



SHERBERT v. VERNER
SUPREME COURT OF THE UNITED STATES
374 U.S. 398
June 17, 1963
[7 – 2]

OPINION: BRENNAN...Appellant, a member of the Seventh-day Adventist Church was discharged by her South Carolina employer because she would not work on Saturday, the Sabbath Day of her faith. When she was unable to obtain other employment because from conscientious scruples she would not take Saturday work, she filed a claim for unemployment compensation benefits under the South Carolina Unemployment Compensation Act. That law provides that, to be eligible for benefits, a claimant must be 'able to work and...is available for work'; and, further, that a claimant is ineligible for benefits 'if...he has failed, without good cause...to accept available suitable work when offered him by the employment office or the employer...' The appellee Employment Security Commission...found that appellant's restriction upon her availability for Saturday work brought her within the provision disqualifying for benefits insured workers who fail, without good cause, to accept 'suitable work when offered...by the employment office or the employer...' The Commission's finding was sustained by the Court of Common Pleas for Spartanburg County. That court's judgment was in turn affirmed by the South Carolina Supreme Court, which rejected appellant's contention that, as applied to her, the disqualifying provisions of the South Carolina statute abridged her right to the free exercise of her religion secured under the Free Exercise Clause of the First Amendment through the Fourteenth Amendment. **The State Supreme Court held specifically that appellant's ineligibility infringed no constitutional liberties because such a construction of the statute 'places no restriction upon the appellant's freedom of**

religion nor does it in any way prevent her in the exercise of her right and freedom to observe her religious beliefs in accordance with the dictates of her conscience.'...

We reverse...

I

The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such. *Cantwell v. Connecticut*.¹ Government may neither compel affirmation of a repugnant belief, *Torcaso v. Watkins*², nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, *Fowler v. Rhode Island*³; nor employ the taxing power to inhibit the dissemination of particular religious views, *Murdock v. Pennsylvania*⁴...On the other hand, the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for 'even when the action is in accord with one's religious convictions, it is not totally free from legislative restrictions.' *Braunfeld v. Brown*.⁵ The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order. *Reynolds v. United States*⁶; *Jacobson v. Massachusetts*⁷; *Prince v. Massachusetts*⁸; *Cleveland v. United States* [holding polygamy across state lines a violation of the Mann Act.]

Plainly enough, appellant's conscientious objection to Saturday work constitutes no conduct prompted by religious principles of a kind within the reach of state legislation. If, therefore, the decision of the South Carolina Supreme Court is to withstand appellant's constitutional challenge, it must be either because her disqualification as a beneficiary represents no infringement by the State of her constitutional rights of free exercise, or because any incidental burden on the free exercise of appellant's religion may be justified by a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate....' *NAACP v. Button*.

II

We turn first to the question whether the disqualification for benefits imposes any burden on the free exercise of appellant's religion. We think it is clear that it does. In a sense the consequences of such a disqualification to religious principles and practices may be only an indirect result of welfare legislation within the State's general competence to enact; it is true that no criminal sanctions directly compel appellant to work a six-day week. But this is only the beginning, not the end, of our inquiry. For 'if the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is

¹ Case 1A-R-011 on this website.

² Case 1A-R-032 on this website.

³ Case 1A-R-026 on this website.

⁴ Case 1A-R-017 on this website.

⁵ Case 1A-R-030 on this website.

⁶ Case 1A-R-001 on this website.

⁷ Case 1A-R-004 on this website.

⁸ Case 1A-R-019 on this website.

constitutionally invalid even though the burden may be characterized as being only indirect.' *Braunfeld v. Brown*. Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. **The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.**

Nor may the South Carolina court's construction of the statute be saved from constitutional infirmity on the ground that unemployment compensation benefits are not appellant's 'right' but merely a 'privilege.' It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege. For example, in *Flemming v. Nestor*, the Court recognized with respect to Federal Social Security benefits that 'the interest of a covered employee under the Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause.' In *Speiser v. Randall*, we emphasized that conditions upon public benefits cannot be sustained if they so operate, whatever their purpose, as to inhibit or deter the exercise of First Amendment freedoms. We there struck down a condition which limited the availability of a tax exemption to those members of the exempted class who affirmed their loyalty to the state government granting the exemption. While the State was surely under no obligation to afford such an exemption, we held that the imposition of such a condition upon even a gratuitous benefit inevitably deterred or discouraged the exercise of First Amendment rights of expression and thereby threatened to 'produce a result which the State could not command directly.' 'To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech.' Likewise, to condition the availability of benefits upon this appellant's willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties.

