CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – "Contemplation of Justice"

Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520 (1993)

Although the practice of animal sacrifice may seem abhorrent to some, ***"religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."*** *Thomas* v. *Review Bd. of Indiana Employment Security Div.*, 450 U. S. 707, 714 (1981). Emphasis added

In our Establishment Clause cases we have often stated the principle that the First Amendment forbids an official purpose to disapprove of a particular religion or of religion in general. See, *e. g., Board of Ed. of Westside Community Schools (Dist.* 66) v. *Mergens*, 496 U. S. 226, 248 (1990) (plurality opinion); *School Dist. of Grand Rapids* v. *Ball, 473* U. S. 373, 389 (1985); *Wallace* v. *Jaffree*, 472 U. S. 38, 56 (1985); *Epperson* v. *Arkansas*, 393 U. S. 97, 106-107 (1968); *School Dist. of Abington* v. *Schempp*, 374 U. S. 203, 225 (1963); *Everson* v. *Board of Ed. of Ewing*, 330 U. S. 1, 15-16 (1947). These cases, however, for the most part have addressed governmental efforts to benefit religion or particular religions, and so have dealt with a question different, at least in its formulation and emphasis, from the issue here. Petitioners allege an attempt to disfavor their religion because of the religious ceremonies it commands, and the Free Exercise Clause is dispositive in our analysis.

At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons. See, *e. g., Braunfeld* v. *Brown*, 366 U. S. 599, 607 (1961) (plurality opinion); *Fowler* v. *Rhode Island*, 345 U. S., at 69-70. Indeed, it was "historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause." *Bowen* v. *Roy*, 476 U. S. 693, 703 (1986) (opinion of Burger, C. J.). See J. Story, Commentaries

on the Constitution of the United States §§ 991-992 (abridged ed. 1833) (reprint 1987); T. Cooley, Constitutional Limitations 467 (1868) (reprint 1972); *McGowan* v. *Maryland,* 366 U. S. 420, 464, and n. 2 (1961) (opinion of Frankfurter, J.); *Douglas* v. *Jeannette,* 319 U. S. 157, 179 (1943) (Jackson, J., concurring in resuIt); *Davis* v. *Beason,* 133 U. S. 333, 342 (1890). These principles, though not often at issue in our Free Exercise Clause cases, have played a role in some. In *McDaniel* v. *Paty, 435* U. S. 618 (1978), for example, we invalidated a state law that disqualified members of the clergy from holding certain public offices, because it "impose[d] special disabilities on the basis of ... religious status," *Employment Div., Dept. of Human Resources of Ore.* v. *Smith,* 494 U. S., at 877. On the same principle, in *Fowler* v. *Rhode Island, supra,* we found that a municipal ordinance was applied in an unconstitutional manner when interpreted to prohibit preaching in a public park by a Jehovah's Witness but to permit preaching during the course of a Catholic mass or Protestant church service. See also *Niemotko* v. *Maryland,* 340 U. S. 268, 272-273 (1951). Cf. *Larson* v. *Valente,* 456 U. S. 228 (1982) (state statute that treated some religious denominations more favorably than others violated the Establishment Clause).

Although a law targeting religious beliefs as such is never permissible, *McDaniel* v. *Paty, supra,* at 626 (pluralityopinion); *Cantwell* v. *Connecticut, supra,* at 303-304, if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, see *Employment Div., Dept. of Human Resources of Ore.* v. *Smith, supra,* at 878-879; and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest. There are, of course, many ways of demonstrating that the object or purpose of a law is the suppression of religion or religious conduct. To determine the object of a law, we must begin with its text, for the minimum requirement of neutrality is that a law not discriminate on its face. A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context. Petitioners contend that three of the ordinances fail this test of facial neutrality because they use the words

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"sacrifice" and "ritual," words with strong religious connotations.

The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause "forbids subtle departures from neutrality," *Gillette* v. *United States,* 401 U. S. 437, 452 (1971), and "covert suppression of particular religious beliefs," *Bowen* v. *Roy, supra,* at 703 (opinion of Burger, C. J.). Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality.

The Free Exercise Clause protects against governmental hostility which is masked as well as overt**.**

"The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders." Walz v. *Tax Comm'n of New York City,* 397 U. S. 664, 696 (1970) (Harlan, J., concurring).