THORNTON v. CALDOR
SUPREME COURT OF THE UNITED STATES
472 U.S. 703
June 26, 1985
[8 - 1]

OPINION: BURGER...**We granted certiorari to decide whether a state statute that provides employees with the absolute right not to work on their chosen Sabbath violates the Establishment Clause of the First Amendment.**

I

In early 1975, petitioner's decedent Donald E. Thornton began working for respondent Caldor, Inc., a chain of New England retail stores; he managed the men's and boys' clothing department in respondent's Waterbury, Connecticut, store. At that time, respondent's Connecticut stores were closed on Sundays pursuant to state law.

In 1977, following the state legislature's revision of the Sunday-closing laws, respondent opened its Connecticut stores for Sunday business. In order to handle the expanded store hours, respondent required its managerial employees to work every third or fourth Sunday. Thornton, a Presbyterian who observed Sunday as his Sabbath, initially complied with respondent's demand and worked a total of 31 Sundays in 1977 and 1978. In October 1978, Thornton was transferred to a management position in respondent's Torrington store; he continued to work on Sundays during the first part of 1979. In November 1979, however, Thornton informed respondent that he would no longer work on Sundays because he observed that day as his Sabbath; **he invoked the protection of Conn.Gen.Stat. § 53-303e(b) (1985), which provides:**

> **"No person who states that a particular day of the week is observed as his Sabbath may be required by his employer to work on such day. An employee's refusal to work on his Sabbath shall not constitute grounds for his dismissal."**

Thornton rejected respondent's offer either to transfer him to a management job in a Massachusetts store that was closed on Sundays, or to transfer him to a nonsupervisory position in the Torrington store at a lower salary. In March 1980, respondent transferred Thornton to a clerical position in the Torrington store; Thornton resigned two days later and filed a grievance with the State Board of Mediation and Arbitration alleging that he was discharged from his manager's position in violation of Conn.Gen.Stat. § 53-303e(b) (1985).

Respondent defended its action on the ground that Thornton had not been "discharged" within the meaning of the statute; respondent also urged the Board to find that the statute violated Article 7 of the Connecticut Constitution as well as the Establishment Clause of the First Amendment.

After holding an evidentiary hearing the Board evaluated the sincerity of Thornton's claim and concluded it was based on a sincere religious conviction; it issued a formal decision sustaining Thornton's grievance. The Board framed the statutory issue as follows: "If a discharge for refusal to work Sunday hours occurred and Sunday was the Grievant's Sabbath . . .," § 53-303e(b) would be violated; the Board held that respondent had violated the statute by "discharging Mr. Thornton as a management employee for refusing to work . . . on Thornton's . . . Sabbath." The Board ordered respondent to reinstate Thornton with backpay and compensation for lost fringe benefits. The Superior Court, in affirming that ruling, concluded that the statute did not offend the Establishment Clause.

The Supreme Court of Connecticut reversed, holding the statute did not have a "clear secular purpose." By authorizing each employee to designate his own Sabbath as a day off, the statute evinced the "unmistakable purpose . . . of allowing those persons who wish to worship on a particular day the freedom to do so." **The court then held that the "primary effect" of the statute was to advance religion because the statute "confers its 'benefit' on an explicitly religious basis.** Only those employees who designate a Sabbath are entitled not to work on that particular day, and may not be penalized for so doing." The court noted that the statute required the State Mediation Board to decide which religious activities may be characterized as an "observance of Sabbath" in order to assess employees' sincerity, and concluded that this type of inquiry is "exactly the type of 'comprehensive, discriminating and continuing state surveillance' . . . which creates **excessive governmental entanglements** between church and state."

We granted certiorari [and affirm.]

II

Under the Religion Clauses, government must guard against activity that impinges on religious freedom, and must take pains not to compel people to act in the name of any religion. In setting the appropriate boundaries in Establishment Clause cases, the Court has frequently relied on our holding in *Lemon*[1] for guidance, and we do so here. **To pass constitutional muster under *Lemon* a statute must not only have a secular purpose and not foster excessive entanglement of government with religion, its primary effect must not advance or inhibit religion.**

[1] Case 1A-R-042 on this website.