Significantly, South Carolina expressly saves the Sunday worshipper from having to make the kind of choice which we here hold infringes the Sabbatarian's religious liberty. When in times of 'national emergency' the textile plants are authorized by the State Commissioner of Labor to operate on Sunday, 'no employee shall be required to work on Sunday...who is conscientiously opposed to Sunday work; and if any employee should refuse to work on Sunday on account of conscientious...objections he or she shall not jeopardize his or her seniority by such refusal or be discriminated against in any other manner.' S.C.Code. No question of the disqualification of a Sunday worshipper for benefits is likely to arise, since we cannot suppose that an employer will discharge him in violation of this statute. The unconstitutionality of the disqualification of the Sabbatarian is thus compounded by the religious discrimination which South Carolina's general statutory scheme necessarily effects.

III

We must next consider whether some compelling state interest enforced in the eligibility provisions of the South Carolina statute justifies the substantial infringement of appellant's First Amendment right. It is basic that no showing merely of a rational relationship to

some colorable state interest would suffice; in this highly sensitive constitutional area, 'only the gravest abuses, endangering paramount interest, give occasion for permissible limitation.' *Thomas v. Collins*⁹. No such abuse or danger has been advanced in the present case. The appellees suggest no more than a possibility that the filing of fraudulent claims by unscrupulous claimants feigning religious objections to Saturday work might not only dilute the unemployment compensation fund but also hinder the scheduling by employers of necessary Saturday work. But that possibility is not apposite here because no such objection appears to have been made before the South Carolina Supreme Court, and we are unwilling to assess the importance of an asserted state interest without the views of the state court. Nor, if the contention had been made below, would the record appear to sustain it; there is no proof whatever to warrant such fears of malingering or deceit as those which the respondents now advance. Even if consideration of such evidence is not foreclosed by the prohibition against judicial inquiry into the truth or falsity of religious beliefs—a question as to which we intimate no view since it is not before us—it is highly doubtful whether such evidence would be sufficient to warrant a substantial infringement of religious liberties. For even if the possibility of spurious claims did threaten to dilute the fund and disrupt the scheduling of work, it would plainly be incumbent upon the appellees to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights.

In these respects, then, the state interest asserted in the present case is wholly dissimilar to the interests which were found to justify the less direct burden upon religious practices in *Braunfeld v. Brown*. The Court recognized that the Sunday closing law which that decision sustained undoubtedly served 'to make the practice of (the Orthodox Jewish merchants') religious beliefs more expensive.' But the statute was nevertheless saved by a countervailing factor which finds no equivalent in the instant case—a strong state interest in providing one uniform day of rest for all workers. That secular objective could be achieved, the Court found, only by declaring Sunday to be that day of rest. Requiring exemptions for Sabbatarians, while theoretically possible, appeared to present an administrative problem of such magnitude, or to afford the exempted class so great a competitive advantage, that such a requirement would have rendered the entire statutory scheme unworkable. In the present case no such justifications underlie the determination of the state court that appellant's religion makes her ineligible to receive benefits.

IV

In holding as we do, plainly we are not fostering the 'establishment' of the Seventh-day Adventist religion in South Carolina, for the extension of unemployment benefits to Sabbatarians in common with Sunday worshippers reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall. *Abington v. Schempp*¹⁰. Nor does the recognition of the appellant's right to unemployment benefits under the state statute serve to abridge any other person's religious liberties. Nor do we, by our decision today, declare the existence of a constitutional right to unemployment benefits

⁹ Case 1A-S-9a on this website.

¹⁰ Case 1A-R-034 on this website.

on the part of all persons whose religious convictions are the cause of their unemployment. This is not a case in which an employee's religious convictions serve to make him a nonproductive member of society. Finally, nothing we say today constrains the States to adopt any particular form or scheme of unemployment compensation. Our holding today is only that South Carolina may not constitutionally apply the eligibility provisions so as to constrain a worker to abandon his religious convictions respecting the day of rest. **This holding but reaffirms a principle that we announced a decade and a half ago, namely that no State may 'exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation.'** *Everson v. Board of Education*¹¹ ...

