

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” *Cummings v. Missouri, 71 U.S. 277, 4 Wall. 277 (1866)*



Whenever prosecutions arise under these provisions, there will, doubtless, be granted, in Missouri, to the accused, all these guarantees of constitutional liberty. The State cannot deny them to one of its citizens without denying them to all; and to suppose a people so lost to common sense as to deprive themselves, voluntarily, of these great and essential rights, necessary to a condition of freedom, is to suppose them incapable of self-government. But an objection is also urged which is well calculated to excite interest. ***The rights of conscience are sacred rights.*** They are too often confounded, however, with the unrestrained

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license to corrupt, from the pulpit, the public taste or the public morals. However this may be, the American people are exceedingly sensitive on the subject of religious freedom; and whenever, the people are told, as they have been in this case, *that the indefeasible right to worship God according to the dictates of conscience is about to be invaded, the public mind at once arouses itself to repel the invasion.* The first article of the amendments to the Constitution is in these words: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'

“This results from the rule of the Constitution, that the instrument itself, and the laws made in pursuance of it, are the supreme law of the land; and whatever obstructs or impairs, or tends to obstruct or impair, their free and full operation is unconstitutional and void.”

“What is punishment? The infliction of pain or privation. To inflict the penalty of death, is to inflict pain and deprive of life. To inflict the penalty of imprisonment, is to deprive of liberty. To impose a fine, is to deprive of property. To deprive of any natural right, is also to punish. And so is it punishment to deprive of a privilege.”

“Let us turn now to the other prohibition, that against passing any 'bill of attainder.' This expression is generic, and includes not only legislative acts to punish for felonies, but every legislative act

which inflicts punishment without a judicial trial. If the offence be less than felony, the act is usually called a bill of pains and penalties.”