CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Bowen v. Roy, 476 U.S. 693 (1986)

CHIEF JUSTICE BURGER announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and II, and an opinion with respect to Part III, in which JUSTICE POWELL and JUSTICE REHNQUIST join.

The question presented is whether the Free Exercise Clause of the First Amendment compels the Government to accommodate a religiously based objection to the statutory requirements that a Social Security number be provided by an applicant seeking to receive certain welfare benefits, and that the States use these numbers in administering the benefit programs.

Our cases have long recognized a distinction between the freedom of individual belief, which is absolute, and the freedom of individual conduct, which is not absolute. This case implicates only the latter concern.

Roy objects to the statutory requirement that state agencies "shall utilize" Social Security numbers not because it places any restriction on what he may believe or what he may do, but because he believes the use of the number may harm his daughter's spirit.

Never to our knowledge has the Court interpreted the First Amendment to require the Government itself to behave in ways that the individual believes will further his or her spiritual development or that of his or her family. **The Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens.** Just as the Government may not insist that appellees engage in

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any set form of religious observance, so appellees **may not demand that the Government join in their chosen religious practices** by refraining from using a number to identify their daughter.

Sherbert v. Verner, 374 U. S. 398, 374 U. S. 412 (1963) (Douglas, J., concurring).

"[T]he Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can extract from the government."

We are not unmindful of the importance of many government benefits today or of the value of sincerely held religious beliefs.

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However, while we do not believe that no government compulsion is involved, we cannot ignore the reality that denial of such benefits by a uniformly applicable statute neutral on its face is of a wholly different, less intrusive nature than affirmative compulsion or prohibition, by threat of penal sanctions, for conduct that has religious implications.

We have repeatedly emphasized this distinction: in rejecting a Free Exercise challenge in Bob Jones University v. United States, 461 U. S. 574, 461 U. S. 603-604 (1983), for example, we observed that the

"[d]enial of tax benefits will inevitably have a substantial impact on the operation of private religious schools, but will not prevent those schools from observing their religious tenets. [Footnote 16]"

We conclude then that government regulation that indirectly and incidentally calls for a choice between securing a governmental benefit and adherence to religious beliefs is wholly different from governmental action or legislation that criminalizes religiously inspired activity or inescapably compels conduct that some find objectionable for religious reasons. Although the denial of government benefits over religious objection can raise serious Free Exercise problems, these two very different forms of government action are not governed by the same constitutional standard. A governmental burden on religious liberty is not insulated from review simply because it is indirect, Thomas v. Review Board of Indiana Employment Security Div., 450 U. S. 707, 450 U. S. 717-718 (1981) (citing Sherbert v. Verner, 374 U.S. at 374 U. S. 404);

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but the nature of the burden is relevant to the standard the government must meet to justify the burden.

[Footnote 16]

JUSTICE O'CONNOR's partial dissent asserts that the Court's holding "has no basis in precedent," post at 476 U. S. 727. To the contrary, it is the history advanced by the dissenting opinions that is revisionist. The dissent characterizes our prior cases as holding that the denial of a benefit is the same, for constitutional purposes, as the imposition of a criminal sanction. In Bob Jones University, however, the Court upheld the denial of tax benefits to a school that prohibited interracial dating, observing that the school remained wholly free to "observ[e] [its] religious tenets." 461 U.S. at 461 U. S. 604. If denying governmental benefits is the same as imposing criminal sanctions, then the Free Exercise Clause could not prevent the Government from ordering Bob Jones University, under pain of criminal penalty, to violate its religious beliefs and permit interracial dating on its campus. But that difficult question is still an open one, since "the Constitution may compel toleration of private discrimination in some circumstances." Norwood v. Harrison, 413 U. S. 455, 413 U. S. 463 (1973).