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BOWEN v. ROY
SUPREME COURT OF THE UNITED STATES
476 U.S. 693
June 11, 1986

OPINION: BURGER...**The question presented is whether the Free Exercise Clause of the First amendment compels the Government to accommodate a religiously based objection to the statutory requirements that a Social Security number be provided by an applicant seeking to receive certain welfare benefits and that the States use these numbers in administering the benefit programs.**

I

Appellees Stephen J. Roy and Karen Miller applied for and received benefits under the Aid to Families with Dependent Children program and the Food Stamp program. They refused to comply, however, with the requirement, contained that participants in these programs furnish their state welfare agencies with the Social Security numbers of the members of their household as a condition of receiving benefits. **Appellees contended that obtaining a Social Security number for their 2-year-old daughter, Little Bird of the Snow, would violate their Native American religious beliefs.** The Pennsylvania Department of Public Welfare thereafter terminated AFDC and medical benefits payable to appellees on the child's behalf and instituted proceedings to reduce the level of food stamps that appellees' household was receiving. Appellees then filed this action against the Secretary of the Pennsylvania Department of Public Welfare, the Secretary of Health and Human Services, and the Secretary of Agriculture, arguing that the Free Exercise Clause entitled them to an exemption from the Social Security number requirement. In their complaint, appellees stated that "the sole basis" for the denial of welfare benefits was "Mr. Roy's refusal to obtain a Social Security Number for Little Bird of the Snow,"

and thus requested injunctive relief, damages, and benefits. In the statement of "undisputed facts," the parties agreed that Little Bird of the Snow did not have a Social Security number.

At trial, Roy testified that he had recently developed a religious objection to obtaining a Social Security number for Little Bird of the Snow. **Roy is a Native American descended from the Abenaki Tribe, and he asserts a religious belief that control over one's life is essential to spiritual purity and indispensable to "becoming a holy person." Based on recent conversations with an Abenaki chief, Roy believes that technology is "robbing the spirit of man."** In order to prepare his daughter for greater spiritual power, therefore, Roy testified to his belief that he must keep her person and spirit unique and that the uniqueness of the Social Security number as an identifier, coupled with the other uses of the number over which she has no control, will serve to "rob the spirit" of his daughter and prevent her from attaining greater spiritual power.

For purposes of determining the breadth of Roy's religious concerns, the trial judge raised the possibility of using the phonetics of his daughter's name to derive a Social Security number. Although Roy saw "a lot of good" in this suggestion, he stated it would violate his religious beliefs because the special number still would apply uniquely and identify her. Roy also testified that his religious objection would not be satisfied even if the Social Security Administration appended the daughter's full tribal name to her Social Security number.

In Roy's own testimony, he emphasized the evil that would flow simply from *obtaining* a number. On the last day of trial, however, a federal officer inquired whether Little Bird of the Snow already had a Social Security number; he learned that a number had been assigned—under first name "Little," middle name "Bird of the Snow," and last name "Roy."

The Government at this point suggested that the case had become moot because, under Roy's beliefs, Little Bird of the Snow's spirit had already been "robbed." Roy, however, was recalled to the stand and testified that her spirit would be robbed only by "use" of the number. Since no known use of the number had yet been made, Roy expressed his belief that her spirit had not been damaged. The District Court concluded that the case was not moot because of Roy's beliefs regarding "use" of the number. ("Roy believes that the establishment of a social security number for Little Bird of the Snow, without more, has not 'robbed her spirit,' but widespread use of the social security number by the federal or state governments in their computer systems would have that effect").

