CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – "Contemplation of Justice"

Wisconsin v. Yoder, 406 U.S. 205 (1972)

The essence of all that has been said and written on the subject is that only ***those interests of the highest order*** and those not otherwise served can overbalance legitimate claims to the free exercise of religion. We can accept it as settled, therefore, that, however strong the State's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests. E.g., Sherbert v. Verner, 374 U. S. 398 (1963); McGowan v. Maryland, 366 U. S. 420, 366 U. S. 459 (1961) (separate opinion of Frankfurter, J.); Prince v. Massachusetts, 321 U. S. 158, 321 U. S. 165 (1944). *(Emphasis added)*

"…I conclude that respondents' claim must prevail, largely because "religious freedom -- the freedom to believe and to practice strange and, it may be, foreign creeds -- has classically been one of the highest values of our society."

Braunfeld v. Brown, 366 U. S. 599, 366 U. S. 612 (1961) (BRENNAN, J., concurring and dissenting).

A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion. Sherbert v. Verner, supra; cf. Walz v. Tax Commission, 397 U. S. 664 (1970). The Court must not ignore the danger that an exception

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from a general obligation of citizenship on religious grounds may run afoul of the Establishment Clause, but that danger cannot be allowed to prevent any exception, no matter how vital it may be to the protection of values promoted by the right of free exercise.

By preserving doctrinal flexibility and recognizing the need for a sensible and realistic application of the Religion Clauses,

"we have been able to chart a course that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion. This is a 'tight rope,' and one we have successfully traversed."

Walz v. Tax Commission, supra, at 397 U. S. 672.

We must not forget that, in the Middle Ages, important values of the civilization of the Western World were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is

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"right," and the Amish and others like them are "wrong." A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different.

MR. JUSTICE DOUGLAS dissenting in part.+

These children are "persons" within the meaning of the Bill of Rights. We have so held over and over again. In Haley v. Ohio, 332 U. S. 596, we extended the protection of the Fourteenth Amendment in a state trial of a 15-year-old boy. In In re Gault, 387 U. S. 1, 387 U. S. 13, we held that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." In In re Winship, 397 U. S. 358, we held that a 12-year-old boy, when charged with an act which would be a crime if committed by an adult, was entitled to procedural safeguards contained in the Sixth Amendment.

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In Tinker v. Des Moines School District, 393 U. S. 503, we dealt with 13-year-old, 15-year-old, and 16-year-old students who wore armbands to public schools and were disciplined for doing so. We gave them relief, saying that their First Amendment rights had been abridged.

"Students, in school as well as out of school, are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State."

Id. at 393 U. S. 511.

In Board of Education v. Barnette, 319 U. S. 624, we held that school children whose religious beliefs collided with a school rule requiring them to salute the flag could not be required to do so. While the sanction included expulsion of the students and prosecution of the parents, id. at 319 U. S. 630, the vice of the regime was its interference with the child's free exercise of religion. We said: "Here . . . we are dealing with a compulsion of students to declare a belief." Id. at 319 U. S. 631. In emphasizing the important and delicate task of boards of education we said:

"That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."

Id. at 319 U. S. 637.

On this important and vital matter of education, I think the children should be entitled to be heard. While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. He may want to be a pianist or an astronaut or an oceanographer.

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To do so he will have to break from the Amish tradition. [Footnote 3/2]