The judgment of the South Carolina Supreme Court is reversed...

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| So, the Supreme Court held in favor of the employee, Sherbert. |
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CONCURRENCE: DOUGLAS...The question is whether the South Carolina law which denies unemployment compensation to a Seventh-day Adventist, who, because of her religion, has declined to work on her Sabbath, is a law 'prohibiting the free exercise' of religion as those words are used in the First Amendment. It seems obvious to me that this law does run afoul of that clause.

Religious scruples of Moslems require them to attend a mosque on Friday and to pray five times daily. Religious scruples of a Sikh require him to carry a regular or a symbolic sword. Religious scruples of a Jehovah's Witness teach him to be a colporteur, going from door to door, from town to town, distributing his religious pamphlets. Religious scruples of a Quaker compel him to refrain from swearing and to affirm instead. Religious scruples of a Buddhist may require him to refrain from partaking of any flesh, even of fish...

Many people hold beliefs alien to the majority of our society—beliefs that are protected by the First Amendment but which could easily be trod upon under the guise of 'police' or 'health' regulations reflecting the majority's views.

Some have thought that a majority of a community can, through state action, compel a minority to observe their particular religious scruples so long as the majority's rule can be said to perform some valid secular function. That was the essence of the Court's decision in the Sunday Blue Law Cases (*Gallagher v. Crown Koshers Market*¹²; *Braunfeld v. Brown*; *McGowan v. Maryland*¹³), a ruling from which I then dissented (*McGowan v. Maryland*) and still dissent.

That ruling of the Court travels part of the distance that South Carolina asks us to go now. She asks us to hold that when it comes to a day of rest a Sabbatarian must conform with the scruples of the majority in order to obtain unemployment benefits.

¹¹ Case 1A-R-022 on this website.

¹² Case 1A-R-031 on this website.

¹³ Case 1A-R-028 on this website.

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.

This case is resolvable not in terms of what an individual can demand of government, but solely in terms of what government may not do to an individual in violation of his religious scruples. **The fact that government cannot exact from me a surrender of one iota of my religious scruples does not, of course, mean that I can demand of government a sum of money, the better to exercise them. For the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.**

Those considerations, however, are not relevant here. If appellant is otherwise qualified for unemployment benefits, payments will be made to her not as a Seventh-day Adventist, but as an unemployed worker. Conceivably these payments will indirectly benefit her church, but no more so than does the salary of any public employee. Thus, this case does not involve the problems of direct or indirect state assistance to a religious organization—matters relevant to the Establishment Clause, not in issue here.

CONCURRENCE: STEWART...Although fully agreeing with the result which the Court reaches in this case, I cannot join the Court's opinion. This case presents a double-barreled dilemma, which in all candor I think the Court's opinion has not succeeded in papering over. The dilemma ought to be resolved.

I

...Because the appellant refuses to accept available jobs which would require her to work on Saturdays, South Carolina has declined to pay unemployment compensation benefits to her. Her refusal to work on Saturdays is based on the tenets of her religious faith. The Court says that South Carolina cannot under these circumstances declare her to be not 'available for work' within the meaning of its statute because to do so would violate her constitutional right to the free exercise of her religion.

Yet what this Court has said about the Establishment Clause must inevitably lead to a diametrically opposite result. If the appellant's refusal to work on Saturdays were based on indolence, or on a compulsive desire to watch the Saturday television programs, no one would say that South Carolina could not hold that she was not 'available for work' within the meaning of its statute. That being so, the Establishment Clause as construed by this Court not only permits but affirmatively requires South Carolina equally to deny the appellant's claim for unemployment compensation when her refusal to work on Saturdays is based upon her religious creed. For, as said in *Everson v. Board of Education*, the Establishment Clause bespeaks 'a government...stripped of all power...to support, or otherwise to assist any or all religions..., and no State 'can pass laws which aid one religion...' In Mr. Justice Rutledge's words, adopted by the Court today in *Schempp*, the Establishment Clause forbids 'every form of public aid or support

for religion.' In the words of the Court in *Engel v. Vitale*¹⁴, the Establishment Clause forbids the 'financial support of government' to be 'placed behind a particular religious belief.'