After hearing all of the testimony, the District Court denied appellees' request for damages and benefits, but granted injunctive relief. Based on the testimony of the Government's experts and the obvious fact that many people share certain names, the District Court found that "utilization in the computer system of the name of a benefit recipient alone frequently is not sufficient to ensure the proper payment of benefits." The court nevertheless concluded that the public "interest in maintaining an efficient and fraud resistant system can be met without requiring use of a social security number for Little Bird of the Snow," elaborating:

> "It appears to the Court that the harm that the Government might suffer if appellees prevailed in this case would be, at worst, that one or perhaps a few individuals could fraudulently obtain welfare benefits. Such a result would obtain only if (1) Little Bird of the Snow attempted fraudulently to obtain welfare benefits or someone else attempted

fraudulently to obtain such benefits using Little Bird of the Snow's name *and* (2) identification procedures available to the Defendants that do not require utilization of a social security number failed to expose the fraud. This possibility appears to the Court to be remote."

Citing our decision in *United States v. Lee*[1], the court entered an injunction containing two basic components. *First*, the Secretary of Health and Human Services was "permanently restrained from making any use of the social security number which was issued in the name of Little Bird of the Snow Roy and from disseminating the number to any agency, individual, business entity, or any other third party." *Second*, the federal and state defendants were enjoined until Little Bird of the Snow's 16th birthday from denying Roy cash assistance, medical assistance, and food stamps "because of the appellees' refusal to provide a social security number for her."

We...vacate and remand.

II

Appellees raise a constitutional challenge to two features of the statutory scheme here. They object to Congress' requirement that a state AFDC plan "*must* . . . provide (A) that, *as a condition of eligibility* under the plan, *each* applicant for or recipient of aid *shall* furnish to the State agency his social security account number." They also object to Congress' requirement that "such State agency *shall utilize* such account numbers . . . in the administration of such plan." We analyze each of these contentions, turning to the latter contention first.

Our cases have long recognized a distinction between the freedom of individual belief, which is absolute, and the freedom of individual conduct, which is not absolute. This case implicates only the latter concern. Roy objects to the statutory requirement that state agencies "shall utilize" Social Security numbers not because it places any restriction on what he may believe or what he may do, but because he believes the use of the number may harm his daughter's spirit.

Never to our knowledge has the Court interpreted the First Amendment to require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family. The Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens. Just as the Government may not insist that appellees engage in any set form of religious observance, so appellees may not demand that the Government join in their chosen religious practices by refraining from using a number to identify their daughter. "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 extract from the government." *Sherbert v. Verner*.[2]

As a result, Roy may no more prevail on his religious objection to the Government's use of a Social Security number for his daughter than he could on a sincere religious objection to the size or color of the Government's filing cabinets. The Free Exercise Clause affords an

[1] Case 1A-R-060 on this website.
[2] Case 1A-R-035 on this website.

individual protection from certain forms of governmental compulsion; it does not afford an individual a right to dictate the conduct of the Government's internal procedures.

As Roy points out, eight years ago Congress passed a Joint Resolution concerning American Indian religious freedom that provides guidance with respect to this case. As currently codified, the Resolution provides:

> "On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

That Resolution—with its emphasis on protecting the freedom to believe, express, and exercise a religion—accurately identifies the mission of the Free Exercise Clause itself. The Federal Government's use of a Social Security number for Little Bird of the Snow does not itself in any degree impair Roy's "freedom to believe, express, and exercise" his religion. Consequently, appellees' objection to the statutory requirement that each state agency "shall utilize" a Social Security number in the administration of its plan is without merit. It follows that their request for an injunction against use of the Social Security number in processing benefit applications should have been rejected. We therefore hold that the portion of the District Court's injunction that permanently restrained the Secretary from making any use of the Social Security number that had been issued in the name of Little Bird of the Snow Roy must be vacated.

