"The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest."—Chief Justice BURGER

"Where . . . a State has enacted a general statute, the purpose and effect of which is to effectuate the State's secular goals, the Free Exercise Clause does not . . . require the State to conform that statute to the dictates of the religious conscience of any group."—Justice REHNQUIST

Thomas v. Review Board

450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981)

Eddie Thomas, a foundry worker in Indiana, was transferred from making steel sheeting to producing gun turrets for tanks. He felt that, as a Jehovah's Witness and a pacifist, he could not engage in such work and requested another transfer. The company refused, and Thomas quit his job. When he applied for unemployment benefits, the state administrative review board ruled that Indiana law did not cover those who left work for personal, even religious, reasons. The state supreme court affirmed the ruling and expressed doubts about the religious grounding of Thomas' decision to leave his job. He obtained certiorari from the U.S. Supreme Court.

■ MR. CHIEF JUSTICE **BURGER** delivered the opinion of the Court. . . .

II

Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion. Sherbert v. Verner [1963]; Wisconsin v. Yoder [1972]. The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task. . . . However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.

In support of his claim for benefits, Thomas testified:

> Q. And then when it comes to actually producing the tank itself, hammering it out; that you will not do. . . .
>
> A. That's right, that's right when . . . I'm daily faced with the knowledge that these are tanks. . . . I really could not, you know, conscientiously continue to work with armaments. It would be against all of the . . . religious principles that . . . I have come to learn. . . .

Based upon this and other testimony, the referee held that Thomas "quit due to his religious convictions." The Review Board adopted that finding. . . .

The Indiana Supreme Court apparently took a different view of the record. It concluded that "although the claimant's reasons for quitting were described as religious, it was unclear what his belief was, and what the religious basis of his belief was." In that court's view, Thomas had made a merely "personal philosophical choice rather than a religious choice." In reaching its conclusion, the Indiana court seems to have placed considerable reliance on the facts that Thomas was "struggling" with his beliefs and that he was not able to "articulate" his belief precisely. It noted, for example, that Thomas admitted before the referee that he would not object to

> working for United States Steel or Inland Steel . . . produc[ing] the raw product necessary for the production of any kind of tank . . . [because I] would not be a direct party to whoever they shipped it to [and] would not be . . . chargeable in . . . conscience. . . .

The court found this position inconsistent with Thomas' stated opposition to participation in the production of armaments. But, Thomas' statements reveal no more than that he found work in the roll foundry sufficiently insulated from producing weapons of war. We see, therefore, that Thomas drew a line, and it is not for us to say that the line he drew was an unreasonable one. Courts should not undertake to dissect religious beliefs because the believer admits that he is "struggling" with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.

The Indiana court also appears to have given significant weight to the fact that another Jehovah's Witness had no scruples about working on tank turrets. . . . Intrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences in relation to the Religion Clauses. One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause; but that is not the case here, and the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. . . . [I]t is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation. . . . On this record, it is clear that Thomas terminated his employment for religious reasons.

III

A

More than 30 years ago, the Court held that a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program. A state may not

> 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 Educ. (1947).

Later, in *Sherbert,* the Court examined South Carolina's attempt to deny unemployment compensation benefits to a Sabbatarian who declined to work on Saturday. In sustaining her right to receive benefits, the Court held:

> 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 burden puts the same kind of burden upon the free exercise of religion as would a fine imposed against [her] for her Saturday worship. . . .

The respondent Review Board argues, and the Indiana Supreme Court held, that the burden upon religion here is only the indirect consequence of public welfare legislation that the state clearly has authority to enact. . . . Indiana requires applicants for unemployment compensation to show that they left work for "good cause in connection with the work." . . . A similar argument was made and rejected in *Sherbert,* however. It is true that, as in *Sherbert,* the Indiana law does not *compel* a violation of conscience. But, "this is only the beginning, not the end, of our inquiry." In a variety of ways we have said that "a regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Yoder*.

Here, as in *Sherbert,* the employee was put to a choice between fidelity to religious belief or cessation of work; the coercive impact on Thomas is indistinguishable from *Sherbert*. . . . Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden

upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial. . . .

