God as described by some Christian mystics, then the Buddhist surely believes in "God," since this state is almost indistinguishable from the Buddhist concept of Nirvana, "the supreme Reality; . . . the eternal, hidden and incomprehensible Peace." Id., pp. 39-40. And, finally, if "God" means one of the many Deities in an at least superficially polytheistic religion like Hinduism, then Buddhism tolerates a belief in many Gods:

"the Buddhists believe that a Faith can be kept alive only if it can be adapted to the mental habits of the average person. In consequence, we find that, in the earlier Scriptures, the deities of Brahmanism are taken for granted, and that, later on, the Buddhists adopted the local Gods of any district to which they came."

Id., p. 42.

When the present Act was adopted in 1948, we were a nation of Buddhists, Confucianists, and Taoists, as well as Christians. Hawaii, then a Territory, was indeed filled with Buddhists, Buddhism being "probably the major

Page 380 U. S. 192

faith, if Protestantism and Roman Catholicism are deemed different faiths." Stokes and Pfeffer, Church and State in the United States, p. 560 (1964). Organized Buddhism first came to Hawaii in 1887 when Japanese laborers were brought to work on the plantations. There are now numerous Buddhist sects in Hawaii, and the temple of the Shin sect in Honolulu is said to have the largest congregation of any religious organization in the city. See Mulholland, Religion in Hawaii pp. 44-50 (1961).

In the continental United States, Buddhism is found "in real strength" in Utah, Arizona, Washington, Oregon, and California.

"Most of the Buddhists in the United States are Japanese or Japanese-Americans; however, there are 'English' departments in San Francisco, Los Angeles, and Tacoma."

Mead, Handbook of Denominations, p. 61 (1961). The Buddhist Churches of North America, organized in 1914 as the Buddhist Mission of North America and incorporated under the present name in 1942, represent the Jodo Shinshu Sect of Buddhism in this country. This sect is the only Buddhist group reporting information to the annual Yearbook of American Churches. In 1961, the latest year for which figures are available, this group alone had 55 churches and an inclusive membership of 60,000; it maintained 89 church schools, with a total enrollment of 11,150. Yearbook of American Churches, p. 30 (1965). According to one source, the total number of Buddhists of all sects in North America is 171,000. See World Almanac, p. 636 (1965).

When the Congress spoke in the vague general terms of a Supreme Being, I cannot, therefore, assume that it was so parochial as to use the words in the narrow sense urged on us. I would attribute tolerance and sophistication to the Congress, commensurate with the religious complexion of our communities. In sum, I agree with the Court that any person opposed to war on the basis of a sincere belief, which, in his life, fills the same place as a belief

Page 380 U. S. 193

in God fills in the life of an orthodox religionist, is entitled to exemption under the statute. None comes to us an avowedly irreligious person or as an atheist; [Footnote 2/2] one as a sincere believer in "goodness and virtue for their own sakes." His questions and doubts on theological issues, and his wonder, are no more alien to the statutory standard than are the awe-inspired questions of a devout Buddhist.

[Footnote 2/1]

And see *Crowell v. Benson*, 285 U. S. 22, 285 U. S. 62; *Ullmann v. United States*, 350 U. S. 422, 350 U. S. 433; *Ashwander v. TVA*, 297 U. S. 288, 297 U. S. 341, 297 U. S. 348 (concurring opinion).

[Footnote 2/2]

If he was an atheist, quite different problems would be presented. Cf. *Torcaso v. Watkins*, 367 U. S. 488.