III

Roy also challenges Congress' requirement that a state AFDC plan "*must* . . . provide (A) that, *as a condition of eligibility* under the plan, *each* applicant for or recipient of aid *shall furnish* to the State agency his social security account number." The First Amendment's guarantee that "Congress shall make no law . . . prohibiting the free exercise" of religion holds an important place in our scheme of ordered liberty, but the Court has steadfastly maintained that claims of religious conviction do not automatically entitle a person to fix unilaterally the conditions and terms of dealings with the Government. Not all burdens on religion are unconstitutional. See *Reynolds v. United States*[3]. This was treated recently in *United States v. Lee:*

> "To maintain an organized society that guarantees religious freedom to a great variety of faiths requires that some religious practices yield to the common good. Religious beliefs can be accommodated, but there is a point at which accommodation would 'radically restrict the operating latitude of the legislature.' "

The statutory requirement that applicants provide a Social Security number is wholly neutral in religious terms and uniformly applicable. There is no claim that there is any attempt by Congress to discriminate invidiously or any covert suppression of particular religious beliefs. The administrative requirement does not create any danger of censorship or place a direct condition or burden on the dissemination of religious views. It does not

[3] Case 1A-R-001 on this website.

intrude on the organization of a religious institution or school. It may indeed confront some applicants for benefits with choices, but in no sense does it affirmatively compel appellees, by threat of sanctions, to refrain from religiously motivated conduct or to engage in conduct that they find objectionable for religious reasons. Rather, it is appellees who seek benefits from the Government and who assert that, because of certain religious beliefs, they should be excused from compliance with a condition that is binding on all other persons who seek the same benefits from the Government.

This is far removed from the historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause of the First Amendment. We are not unmindful of the importance of many government benefits today or of the value of sincerely held religious beliefs. However, while we do not believe that no government compulsion is involved, we cannot ignore the reality that denial of such benefits by a uniformly applicable statute neutral on its face is of a wholly different, less intrusive nature than affirmative compulsion or prohibition, by threat of penal sanctions, for conduct that has religious implications.

This distinction is clearly revealed in the Court's opinions. Decisions rejecting religiously based challenges have often recited the fact that a mere denial of a governmental benefit by a uniformly applicable statute does not constitute infringement of religious liberty. In *Hamilton v. Regents of University of California* (1934), for example, the Court rejected a religious challenge by students to military courses required as part of their curriculum, explaining:

> "The fact that they are able to pay their way in this university but not in any other institution in California is without significance upon any constitutional or other question here involved. California has not drafted or called them to attend the university. They are seeking education offered by the State and at the same time insisting that they be excluded from the prescribed course solely upon grounds of their religious beliefs and conscientious objections to war. . . ."

In cases upholding First Amendment challenges, on the other hand, the Court has often relied on the showing that compulsion of certain activity with religious significance was involved. In *West Virginia Bd. of Ed. v. Barnette*[4], for example, the Court distinguished the earlier *Hamilton* holding and upheld a challenge to a flag salute requirement:

> "Here . . . we are dealing with a compulsion of students to declare a belief. . . . This issue is not prejudiced by the Court's previous holding that where a State, without compelling attendance, extends college facilities to pupils who voluntarily enroll, it may prescribe military training as part of the course without offense to the Constitution. It was held that those who take advantage of its opportunities may not on ground of conscience refuse compliance with such conditions. In the present case attendance is not optional."

[4] Case 1A-S-9 on this website.

The distinction between governmental compulsion and conditions relating to governmental benefits contained in these two cases was emphasized by Justice BRENNAN in his concurring opinion in *Abington School District v. Schempp*[5]:

> "The different results of *Hamilton* and *Barnette* are attributable only in part to a difference in the strength of the particular state interests which the respective statutes were designed to serve. Far more significant is the fact that *Hamilton* dealt with the voluntary attendance at college of young adults, while *Barnette* involved the compelled attendance of young children at elementary and secondary schools. This distinction warrants a difference in constitutional results."

We have repeatedly emphasized this distinction: In rejecting a Free Exercise challenge in *Bob Jones University v. United States*[6], for example, we observed that the "denial of tax benefits will inevitably have a substantial impact on the operation of private religious schools, but will not prevent those schools from observing their religious tenets."