The Connecticut statute challenged here guarantees every employee, who "states that a particular day of the week is observed as his Sabbath," the right not to work on his chosen day. The State has thus decreed that those who observe a Sabbath any day of the week as a matter of religious conviction must be relieved of the duty to work on that day, no matter what burden or inconvenience this imposes on the employer or fellow workers. The statute arms Sabbath observers with an absolute and unqualified right not to work on whatever day they designate as their Sabbath.

In essence, the Connecticut statute imposes on employers and employees an absolute duty to conform their business practices to the particular religious practices of the employee by enforcing observance of the Sabbath the employee unilaterally designates. The State thus commands that Sabbath religious concerns automatically control over all secular interests at the workplace; the statute takes no account of the convenience or interests of the employer or those of other employees who do not observe a Sabbath. The employer and others must adjust their affairs to the command of the State whenever the statute is invoked by an employee.

There is no exception under the statute for special circumstances, such as the Friday Sabbath observer employed in an occupation with a Monday through Friday schedule—a school teacher, for example; the statute provides for no special consideration if a high percentage of an employer's work force asserts rights to the same Sabbath. Moreover, there is no exception when honoring the dictates of Sabbath observers would cause the employer substantial economic burdens or when the employer's compliance would require the imposition of significant burdens on other employees required to work in place of the Sabbath observers. Finally, the statute allows for no consideration as to whether the employer has made reasonable accommodation proposals.

This unyielding weighting in favor of Sabbath observers over all other interests contravenes a fundamental principle of the Religion Clauses, so well articulated by Judge Learned Hand:

> **"The First Amendment . . . gives no one the right to insist that in pursuit of their own interests others must conform their conduct to his own religious necessities."** ***Otten v. Baltimore & Ohio R. Co.*** **(CA2 1953).**

As such, the statute goes beyond having an incidental or remote effect of advancing religion. The statute has a primary effect that impermissibly advances a particular religious practice.

III

We hold that the Connecticut statute, which provides Sabbath observers with an absolute and unqualified right not to work on their Sabbath, violates the Establishment Clause of the First Amendment. Accordingly, the judgment of the Supreme Court of Connecticut is *Affirmed.*

CONCURRENCE: O'CONNOR/MARSHALL...The Court applies the test enunciated in *Lemon v. Kurtzman* and concludes that Conn.Gen.Stat. § 53-303e(b) (1985) has a primary effect that impermissibly advances religion. I agree, and I join the Court's opinion and judgment. In my

view, the Connecticut Sabbath law has an impermissible effect because it conveys a message of endorsement of the Sabbath observance.

All employees, regardless of their religious orientation, would value the benefit which the statute bestows on Sabbath observers—the right to select the day of the week in which to refrain from labor. Yet Connecticut requires private employers to confer this valued and desirable benefit only on those employees who adhere to a particular religious belief. The statute singles out Sabbath observers for special and, as the Court concludes, absolute protection without according similar accommodation to ethical and religious beliefs and practices of other private employees. There can be little doubt that an objective observer or the public at large would perceive this statutory scheme precisely as the Court does today. **The message conveyed is one of endorsement of a particular religious belief, to the detriment of those who do not share it. As such, the Connecticut statute has the effect of advancing religion, and cannot withstand Establishment Clause scrutiny.**

I do not read the Court's opinion as suggesting that the religious accommodation provisions of Title VII of the Civil Rights Act of 1964 are similarly invalid. These provisions preclude employment discrimination based on a person's religion and require private employers to reasonably accommodate the religious practices of employees unless to do so would cause undue hardship to the employer's business. Like the Connecticut Sabbath law, Title VII attempts to lift a burden on religious practice that is imposed by *private* employers, and hence it is not the sort of accommodation statute specifically contemplated by the Free Exercise Clause. The provisions of Title VII must therefore manifest a valid secular purpose and effect to be valid under the Establishment Clause. In my view, a statute outlawing employment discrimination based on race, color, religion, sex, or national origin has the valid secular purpose of assuring employment opportunity to all groups in our pluralistic society. Since Title VII calls for reasonable rather than absolute accommodation and extends that requirement to all religious beliefs and practices rather than protecting only the Sabbath observance, I believe an objective observer would perceive it as an anti-discrimination law rather than an endorsement of religion or a particular religious practice.

DISSENT: Justice REHNQUIST dissents.