

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice”
Sherbert v. Verner, 374 U.S. 398 (1963)



In a closely analogous context, this Court said:

". . . the fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free speech question. **Under some circumstances, indirect 'discouragements' undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions or taxes.** A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature." (Emphasis added)

American Communications Assn. v. Douds, 339 U. S. 382, 339 U. S. 402. Cf. *Smith v. California*, 361 U. S. 147, 361 U. S. 153-155.

“The result turns not on the degree of injury, which may indeed be nonexistent by ordinary standards. *The harm is the interference with the individual's scruples or conscience -- an important area of privacy which the First Amendment fences off from government.* **The interference here is as plain as it is in Soviet Russia, where a churchgoer is given a second-class citizenship, resulting in harm, though perhaps not in measurable damages.**” Page 374 U. S. 412-413 (Emphasis added)