We conclude then that government regulation that indirectly and incidentally calls for a choice between securing a governmental benefit and adherence to religious beliefs is wholly different from governmental action or legislation that criminalizes religiously inspired activity or inescapably compels conduct that some find objectionable for religious reasons. Although the denial of government benefits over religious objection can raise serious Free Exercise problems, these two very different forms of government action are not governed by the same constitutional standard. A governmental burden on religious liberty is not insulated from review simply because it is indirect, *Thomas v. Review Board*[7], but the nature of the burden is relevant to the standard the government must meet to justify the burden.

The general governmental interests involved here buttress this conclusion. Governments today grant a broad range of benefits; inescapably at the same time the administration of complex programs requires certain conditions and restrictions. Although in some situations a mechanism for individual consideration will be created, a policy decision by a government that it wishes to treat all applicants alike and that it does not wish to become involved in case-by-case inquiries into the genuineness of each religious objection to such condition or restrictions is entitled to substantial deference. Moreover, legitimate interests are implicated in the need to avoid any appearance of favoring religious over nonreligious applicants.

The test applied in cases like *Wisconsin v. Yoder*[8] is not appropriate in this setting. In the enforcement of a facially neutral and uniformly applicable requirement for the administration of welfare programs reaching many millions of people, the Government is entitled to wide latitude. The Government should not be put to the strict test applied by the District Court; that standard required the Government to justify enforcement of the use of Social Security number requirement as the least restrictive means of accomplishing a

[5] Case 1A-R-034 on this website.
[6] Case 1A-R-063 on this website.
[7] Case 1A-R-058 on this website.
[8] Case 1A-R-045 on this website.

compelling state interest. Absent proof of an intent to discriminate against particular religious beliefs or against religion in general, the Government meets its burden when it demonstrates that a challenged requirement for governmental benefits, neutral and uniform in its application, is a reasonable means of promoting a legitimate public interest.

We reject appellees' contention that *Sherbert* and *Thomas* compel affirmance. The statutory conditions at issue in those cases provided that a person was not eligible for unemployment compensation benefits if, "without good cause," he had quit work or refused available work. The "good cause" standard created a mechanism for individualized exemptions. If a state creates such a mechanism, its refusal to extend an exemption to an instance of religious hardship suggests a discriminatory intent. Thus, as was urged in *Thomas,* to consider a religiously motivated resignation to be "without good cause" tends to exhibit hostility, not neutrality, towards religion. (*Thomas* and *Sherbert* may be viewed "as a protection against unequal treatment rather than a grant of favored treatment for the members of the religious sect"). In those cases, therefore, it was appropriate to require the State to demonstrate a compelling reason for denying the requested exemption.

Here there is nothing whatever suggesting antagonism by Congress towards religion generally or towards any particular religious beliefs. The requirement that applicants provide a Social Security number is facially neutral and applies to all applicants for the benefits involved. Congress has made no provision for individual exemptions to the requirement in the two statutes in question. Indeed, to the contrary, Congress has specified that a state AFDC plan "*must* . . . provide (A) that, *as a condition of eligibility* under the plan, *each* applicant for or recipient of aid *shall* furnish to the State agency his social security account number" and that "state agencies *shall* (1) *require, as a condition of eligibility* for participation in the food stamp program, that *each* household member furnish to the State agency their social security account number." Nor are these requirements relics from the past; Congress made the requirement mandatory for the Food Stamp program in 1981. Congress also recently extended to several other aid programs the mandatory requirement that the States use Social Security numbers in verifying eligibility for benefits.

The Social Security number requirement clearly promotes a legitimate and important public interest. No one can doubt that preventing fraud in these benefits programs is an important goal. As Representative Richmond explained in support of the bill that made the Social Security number requirement mandatory for the Food Stamp program:

> "We know that however generously motivated Americans may be to furnish resources to the poor to enable them to survive, . . . they understandably object if they believe that those resources are being abused or wasted. . . . We want to be certain that the food stamp program is run as efficiently and as error-free as possible. We want applicants and recipients alike constantly to be aware that the Congress does not and will not tolerate any refusal to disclose earnings accurately, and under-reporting of welfare or other assistance program benefits, any efforts to evade the work requirement or any other attempts to take advantage of the program and dollars intended only for those who completely satisfy the stringent eligibility requirements set forth in sections 5 and 7 of the Food Stamp Act of 1977 and further tightened this year and in this bill."