B

The mere fact that the petitioner's religious practice is burdened by a governmental program does not mean that an exemption accommodating his practice must be granted. The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest. However, it is still true that "[t]he essence of all that has been said and written on the subject is that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion." *Yoder*.

The purposes urged to sustain the disqualifying provision of the Indiana unemployment compensation scheme are two-fold: (1) to avoid the widespread unemployment and the consequent burden on the fund resulting if people were permitted to leave jobs for "personal" reasons; and (2) to avoid a detailed probing by employers into job applicants' religious beliefs. These are by no means unimportant considerations. When the focus of the inquiry is properly narrowed, however, we must conclude that the interests advanced by the state do not justify the burden placed on free exercise of religion.

There is no evidence in the record to indicate that the number of people who find themselves in the predicament of choosing between benefits and religious beliefs is large enough to create "widespread unemployment," or even to seriously affect unemployment—and no such claim was advanced by the Review Board. Similarly, although detailed inquiry by employers into applicants' religious beliefs is undesirable, there is no evidence in the record to indicate that such inquiries will occur in Indiana, or that they have occurred in any of the states that extend benefits to people in the petitioner's position. Nor is there any reason to believe that the number of people terminating employment for religious reasons will be so great as to motivate employers to make such inquiries.

Neither of the interests advanced is sufficiently compelling to justify the burden upon Thomas' religious liberty. Accordingly, Thomas is entitled to receive benefits unless, as the state contends and the Indiana court held, such payment would violate the Establishment Clause.

IV

The respondent contends that to compel benefit payments to Thomas involves the state in fostering a religious faith. There is, in a sense, a "benefit" to Thomas deriving from his religious beliefs, but this manifests no more than the tension between the two Religious Clauses which the Court resolved in *Sherbert:*

> 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. . . .

Reversed.

■ JUSTICE **BLACKMUN** joins Parts . . . **II** and **III** of the Court's opinion. As to Part **IV** thereof, he concurs in the result.

■ JUSTICE **REHNQUIST**, dissenting. . . .

I

The Court correctly acknowledges that there is a "tension" between the Free Exercise and Establishment Clauses. . . . Although the relationship of the two clauses has been the subject of

much commentary, the "tension" is of fairly recent vintage, unknown at the time of the framing and adoption of the First Amendment. The causes of the tension, it seems to me, are three-fold. First, the growth of social welfare legislation during the latter part of the 20th century has greatly magnified the potential for conflict between the two clauses, since such legislation touches the individual at so many points in his life. Second, the decision by this Court that the First Amendment was "incorporated" into the Fourteenth Amendment and thereby made applicable against the States, Stromberg v. California (1931); Cantwell v. Connecticut (1940), similarly multiplied the number of instances in which the "tension" might arise. The third, and perhaps most important, cause of the tension is our overly expansive interpretation of *both* clauses. By broadly construing both clauses, the Court has constantly narrowed the channel between the Scylla and Charybdis through which any state or federal action must pass in order to survive constitutional scrutiny.

None of these developments could have been foreseen by those who framed and adopted the First Amendment. . . .

II

The decision today illustrates how far astray the Court has gone in interpreting the Free Exercise and Establishment Clauses. . . . Although the Court . . . recognizes the "tension" between the two clauses, it does little to help resolve that tension or to offer meaningful guidance to other courts which must decide cases like this on a day-by-day basis. Instead, it simply asserts that there is no Establishment Clause violation here and leaves tension between the two Religion Clauses to be resolved on a case-by-case basis. . . . I believe that the "tension" is largely of this Court's own making, and would diminish almost to the vanishing point if the clauses were properly interpreted.

Just as it did in *Sherbert*, the Court today reads the Free Exercise Clause more broadly than is warranted. As to the proper interpretation of the Free Exercise Clause, I would accept the decision of Braunfeld v. Brown (1961), and the dissent in *Sherbert*. In *Braunfeld,* we held that Sunday Closing laws do not violate the First Amendment rights of Sabbatarians. Chief Justice Warren explained that the statute did not make unlawful any religious practices of appellants; it simply made the practice of their religious beliefs more expensive. . . . Likewise in this case, it cannot be said that the State discriminated against Thomas on the basis of his religious beliefs or that he was denied benefits *because* he was a Jehovah's Witness. Where, as here, a State has enacted a general statute, the purpose and effect of which is to advance the State's secular goals, the Free Exercise Clause does not in my view require the State to conform that statute to the dictates of religious conscience of any group. . . .

