

Although many would argue the Supreme Court has been inconsistent in its consideration of state interests in religious exercise cases, from *Cantwell v. Connecticut* (1940) to *City of Boerne v. Flores* (1997), the Court has remained consistent in its rulings. In such cases the Court has followed the unwavering principle that religious freedom concerns may only supersede governmental interests if the effects will be slight and felt by few. Regardless of whether the group seeking religious protection was a well-known and respected religion or a religion that most would consider disreputable, this standard has remained firm. Moreover, the supposed “test” that the Court purported to be following at the time of a particular case – be it the valid secular policy test, the Sherbet/Yoder test, or the Smith test – has proved meaningless. The only issue that has ultimately mattered in all such cases is whether allowing religious interests to dominate governmental concerns will have great effects on the society as a whole. Thus, the Court has remained resolute in how it has resolved cases concerning religious freedoms and state interests.

To begin, let us consider the cases of *Cantwell v. Connecticut* (1940) and *Minersville School District v. Gobitas* (1940). For our discussion, the most important aspect of these cases is that they were both filed by members of the Jehovah’s Witness religious sect. The Jehovah’s Witnesses are a commonly ostracized religious minority that is not usually accepted by the general public. Consequently, if the Court allowed itself to be ruled by public opinion in cases concerning religious freedom, the Jehovah’s Witnesses would have been ruled against in each of these cases. Yet, this is hardly what happened, as in *Cantwell* the Court ruled in favor of the group with Justice Roberts declaring that “to condition the solicitation of aid for the perpetuation of religious views

or systems upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause, it to lay a forbidden burden upon the exercise of liberty protected by the Constitution.” However, in *Gobitas*, it was the converse that rang true as the Jehovah’s Witnesses were ruled against with the Court asserting the group had no constitutional right that could make them exempt from saluting the flag in public schools. Thus, it was not the Jehovah’s Witnesses disliked religion that was the deciding factor in these cases, but rather something else.

That something else was the nature of the cases and the consequences they could potentially have on society as a whole. In *Cantwell*, the group brought litigation because they were outlawed from distributing pamphlets and soliciting for money without ascertaining prior approval from the state that their cause was religious or an object of charity. The Cantwell’s feared that if they sought this endorsement from the state they would be denied on the grounds that the Jehovah’s Witnesses did not constitute a legitimate religious group. The group likely had good reason for having this fear and consequently their right to freely exercise their religion was compromised by this law. As previously mentioned, the Court ruled in favor of the group in this case. While this decision appears to be a grand achievement for the group, it in fact had very little impact on the society as a whole. The Court was likely aware that no major transformation of society would result in allowing the Jehovah’s Witnesses to distribute their materials sans prior permission. The group was already out of favor with the majority of the populace for its seemingly abnormal ideas and the distribution of their materials would probably only result in them being even more resented. Moreover, the Court all but suggested an alternative law to the one it remanded that would also be sufficient in quelling the activity

of the group. Thus, the effects on society of deciding in favor of the Jehovah's Witnesses in this case were likely to be very minimal.

On the other hand, much more was at stake in the *Gobitas* case and the Court ruled likewise. In *Gobitas*, the Jehovah's Witnesses sought an exemption for their children who were required to salute the flag while attending public schools. The group purported that they were against saluting anything and consequently their right to freely exercise their religion was violated by this requirement. This assertion clearly appears to be true but nonetheless the Court ruled against the group declaring the salute of the flag was necessary to promote patriotism in the country. One can see that the ramifications of the Court ruling conversely and in favor of the Jehovah's Witnesses in this case would have been tremendous. Such a ruling would have disrupted American life throughout all spheres. Schools throughout the nation would have been disturbed with Jehovah's Witness children bowing out of the flag salute and other students consequently becoming irate and even possibly coming to blows with these individuals. This fiasco would obviously spread to the home where parents would become involved. Finally, the mess would extend to the workplace and all places of public life until the entire country was enveloped in the issue. Thus, the price was just too high for deciding in favor of the Jehovah's Witnesses in this case.

The next two cases of importance to this issue are *Braunfeld v. Brown* (1961) and *Sherbert v. Verner* (1962). In *Braunfeld*, Abraham Braunfeld, an Orthodox Jew, took issue with a Sunday closing law that required his retail store to remain closed on Sundays. According to Braunfeld, this law violated his right to freely exercise his religion because as an Orthodox Jew "he could not work on Saturday, the Jewish

Sabbath, but he needed to be open six days a week for economic reasons” (Epstein, 112). In *Sherbert*, Adell Sherbert was denied unemployment benefits because work was available for her but she did not take it. However, Sherbert claimed that the only potential work existing for her would force her to work on Saturdays and this would violate her faith as a member of the Seventh Day Adventist Church. Thus, Sherbert declared that withholding unemployment benefits from her violated her right to freely exercise her religion.

