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)