The Court's treatment of the Establishment Clause is equally unsatisfying. . . . I would agree that the Establishment Clause, properly interpreted, would not be violated if Indiana voluntarily chose to grant unemployment benefits to those persons who left their jobs for religious reasons. But I also believe that the decision below is inconsistent with many of our prior Establishment Clause cases. Those cases, if faithfully applied, would require us to hold that such voluntary action by a State *did* violate the Establishment Clause.

. . . In *Everson*, the Court stated that the Establishment Clause bespeaks a "government . . . stripped of all power . . . to support, or otherwise assist any or all religions . . . ," and no State "can pass laws which aid one religion [or] all religions." In Torcaso v. Watkins (1961), the Court asserted that the government cannot "constitutionally pass laws or impose requirements which aid all religions as against non-believers." And in School Dist. of Abington Township v. Schempp (1963), the Court adopted Justice Rutledge's words in *Everson* that the Establishment Clause forbids "every form of public aid or support for religion." See also Engel v. Vitale (1962).

In recent years the Court has moved away from the mechanistic "no-aid-to-religion" approach to the Establishment Clause and has stated a three-part test to determine the constitutionality

of governmental aid to religion. See Lemon v. Kurtzman (1971); Comm. for Public Educ. & Religious Liberty v. Nyquist (1973). First, the statute must serve a secular legislative purpose. Second, it must have a "primary effect" that neither advances nor inhibits religion. And third, the State and its administration must avoid excessive entanglement with religion. Walz v. Tax Comm'n (1970).

It is not surprising that the Court today makes no attempt to apply those principles to the facts of this case. If Indiana were to legislate what the Court today requires—an unemployment compensation law which permitted benefits to be granted to those persons who quit their jobs for religious reasons—the statute would "plainly" violate the Establishment Clause as interpreted in such cases as *Lemon* and *Nyquist*. First, although the unemployment statute as a whole would be enacted to serve a secular legislative purpose, the proviso would clearly serve only a religious purpose. It would grant financial benefits for the sole purpose of accommodating religious beliefs. Second, there can be little doubt that the primary effect on the proviso would be to "advance" religion by facilitating the exercise of religious belief. Third, any statute including such a proviso would surely "entangle" the State in religion. . . . By granting financial benefits to persons solely on the basis of their religious beliefs, the State must necessarily inquire whether the claimant's belief is "religious" and whether it is sincerely held. Otherwise any dissatisfied employee may leave his job without cause and claim that he did so because his own particular beliefs required it.

It is unclear from the Court's opinion whether it has temporarily retreated from its expansive view of the Establishment Clause, or wholly abandoned it. I would welcome the latter. . . .

. . . I believe that Justice Stewart, dissenting in *Schempp*, accurately stated the reach of the Establishment Clause. He explained that the Establishment Clause is limited to "government support of proselytizing activities of religious sects by throwing the weight of secular authorities behind the dissemination of religious tenets." . . . Conversely, governmental assistance which does not have the effect of "inducing" religious belief, but instead merely "accommodates" or implements an independent religious choice does not impermissibly involve the government in religious choices. . . . I would think that in this case, as in *Sherbert,* had the state voluntarily chosen to pay unemployment compensation benefits to persons who left their jobs for religious reasons, such aid would be constitutionally permissible because it redounds directly to the benefit of the individual. . . .

EDITORS' NOTES

(1) **Query:** As in *Yoder* (1972; reprinted above, p. **Error! Bookmark not defined.**), Burger referred to religious liberty as a "fundamental right" (in *Yoder* he followed a *balancing approach*, while here he used "strict scrutiny"). What accounts for this difference and is it justifiable?

(2) **Query:** What approach(es) to constitutional interpretation did Rehnquist follow in his dissent? To what extent did he and/or Burger rely on constitutional structures? What does Rehnquist's admission that the founders could not have seen the changes in American society and constitutional interpretation imply for the value of *originalism*? (One might re-ask this question after reading Justice Scalia's opinion for the Court in the Peyote Case, the very next reading.)