CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Employment Div. v. Smith, 494 U.S. 872 (1990)

"**As we reaffirmed only last Term**,

"[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretation of those creeds."

Hernandez v. Commissioner, 490 U.S. at 490 U. S. 699. Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the **plausibility of a religious claim**." (Emphasis added)

Precisely because "we are a cosmopolitan nation made up of people of almost every conceivable religious preference," Braunfeld v. Brown, 366 U.S. at 366 U. S. 606, **and precisely because we value and protect that religious divergence**, we cannot afford the luxury of deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order. (Emphasis added)

The compelling interest test effectuates the **First Amendment's command** that religious liberty is an independent liberty, **that it occupies a preferred position**, and that the **Court will not permit encroachments upon this liberty, whether direct or indirect**, unless required by clear and compelling governmental interests "**of the highest order**," Yoder, supra, 406 U.S. at 406 U. S. 215. (Emphasis added)

The Free Exercise Clause of the First Amendment, which has been made applicable to the States by incorporation into

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the Fourteenth Amendment, see Cantwell v. Connecticut, 310 U. S. 296, 303 (1940), provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . . " U.S. Const. Am. I (emphasis added). The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all "governmental regulation of religious beliefs as such." Sherbert v. Verner, supra, 374 U.S. at 374 U. S. 402. The government may not compel affirmation of religious belief, see Torcaso v. Watkins, 367 U. S. 488 (1961), punish the expression of religious doctrines it believes to be false, United States v. Ballard, 322 U. S. 78, 322 U. S. 86-88 (1944), impose special disabilities on the basis of religious views or religious status, see McDaniel v. Paty, 435 U. S. 618 (1978); Fowler v. Rhode Island, 345 U. S. 67, 345 U. S. 69 (1953); cf. Larson v. Valente, 456 U. S. 228, 456 U. S. 245 (1982), or lend its power to one or the other side in controversies over religious authority or dogma, see Presbyterian Church v. Hull Church, 393 U. S. 440, 393 U. S. 445-452 (1969); Kedroff v. St. Nicholas Cathedral, 344 U. S. 94, 344 U. S. 95-119 (1952); Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U. S. 696, 426 U. S. 708-725 (1976).

The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press, see Cantwell v. Connecticut, 310 U.S. at 304, 310 U. S. 307 (invalidating a licensing system for religious and charitable solicitations under which the administrator had discretion to deny a license to any cause he deemed nonreligious); Murdock v. Pennsylvania, 319 U. S. 105 (1943) (invalidating a flat tax on solicitation as applied to the dissemination of religious ideas); Follett v. McCormick, 321 U. S. 573 (1944) (same), or the right of parents, acknowledged in Pierce v. Society of Sisters, 268 U. S. 510 (1925), to direct the education of their children, see Wisconsin v. Yoder, 406 U. S. 205 (1972) (invalidating compulsory school attendance laws as applied to Amish parents who refused on religious grounds to send their children to school). [Footnote 1]

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Some of our cases prohibiting compelled expression, decided exclusively upon free speech grounds, have also involved freedom of religion, cf. Wooley v. Maynard, 430 U. S. 705 (1977) (invalidating compelled display of a license plate slogan that offended individual religious beliefs); West Virginia Board of Education v. Barnette, 319 U. S. 624 (1943) (invalidating compulsory flag salute statute challenged by religious objectors). And it is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns. Cf. Roberts v. United States Jaycees, 468 U. S. 609, 468 U. S. 622 (1983) ("An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State [if] a correlative freedom to engage in group effort toward those ends were not also guaranteed.").

It is no

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more appropriate for judges to determine the "centrality" of religious beliefs before applying a "compelling interest" test in the free exercise field than it would be for them to determine the "importance" of ideas

before applying the "compelling interest" test in the free speech field. What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is "central" to his personal faith? Judging the centrality of different religious practices is akin to the unacceptable "business of evaluating the relative merits of differing religious claims." United States v. Lee, 455 U.S. at 455 U. S. 263 n. 2 (STEVENS, J., concurring). As we reaffirmed only last Term,

"[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretation of those creeds."

Hernandez v. Commissioner, 490 U.S. at 490 U. S. 699. Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim. See, e.g., Thomas v. Review Board, Indiana Employment Security Div., 450 U.S. at 450 U. S. 716; Presbyterian Church v. Hull Church, 393 U.S. at 393 U. S. 450; Jones v. Wolf, 443 U. S. 595, 443 U. S. 602-606 (1979); United States v. Ballard, 322 U. S. 78, 322 U. S. 85-87 (1944). [Footnote 4]

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If the "compelling interest" test is to be applied at all, then, it must be applied across the board, to all actions thought to be religiously commanded. Moreover, if "compelling interest" really means what it says (and watering it down here would subvert its rigor in the other fields where it is applied), many laws will not meet the test. Any society adopting such a system would be courting anarchy, but that danger increases in direct proportion to the society's diversity of religious beliefs, and its determination to coerce or suppress none of them. Precisely because "we are a cosmopolitan nation made up of people of almost every conceivable religious preference," Braunfeld v. Brown, 366 U.S. at 366 U. S. 606, and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order.

To say that a person's right to free exercise has been burdened, of course, does not mean that he has an absolute right to engage in the conduct. Under our established First Amendment jurisprudence, we have recognized that the freedom to act, unlike the freedom to believe, cannot be absolute. See, e.g., Cantwell, supra, 310 U.S. at 310 U. S. 304; Reynolds v. United States, 98 U. S. 145, 98 U. S. 161-167. Instead, we have respected both the First Amendment's express textual mandate and the governmental interest in regulation of conduct by requiring the Government to justify any substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest. See Hernandez v. Commissioner, 490 U. S. 680,

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490 U. S. 699 (1989); Hobbie, supra, 480 U.S. at 480 U. S. 141; United States v. Lee, 455 U. S. 252, 455 U. S. 257-258 (1982); Thomas v. Review Bd., Indiana Employment Security Div., 450 U. S. 707, 450 U. S. 718 (1981); McDaniel v. Paty, 435 U. S. 618, 435 U. S. 626-629 (1978) (plurality opinion); Yoder, supra, 406 U.S. at 406 U. S. 215; Gillette v. United States, 401 U. S. 437, 401 U. S. 462 (1971); Sherbert v. Verner, 374 U. S. 398, 374 U. S. 403 (1963); see also Bowen v. Roy, supra, 476 U.S. at 476 U. S. 732 (opinion concurring in part and dissenting in part); West Virginia State Bd. of Educ. v. Barnette, 319 U. S. 624, 319 U. S. 639 (1943). The compelling interest test effectuates the First Amendment's command that religious liberty is an independent liberty, that it occupies a preferred position, and that the Court will not permit encroachments upon this liberty, whether direct or indirect, unless required by clear and compelling governmental interests "of the highest order," Yoder, supra, 406 U.S. at 406 U. S. 215.