To require South Carolina to so administer its laws as to pay public money to the appellant under the circumstances of this case is thus clearly to require the State to violate the Establishment Clause as construed by this Court. This poses no problem for me, because I think the Court's mechanistic concept of the Establishment Clause is historically unsound and constitutionally wrong. I think the process of constitutional decision in the area of the relationships between government and religion demands considerably more than the invocation of broad-brushed rhetoric of the kind I have quoted. And **I think that the guarantee of religious liberty embodied in the Free Exercise Clause affirmatively requires government to create an atmosphere of hospitality and accommodation to individual belief or disbelief.** In short, I think our Constitution commands the positive protection by government of religious freedom—not only for a minority, however small—not only for the majority, however large—but for each of us.

South Carolina would deny unemployment benefits to a mother unavailable for work on Saturdays because she was unable to get a babysitter. Thus, we do not have before us a situation where a State provides unemployment compensation generally, and singles out for disqualification only those persons who are unavailable for work on religious grounds. This is not, in short, a scheme which operates so as to discriminate against religion as such. But the Court nevertheless holds that the State must prefer a religious over a secular ground for being unavailable for work that state financial support of the appellant's religion is constitutionally required to carry out 'the governmental obligation of neutrality in the face of religious differences...'

Yet in cases decided under the Establishment Clause the Court has decreed otherwise. It has decreed that government must blind itself to the differing religious beliefs and traditions of the people. With all respect, I think it is the Court's duty to face up to the dilemma posed by the conflict between the Free Exercise Clause of the Constitution and the Establishment Clause as interpreted by the Court. It is a duty, I submit, which we owe to the people, the States, and the Nation, and a duty which we owe to ourselves. For so long as the resounding but fallacious fundamentalist rhetoric of some of our Establishment Clause opinions remains on our books, to be disregarded at will as in the present case, or to be indiscriminately invoked as in the *Schempp* case, so long will the possibility of consistent and perceptive decision in this most difficult and delicate area of constitutional law be impeded and impaired. And so long, I fear, will the guarantee of true religious freedom in our pluralistic society be uncertain and insecure.

II

My second difference with the Court's opinion is that I cannot agree that today's decision can stand consistently with *Braunfeld v. Brown*. The Court says that there was a 'less direct burden upon religious practices' in that case than in this. With all respect, I think the Court is mistaken, simply as a matter of fact. The *Braunfeld* case involved a state criminal statute. The undisputed

¹⁴ Case 1A-R-033 on this website.

effect of that statute, as pointed out by Mr. Justice BRENNAN in his dissenting opinion in that case, was that "Plaintiff, Abraham Braunfeld, will be unable to continue in his business if he may not stay open on Sunday and he will thereby lose his capital investment.' In other words, the issue in this case—and we do not understand either appellees or the Court to contend otherwise—is whether a State may put an individual to a choice between his business and his religion.'

The impact upon the appellant's religious freedom in the present case is considerably less onerous. We deal here not with a criminal statute, but with the particularized administration of South Carolina's Unemployment Compensation Act. Even upon the unlikely assumption that the appellant could not find suitable non-Saturday employment, the appellant at the worst would be denied a maximum of 22 weeks of compensation payments. I agree with the Court that the possibility of that denial is enough to infringe upon the appellant's constitutional right to the free exercise of her religion. But it is clear to me that in order to reach this conclusion the court must explicitly reject the reasoning of *Braunfeld v. Brown*. I think the *Braunfeld* case was wrongly decided and should be overruled, and accordingly I concur in the result reached by the Court in the case before us.

DISSENT: HARLAN/WHITE...South Carolina's Unemployment Compensation Law was enacted in 1936 in response to the grave social and economic problems that arose during the depression of that period...The purpose of the legislature was to tide people over, and to avoid social and economic chaos, during periods when work was unavailable. But at the same time there was clearly no intent to provide relief for those who for purely personal reasons were or became unavailable for work. In accordance with this design, the legislature provided that 'an unemployed insured worker shall be eligible to receive benefits with respect to any week only if the Commission finds that...he is able to work and is available for work....'