We also think it plain that the Social Security number requirement is a reasonable means of promoting that goal. The programs at issue are of truly staggering magnitude. Each year roughly 3.8 million families receive $7.8 billion through federally funded AFDC programs and 20 million persons receive $11 billion in food stamps. The Social Security program itself is the largest domestic governmental program in the United States today, distributing approximately $51 billion monthly to 36 million recipients. Because of the tremendous administrative problems associated with managing programs of this size, the District Court found that:

> "Social security numbers are used in making the determination that benefits in the programs are properly paid and that there is no duplication of benefits or failure of payment. . . . Utilization in the computer system of the name of a benefit recipient alone frequently is not sufficient to ensure the proper payment of benefits."

Social Security numbers are unique numerical identifiers and are used pervasively in these programs. The numbers are used, for example, to keep track of persons no longer entitled to receive food stamps because of past fraud or abuses of the program. Moreover, the existence of this unique numerical identifier creates opportunities for ferreting out fraudulent applications through computer "matching" techniques. One investigation, "Project Match," compared federal employee files against AFDC and Medicaid files to determine instances of Government employees receiving welfare benefits improperly. Data from 26 States were examined, and 9,000 individuals were identified as receiving duplicate welfare payments. While undoubtedly some fraud escapes detection in spite of such investigations, the President's Private Sector Survey on Cost Control, known more popularly as the "Grace Commission," recently reported that matching "is the Federal Government's most cost-effective tool for verification or investigation in the prevention and detection of fraud, waste and abuse."

The importance of the Social Security number to these matching techniques is illustrated by the facts of this case. The District Court found that "efficient operation of these matching programs requires the use of computer systems that utilize unique numerical identifiers such as the social security number." It further found that exempting even appellees alone from this requirement could result in "one or perhaps a few individuals . . . fraudulently obtaining welfare benefits," a prospect the court termed "remote." The District Court's assessment of this probability seems quite dubious. But in any event, we know of no case obligating the Government to tolerate a slight risk of "one or perhaps a few individuals" fraudulently obtaining benefits in order to satisfy a religious objection to a requirement designed to combat that very risk. Appellees may not use the Free Exercise Clause to demand Government benefits, but only on their own terms, particularly where that insistence works a demonstrable disadvantage to the Government in the administration of the programs.

As the Court has recognized before, given the diversity of beliefs in our pluralistic society and the necessity of providing governments with sufficient operating latitude, some incidental neutral restraints on the free exercise of religion are inescapable. As a matter of legislative policy, a legislature might decide to make religious accommodations to a general and neutral system of awarding benefits, "but our concern is not with the wisdom of legislation but with its constitutional limitation." ***Braunfeld v. Brown*****.[9] We conclude that**

[9] Case 1A-R-030 on this website.

the Congress' refusal to grant appellees a special exemption does not violate the Free Exercise Clause.

The judgment of the District Court is vacated, and the case is remanded.

CONCURRENCE: BLACKMUN...I join only Parts I and II of the opinion written by THE CHIEF JUSTICE...I agree with the Court that the District Court erred in enjoining the Government's internal use of Little Bird of the Snow's social security number. It is easy to understand the rationale for that part of the District Court's injunction: appellees argue plausibly that the Government's threat to put the social security number into active use if they apply for benefits for their daughter requires them to choose between the child's physical sustenance and the dictates of their faith, the same dilemma created by the Government's initial requirement that appellees themselves supply a social security number for Little Bird of the Snow. *Sherbert v. Verner*. They claim that, absent some compelling state interest, the Government should refrain from acting in ways that appellees believe on religious grounds will harm their daughter's spiritual development.