Naturally, in these cases the Court ruled against Braunfeld and ruled in favor of Sherbert. Ruling in favor of Braunfeld would have had vast consequences on the society as a whole. In *Braunfeld*, the Court purported to make its decision on the basis that the Sunday closing laws had a valid secular purpose in bringing the community together. However, ruling otherwise would have put a considerable burden on the majority of the community. If Jewish-run businesses were allowed to remain open on Sundays, this would have given them a significant advantage against competitors who wished to remain closed on Sundays. Being that Judaism was a minority religion, it is clear that the annulment of the law would have affected more people than its being in existence did. Thus, a greater number of individuals reaped a benefit from the law than were harmed by its existence. Consequently, the effects of overturning the law would not have been slight. On the other hand, in *Sherbet*, by ruling in favor of the plaintiff the Court put only a slight burden (if any at all) on the majority of the populace. Allowing members of the Seventh Day Adventist Church and other religious groups that held no work should occur on Saturdays to receive unemployment benefits would cost the society very little. Individuals receiving benefits because of this ruling were likely to be few and far

between, as they constituted members of minority religions. Moreover, it is dubious that people would run out to join such religions just so they would have a greater possibility of receiving unemployment benefits. It is not as if the receipt of unemployment benefits permitted one to live a comfortable lifestyle that everyone would seek. Thus, tolerating a few more individuals receiving unemployment than previously allowed for would not cause sweeping changes in a community if any at all. Hence, in *Braunfeld* and *Sherbet* – both cases featuring the interests of religious minority groups – the same principle held true: the Court allowed religious interests only to supersede governmental interests if the consequences would be slight.

Many would argue that the cases of *Wisconsin v. Yoder* (1972) and *Employment Division Department of Human Resources of Oregon v. Smith* (1990) serve as clear evidence for the assertion that the Court has been inconsistent in how it has ruled in cases where state interests have been in opposition to religious interests. This line of thinking follows that the Court has favored religious groups it approves of, while rebuffing those religious groups it frowns upon. In *Yoder*, the Amish were battling the state of Wisconsin's compulsory education law "mandating children to attend public or private schools until the age of sixteen" (118). The Amish believed that for their lifestyle children were best suited to attend school until the completion of the eighth grade and would then benefit the most from being educated at home. On the other hand, the state of Wisconsin argued that this mandate was necessary for the welfare of children. In *Smith*, Alfred Smith and Galen Black – members of the Native American church – sought unemployment benefits after they were fired from their jobs as drug abuse counselors following their use of the drug peyote at a religious ceremony. The two argued that the

use of peyote was a traditional component of their Native American religion and by withholding unemployment benefits the state was violating their right to freely exercise their religion. The state of Oregon countered that they were “ineligible [for unemployment benefits] because they had been fired for ‘misconduct’; under state law, workers discharged for that reason cannot obtain benefits” (126).

Giving ammunition to the argument outlined in the previous paragraph, the Court ruled in favor of the “beloved” Amish in *Yoder* and against the “reviled” Native Americans in *Smith*. However, upon further analysis of these cases, one can see that the Court followed the same principle as has been professed throughout this paper: the Court allowed religious interests only to supersede governmental interests if the consequences would be slight. To demonstrate this, let us consider the case of *Yoder* from the perspective of the majority of society in the state of Wisconsin. While some may argue it would be in the interest of the community for the few children of the Amish population to continue their schooling until the age of 16 in order to become more upstanding citizens, one must remember the Amish constituted a very small segment of the population and most importantly a segment that had very little interaction with the remainder of the populace. Thus, the common individual in Wisconsin was extremely unlikely to reap any negative consequences from the termination of public or private school education for Amish persons following the completion of the eighth grade. Not only was an ordinary member of the population unlikely to encounter an Amish individual in his or her day-to-day dealings, but also even he or she did, the Amish did not have a record of being repugnant when such contact occurred. The Amish had a track record of keeping to their own affairs and being stand-up members of society. Thus, it was dubious that allowing

Amish children to withdraw from public or private school education following the eighth grade would have compromised the interests of others. However, the same cannot be said in the case of *Smith*. While some may see *Smith* as analogous to *Sherbert* where there would be little impact on society by allowing a few more individuals unemployment benefits, there is a key difference between the two cases: the use of peyote can have a significant impact on society while simply remaining at home on Saturdays is likely not to have this impact. As a hallucinogen, individuals under the influence of peyote may be apt to cause traffic accidents or engage in other destructive behaviors. Consequently, using the drug would not only be unsafe for those that used it themselves, but also for those that did not. Therefore, by sanctioning its use – for any purpose – a community puts its entire populace in danger. For the Court to knowingly allow any governmental benefit to be available to those that engaged in such an activity would be absurd. Thus, the difference between *Smith* and *Yoder*, and for that matter *Smith* and *Sherbert*, was not that *Smith* involved a group that had been frowned upon since the beginning of the European occupation of America, but rather that ruling in *Smith*'s favor would have had a potentially destructive effect on society while ruling in favor of the *Yoder* and *Sherbert* would likely result in no such harms.