The South Carolina Supreme Court has...consistently held that one is not 'available for work' if his unemployment has resulted not from the inability of industry to provide a job but rather from personal circumstances, no matter how compelling. The reference to 'involuntary unemployment' in the legislative statement of policy, whatever a sociologist, philosopher, or theologian might say, has been interpreted not to embrace such personal circumstances...

In the present case all that the state court has done is to apply these accepted principles. Since virtually all of the mills in the Spartanburg area were operating on a six-day week, the appellant was 'unavailable for work,' and thus ineligible for benefits, when personal considerations prevented her from accepting employment on a full-time basis in the industry and locality in which she had worked. **The fact that these personal considerations sprang from her religious convictions was wholly without relevance to the state court's application of the law. Thus in no proper sense can it be said that the State discriminated against the appellant on the basis of her religious beliefs or that she was denied benefits because she was a Seventh-day Adventist.** She was denied benefits just as any other claimant would be denied benefits who was not 'available for work' for personal reasons.

With this background, this Court's decision comes into clearer focus. What the Court is holding is that if the State chooses to condition unemployment compensation on the applicant's

availability for work, it is constitutionally compelled to carve out an exception—and to provide benefits—for those whose unavailability is due to their religious convictions. Such a holding has particular significance in two respects.

First, despite the Court's protestations to the contrary, the decision necessarily overrules *Braunfeld v. Brown*, which held that it did not offend the 'Free Exercise' Clause of the Constitution for a State to forbid a Sabbatarian to do business on Sunday. The secular purpose of the statute before us today is even clearer than that involved in *Braunfeld*. And just as in *Braunfeld*—where exceptions to the Sunday closing laws for Sabbatarians would have been inconsistent with the purpose to achieve a uniform day of rest and would have required case-by-case inquiry into religious beliefs—so here, an exception to the rules of eligibility based on religious convictions would necessitate judicial examination of those convictions and would be at odds with the limited purpose of the statute to smooth out the economy during periods of industrial instability. Finally, the indirect financial burden of the present law is far less than that involved in *Braunfeld*. Forcing a store owner to close his business on Sunday may well have the effect of depriving him of a satisfactory livelihood if his religious convictions require him to close on Saturday as well. Here we are dealing only with temporary benefits, amounting to a fraction of regular weekly wages and running for not more than 22 weeks. Clearly, any differences between this case and *Braunfeld* cut against the present appellant.

Second,...the meaning of today's holding...is that the State must furnish unemployment benefits to one who is unavailable for work if the unavailability stems from the exercise of religious convictions. The State, in other words, must single out for financial assistance those whose behavior is religiously motivated, even though it denies such assistance to others whose identical behavior (in this case, inability to work on Saturdays) is not religiously motivated.

It has been suggested that such singling out of religious conduct for special treatment may violate the constitutional limitations on state action. My own view, however, is that at least under the circumstances of this case it would be a permissible accommodation of religion for the State, if it chose to do so, to create an exception to its eligibility requirements for persons like the appellant. The constitutional obligation of 'neutrality' is not so narrow a channel that the slightest deviation from an absolutely straight course leads to condemnation. There are too many instances in which no such course can be charted, too many areas in which the pervasive activities of the State justify some special provision for religion to prevent it from being submerged by an all-embracing secularism. The State violates its obligation of neutrality when, for example, it mandates a daily religious exercise in its public schools, with all the attendant pressures on the school children that such an exercise entails. *Engel v. Vitale*; *Abington Township v. Schempp*. But there is, I believe, enough flexibility in the Constitution to permit a legislative judgment accommodating an unemployment compensation law to the exercise of religious beliefs such as appellant's.

For very much the same reasons, however, I cannot subscribe to the conclusion that the State is constitutionally compelled to carve out an exception to its general rule of eligibility in the present case. Those situations in which the Constitution may require special treatment on account of religion are, in my view, few and far between, and this view is amply supported by the course of constitutional litigation in this area. Such compulsion in the present case is particularly

inappropriate in light of the indirect, remote, and insubstantial effect of the decision below on the exercise of appellant's religion and in light of the direct financial assistance to religion that today's decision requires...I respectfully dissent...