Although this argument has some facial appeal, I conclude, for the reasons stated in Part II of the Court's opinion, that it stretches the Free Exercise Clause too far. Consequently, I agree that the portion of the District Court's judgment that enjoins the Government from using or disseminating the social security number already assigned to Little Bird of the Snow must be vacated. I would also vacate the remainder of the judgment and remand the case for further proceedings, because once the injunction against use or dissemination is set aside, it is unclear on the record presently before us whether a justiciable controversy remains with respect to the rest of the relief ordered by the District Court. Roy and Miller evidently objected to the social security number requirement primarily because they did not want the Government to be able to use a unique numerical identifier for Little Bird of the Snow, and that injury cannot be redressed if, as the Court today holds, the Government cannot be enjoined from using the pre-existing number. It is possible, however, that appellees still would have an independent religious objection to their being forced to cooperate actively with the Government by themselves providing their daughter's social security number on benefit applications.

In my view, the record is ambiguous on this score. In rejecting the Government's argument that the existence of the number rendered the case moot, the District Court found that Roy "feels compelled by his religious belief to avoid any use of that number and, to that end, has refused to provide the number to the Defendants in order to receive welfare benefits for Little Bird of the Snow." It is unclear whether the "use" to which the District Court referred included use by Roy and Miller, or just the more extensive use of the number by the Government. And even if the court meant to refer only to use by the Government, it is not clear that appellees do not also have an independent religious objection to the requirement that *they* provide a social security number for their daughter.

On the other hand, even if appellees do have such an objection, vacating the District Court's injunction against governmental use or dissemination of the number may moot this case in other ways. Regardless of whether Roy and Miller are required to provide their daughter's social security number on applications for benefits, they may simply be unwilling to apply for benefits without an assurance that the application will not trigger the use of the number. Conversely, it is

possible that the Government, in a welcome display of reasonableness, will decide that since it already has a social security number for Little Bird of the Snow, it will not insist that appellees resupply it.

Since the proceedings on remand might well render unnecessary any discussion of whether appellees constitutionally may be required to provide a social security number for Little Bird of the Snow in order to obtain government assistance on her behalf, that question could be said not to be properly before us. I nonetheless address it, partly because the rest of the Court has seen fit to do so, and partly because I think it is not the kind of difficult constitutional question that we should refrain from deciding except when absolutely necessary. Indeed, for the reasons expressed by Justice O'CONNOR, I think the question requires nothing more than a straightforward application of Sherbert, Thomas, and Wisconsin v. Yoder. If it proves necessary to reach the issue on remand, I agree with Justice O'CONNOR that, on the facts as determined by the District Court, the Government may not deny assistance to Little Bird of the Snow solely because her parents' religious convictions prevent them from supplying the Government with a social security number for their daughter.

CONCURRENCE: STEVENS...Members of the Abenaki Indian Tribe are unquestionably entitled to the same constitutional protection against governmental action "prohibiting the free exercise" of their religion as are the adherents of other faiths. Our respect for the sincerity of their religious beliefs does not, however, relieve us from the duty to identify the precise character of the two quite different claims that the parents of Little Bird of the Snow have advanced. They claim, first, that they are entitled to an injunction preventing the Government from making any use of a Social Security number assigned to Little Bird of the Snow; and second, that they are entitled to receive a full allowance of food stamps and cash assistance for Little Bird of the Snow without providing a Social Security number for her.

As the Court holds in Part II of its opinion, which I join, the first claim must fail because the Free Exercise Clause does not give an individual the right to dictate the Government's method of recordkeeping. The second claim, I submit, is either moot or not ripe for decision...

CONCURRENCE/DISSENT: O'CONNOR/BRENNAN/MARSHALL...[Not Provided.]

DISSENT: WHITE...Being of the view that *Thomas v. Review Bd.* and *Sherbert v. Verner* control this case, I cannot join the Court's opinion and judgment.