To expound upon this point, let us consider the case of *United States v. Lee* (1982). In this case, Lee, an Amish business owner, “refused to withhold Social Security taxes or pay the employers’ share of those taxes, arguing that the payment of taxes and the receipt of Social Security benefits violates his religious tenets” (123). However, the Court rejected this argument with Chief Justice Burger declaring participating in the program is “essential to accomplish an overriding governmental interest.” Clearly, the

Court recognized that exempting Amish business owners from paying into the Social Security system would have an unfavorable impact on the majority of society as nearly everybody draws benefits from the system. Moreover, a ruling in favor of Lee could have prompted other groups to declare that their religious tenets held they could not pay into the system; this would have put the Social Security system in great peril. The most important aspect of this case, however, is the fact that it dismisses the argument that the Court only ruled in favor of the Amish in *Yoder* because they held a great deal of respect for Amish religious tenets. If “respect” had been the basis for the decision in *Yoder* (which had been garnered over hundreds of years) it is doubtful that it would have dissipated so much in the ten years between *Yoder* and *Lee* that Lee would have been ruled against. Thus, it was not “respect” that decided these cases but rather the consequences they could potentially have on society as a whole.

The final two cases on the docket for our consideration are *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993) and *City of Boerne v. Flores* (1997). In *Lukumi Babalu Aye*, members of the church filed suit against the City of Hialeah, Florida after the city passed ordinances forbidding the killing of animals during religious ceremonies. As followers of the Santeria religion, members of the Lukumi Babalu Aye church commonly engaged in such practices as they were a central component of the religion. Thus, the group felt the laws specifically targeted their right to freely exercise their religion. In *Flores*, the central issue was the constitutionality of the Religious Freedom Restoration Act (RFRA) passed by Congress in 1993 in an attempt to guarantee religious freedoms unless a compelling governmental interest of the least restrictive means was involved. In the case, the local Catholic church argued the city of Boerne, Texas had no

right due to the RFRA to “den[y] the church permission to tear down its existing building and erect a new structure” (135). The city of Boerne sought to prevent the destruction of the building as it considered the structure a historical landmark.

As is consistent with the cases previously discussed, the Court ruled in favor of the Church of the Lukumi Babalu Aye while it ruled against Flores. In *Lukumi Babalu Aye*, the Court found that “the laws were passed to prohibit the practices of a particular religious group” and consequently infringed upon the Free Exercise Clause. This case serves to again demonstrate the Court’s impartiality concerning various religious groups. It is likely the Court was not in favor of the slaughter of animals for religious purposes and may have found the practice utterly repugnant, yet it still found in favor of the group. One can imagine that such ceremonies were likely to occur in private where no individual that would be disgusted by such actions would be present. Consequently, the effects this behavior could have on an entire community were severely limited. In *Flores*, on the other hand, ruling in favor of the Church would have imperiled the society as a whole, which is exactly why the Court ruled against the Church finding that the RFRA was a misuse of legislative power and hence unconstitutional. Considering the case of *Flores* specifically, ruling in favor of the Church would have been detrimental to the community as a whole because it would have meant the loss of a historical building that was likely regarded as somewhat of a monument in the city. This would have been a blow to the beauty of the city and nobody in the city, be it visitors or residents, would have been immune from its detrimental consequences. Yet, it is most important in this case to generally explore the consequences to society that would have resulted from the enactment of the RFRA. More or less, had the RFRA stood, it would have put cities and

communities everywhere at the mercy of religious interests. The Court would no longer be in a position to weigh religious and state interests and then come to a seemingly utilitarian decision on the matters. Under the RFRA, in nearly every case, the exercise of religious interests would have been viewed as more imperative than that of state or community interests and this is precisely what the Court has attempted to prevent throughout its tenure.

It should be mentioned that in the various cases discussed in this essay the Court purported to be using various “tests” in order to decide each. For example, in the *Cantwell* and *Gobitas* cases the Court used the valid secular policy test, which eventually evolved into the Sherbert/Yoder test and finally the Smith test. There has been little discussion of these “tests” because as has been shown throughout this essay, the specific “test” used has had absolutely no bearing on the ultimate decision of the Court. In each and every case reviewed, be it decided under the valid secular policy test or the Smith test, the same thing has ringed true: the Court has followed the unwavering principle that religious freedom concerns may only supersede governmental interests if the effects will be slight and felt by few. Thus, a discussion of the specifics of these various “tests” is impertinent to the matter at hand.

The way in which the Court has consistently dealt with the conflicts that have arisen between state interests and the exercise of religious freedoms is seemingly utilitarian in manner. That is, the Court has attempted to achieve the greatest amount of happiness for the greatest number of people. The origins of this notion are an important consideration. While the Court is an appointed body and is thus not accountable to electorates, it must seek to satisfy the majority of the population or risk being regarded as

illegitimate. In cases where the majority is only minimally affected, if at all, the Court is in a position where it can uphold religious freedoms without risking the ramifications of an unpopular decision. Favoring the right to free religious exercise in such cases allows a few individuals to benefit but nobody is truly hurt. On the other hand, ruling against religious groups when doing the converse would harm the majority of society also accords to this notion since a utilitarian would hold it is better to harm a few people (in this case the religious groups) than an abundance of people. Thus, by keeping with this principle the Court has helped to maintain its status as a paramount American institution.

## Works Cited

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