

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” *Wallace v. Jaffree, 472 U.S. 38 (1985)*



The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion." Cantwell, of course, is but one case in which the Court has identified the individual's freedom of conscience as the central liberty that unifies the various Clauses in the First Amendment. [Footnote 35] Enlarging on this theme, THE CHIEF JUSTICE recently wrote:

Page 472 U. S. 51

"We begin with the proposition that the right of freedom of thought protected by the First Amendment against state action includes both ***the right to speak freely and the right to refrain from speaking at all.*** See Board of Education v. Barnette, 319 U. S. 624, 319 U. S. 633-634 (1943); *id.* at 319 U. S. 645 (Murphy, J., concurring). A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts. ***The right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'*** *Id.* at 319 U. S. 637."

Just as the right to speak and the right to refrain from speaking are complementary components of a broader concept of individual freedom of mind, so also the individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority.