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LA REPRESSION DU PHENOMENE SECTAIRE AUX ETATS-UNIS

Textes de référence (en annexe) :

- ✓ The U.S. Constitution - First Amendment
- ✓ " Religious Freedom Restoration Act of 1993 "
- ✓ " The Constitution of the State of California "
- ✓ " The Constitution for the Commonwealth of Massachusetts "
- ✓ Arrêt SHERBERT v. VERNER
- ✓ Arrêt SMITH
- ✓ Arrêt BOERNE

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Introduction

Entre le 18 et le 19 novembre 1978, dans la jungle de la Guyane (Jonestown), plus de neuf cents membres du Temple du Peuple ont trouvé la mort, en partie suicidés par empoisonnement, en partie tués par leurs co-disciples. Cet événement a fait une énorme impression aux Etats-Unis et dans le monde. Les milieux anti-sectes qui considéraient les sectes religieuses comme nuisibles et dangereuses pour la société, en ont profité pour lancer une campagne médiatique et judiciaire contre ceux qu'ils appelaient "cults" ou sectes. Cette campagne a duré une quinzaine d'années; aujourd'hui elle a perdu de sa vigueur.

Au plan juridique, la secte n'est pas un concept juridique clairement défini en droit américain. Les termes tels que *Religious cult* ou *sectes* ont été utilisés dans la presse ou les documents juridiques alors que le contenu de ces termes restent peu précis.

Certaines associations de recherche sur les religions emploient le mot "culte" pour désigner l'ensemble des petits groupes religieux, tandis que les sociologues entendent par le mot "culte" un petit groupe religieux qui se trouve dans un état de tension avec la religion dominante. Pour ces derniers, l'Indouisme peut être considéré comme un culte aux Etats-Unis et tout comme le Christianisme en Inde.

Dans le langage des milieux religieux, le culte est un petit groupe religieux nouvellement créé sans être la variante d'une religion déjà établie.

Dans le "*Dictionary of cults, sects, religions and the occult*"[1], on trouve les définitions suivantes : "le culte est un groupe religieux relativement petit, souvent transitoire et qui obéit généralement à un leader radical. Un culte, à la différence d'une secte, épouse radicalement des croyances et pratiques religieuses nouvelles qui sont souvent considérées comme une menace pour les valeurs et la culture traditionnelles de la société." ...

La secte est un groupe religieux qui s'est détaché d'une grande organisation religieuse déjà établie, considérée par les membres de la secte comme étant devenue trop banale à cause de l'abandon des croyances et pratiques traditionnelles. Elle cherche à restaurer les croyances et pratiques traditionnelle et ce faisant, elle rejette les valeurs de la société mais pas nécessairement d'une manière aussi menaçante que les *cults*.

En mai 1998, l'Association de la Presse a décidé d'éviter l'usage du mot "culte" pour sa connotation péjorative et a suggéré le terme "secte".

Aux Etats-Unis, les pratiques des sectes, et plus généralement les pratiques religieuses sont protégées par les dispositions sur la liberté religieuse prévue dans la Constitution,

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[1] Editions Zondervan Publishing House, 1989.

notamment le Premier Amendement qui interdit toute législation et réglementations visant spécialement une religion (ou secte) ou plusieurs religions (sectes). C'est donc seulement lorsque les pratiques des sectes constituent une violation d'une législation ou réglementation de droit commun que ces pratiques peuvent être l'objet des sanctions.

Aux Etats-Unis, les groupes religieux exercent une énorme influence sur les pouvoirs publics. Sous la pression du lobby religieux, le Congrès des Etats-Unis ainsi que le gouvernement fédéral adoptent souvent une attitude protectrice vis à vis des groupes religieux. C'est ainsi que, lorsque l'autorité judiciaire s'est montrée un peu plus sévère envers les pratiques de certains groupes religieux, le Congrès a immédiatement voté une loi (en 1993) pour "restaurer" la liberté religieuse.

Lors de la Réunion d'évaluation d'application des accords de l'OSCE (*Organisation pour la Sécurité et la Coopération en Europe*) à Varsovie le 27 octobre 1998, la délégation américaine a émis des critiques à l'égard de l'"intolérance religieuse" de certains gouvernements européens dont le gouvernement français.

Il en résulte que l'étude sur la répression des sectes religieuses ne peut se faire sans une présentation de l'évolution du contenu de la liberté religieuse prévue dans la Constitution des Etats-Unis (A), avant d'analyser certaines décisions de justice importantes concernant les pratiques des sectes (B).

A. L'évolution du contenu de la liberté religieuse

Aux Etats-Unis, la liberté religieuse est un des droits fondamentaux des citoyens. Le premier Amendement de la Constitution des Etats-Unis (*First amendment of the U.S. Constitution*) dispose que :

"Le Parlement ne peut adopter aucune loi relative à l'établissement de religions, ni en prohiber le libre exercice ... "

A propos de l'objectif des dispositions, Jefferson, un des Pères fondateurs des Etats-Unis, a déclaré que l'article sur le libre établissement des religions était censé ériger "un mur de séparation entre l'église et l'Etat".

Ces dispositions, relativement succinctes, sont devenues précises grâce à l'interprétation de la jurisprudence et à certains textes législatifs adoptés depuis.

1. L'évolution de l'interprétation de la liberté religieuse par la Cour Suprême

Au cours de l'histoire, la Cour Suprême des Etats-Unis a eu nombre d'occasions pour interpréter l'article sur la liberté religieuse.

La Cour a considéré que le libre établissement de la religion signifie que ni les Etats ni le gouvernement fédéral ne peuvent créer une église ou adopter des lois et réglementation qui aident une ou plusieurs religions, ni privilégier une religion au détriment des autres, ni exercer d'influence sur une personne pour qu'elle aille joindre une religion ou en reste éloignée contre son gré.

La Cour a déclaré qu'aucune personne ne peut être punie pour entretenir ou professer des croyances religieuses ou la non-croyance, ou pour l'adhésion ou la non-adhésion à une église; qu'aucune taxe ne peut être prélevée pour soutenir les activités ou institutions religieuse; qu'aucun Etat ni le gouvernement fédéral ne peut ouvertement ou secrètement participer dans les affaires de toute religion.

Il est donc clair qu'une loi ou une réglementation destinées spécialement à une ou plusieurs religions constituera une violation de l'article sur le libre établissement des religions. En revanche, il est possible que des pratiques religieuses puissent tomber sous le coup d'une loi ou d'une réglementation de droit commun; dans ce cas, la Cour a estimé que les religions peuvent bénéficier d'exceptions dans certains cas.

Depuis un demi siècle, la Cour Suprême des Etats-Unis a développé plusieurs critères pour déterminer dans quelles circonstances les religions peuvent prétendre à des exceptions. La Cour a élaboré successivement le critère de la distinction entre croyance (*creed*) et pratiques (*deed*) et le critère de l'intérêt impératif (compelling interest) du gouvernement, avant de revenir sur le premier critère dans les années 90.

Le dernier revirement de la Cour Suprême a provoqué l'intervention du Congrès qui a adopté la Loi sur la Restauration de la Liberté Religieuse (*Religious Freedom Restoration Act*) qui a fait l'objet de nombreux débats.

*a) La distinction entre croyance (*creed*) et conduite (*deed*)*

La Cour Suprême des Etats-Unis estimait que la clause de la liberté religieuse du Premier Amendement comprenait deux concepts : liberté des croyances et liberté des pratiques religieuses, estimant que si la première est absolue, la deuxième ne l'est pas[2].

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[2] Cantwell v. Connecticut, 310 U.S. 296, 304 (1940).

Dans les premières affaires, la Cour était amenée à se prononcer sur l'interdiction de la polygamie par le gouvernement. La Cour a évoqué une distinction rigide entre la liberté de croyances et la liberté des pratiques, en invoquant que bien que les lois "ne peuvent pas intervenir dans les croyances et opinions religieuses, elles le peuvent dans les pratiques religieuses"[3]. La règle ainsi affirmée ne protégeait que la croyance et pas les pratiques religieuses, ces dernières étaient par conséquent soumises aux pouvoirs de police de l'Etat.

b) La théorie de l'intérêt impératif (compelling interest) du gouvernement

De la Seconde Guerre mondiale au début des années 1970, la Cour Suprême a abandonné la théorie de séparation entre croyance (*creed*) et pratiques (*deed*) et a élaboré le critère de l'intérêt impératif (*compelling interest*) de l'Etat.

Dans l'arrêt de principe *Sherbert v. Verner, 374 U.S. 398 (1963)*, la Cour Suprême a confirmé le droit d'une femme adventiste du Septième Jour de recevoir une allocation de chômage, bien que plusieurs emplois lui aient été proposés, au motif que ces emplois la contraignait à travailler le samedi, et que cela constituait une pratique interdite par sa foi.

La Cour Suprême a retenu qu'il n'y avait aucun intérêt impératif de l'Etat à ne pas payer l'allocation de chômage à ceux qui refusent des emplois particuliers sur le fondement d'une interprétation raisonnable de leurs fois religieuses. Selon cet arrêt, le gouvernement ne peut limiter l'exercice de la liberté religieuse qu'à deux conditions : lorsqu'il a un intérêt impératif à le faire, et lorsqu'un tel intérêt ne peut être satisfait par des alternatives.

c) Le retour de la distinction entre croyance et pratiques

Dans les années 1980 et 1990, la Cour Suprême s'est écartée de l'intérêt impératif de l'Etat pour revenir à un principe similaire à celui de la distinction entre croyance et pratiques, estimant que les pratiques religieuses doivent obéir à l'ordre public.

La Cour a indiqué que l'intérêt impératif n'est applicable que dans le domaine de l'indemnité de l'emploi ; que les lois neutres de droit commun peuvent imposer des contraintes à des pratiques religieuses ; que la clause de liberté d'exercice n'exige pas d'exceptions systématiques; qu'il appartient au législateur de déterminer par des textes spécifiques les exceptions religieuses.

Dans l'arrêt *Employment Division v. Smith de 1990*, la Cour a retenu que si l'interdiction de l'exercice religieux n'est pas l'objectif mais seulement l'effet d'une disposition de droit commun, cette disposition n'est pas en infraction avec le Premier Amendement. La Cour a conclu que la clause sur la liberté de l'exercice des religions n'interdit pas à un Etat d'appliquer des lois

[3] Reynolds v. United States, 98 U.S. 145, 166 (1878).

de droit commun pour sanctionner l'usage de peyote (drogue) au cours d'une cérémonie religieuse.

La Cour Suprême a en outre jugé légal le licenciement des fonctionnaires qui participaient à des rituels de la *Native American Church* durant lesquels les membres absorbent de la peyote.

2. Le "Religious Freedom Restoration Act"

L'arrêt Smith avait provoqué les protestations de la part de nombreux groupes religieux. Sous la pression de ces derniers, le Congrès a voté la Loi sur la Restauration de la Liberté Religieuse (*Religious Freedom Restoration Act*).

Cette loi, signée par le président Clinton en 1993, oblige les tribunaux à appliquer le critère de "*compelling interest*" dans toutes les affaires où le libre exercice des religions est en jeu.

Depuis l'entrée en vigueur de cette Loi, ceux qui estiment qu'une agence gouvernementale est intervenue dans le libre exercice de leurs religions, peuvent intenter un procès sur la base de cette nouvelle loi, plutôt que sur le fondement du Premier Amendement.

La Loi sur la Restauration de la Liberté Religieuse a immédiatement suscité des controverses car les opposants estiment que la Loi constitue une violation du principe fondamental de la séparation entre le pouvoir législatif et le pouvoir judiciaire.

En effet, la Loi sur la Restauration de la Liberté Religieuse a pour objectif clairement affiché de modifier l'interprétation du Premier Amendement par la Cour suprême dans l'arrêt Smith[4] ; or l'interprétation de la Constitution relève en principe des compétences de l'autorité judiciaire.

L'adoption de cette loi a été considérée comme une immixtion du pouvoir législatif dans le domaine du pouvoir judiciaire et constitue donc une violation du principe de la séparation des pouvoirs. C'est pour cela que plusieurs gouvernements fédéraux ont introduit des procès devant les Cours, en argumentant que la Loi sur la Restauration de la Liberté des Religions était contraire à la Constitution et constituait une violation du principe de la séparation des pouvoirs.

L'affaire Boerne a marqué le dernier épisode[5].

Le 19 février 1997 une action sur la constitutionnalité de la Loi sur la Restauration de la Liberté Religieuse a été introduite devant la Cour Suprême. Le centre du litige était un arrêté de la municipalité de Boerne (Texas). Le *St Peter's Catholic Church* souhaitait reconstruire et agrandir une partie de son église et avait demandé un permis de construire à la Municipalité mais s'était

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[4] Section 2. (a) (4) de la Loi.

[5] City of Boerne, Tesas v. P.F. Flores, Archbishop of San Antonio

heurté au refus de cette dernière. L'église a intenté une action sur la base de Loi sur la Restauration de la Liberté Religieuse (et non sur celle du premier Amendement), argumentant que l'arrêté constituait une infraction au regard du libre exercice des religions.

Les premiers juges ont décidé que la Loi sur la Restauration de la Liberté Religieuse était contraire à la Constitution, tandis que la Cour d'appel du 5e Circuit a rejeté le premier jugement. Les deux parties ont demandé à la Cour Suprême de se prononcer.

Le 25 juin 1997 la Cour Suprême a déclaré que la Loi sur la Restauration de la Liberté Religieuse était contraire à la Constitution, car cette loi constituait une violation du principe de la séparation entre le pouvoir législatif et le pouvoir judiciaire.

B. La jurisprudence en matière des pratiques des sectes

Les premières décisions de justice en matière de liberté religieuse ont concerné les membres de l'Eglise Mormon, alors les Témoins de Jéhovah ont fait l'objet d'un grand nombre de procès depuis le début du siècle.

1. Le cas des Mormons

La pratique de bigamie des Mormons a été l'objet de nombreux procès. Dans l'arrêt *"Reynolds v. United Stat*es" rendu le 5 mai 1879, la Cour Suprême des Etats-Unis a confirmé la condamnation de la bigamie commise par un membre des Mormons, alors que ce dernier argumentait, dans le pourvoi, que la polygamie était un devoir religieux des membres masculins de l'Eglise Mormon, et donc protégé par la clause sur la liberté religieuse du Premier Amendement.

En 1882, le Congrès avait voté une loi qui interdisait la bigamie et la polygamie. La Cour soutenait la Loi et l'appliquait à des cas mêmes antérieurs à l'entrée en vigueur de la législation et aux personnes pour qui la loi avait prévu des exceptions[6].

Ensuite, une loi territoriale a demandé aux électeurs de prêter serment sur le fait qu'ils n'étaient pas bigamistes ou polygamistes, et qu'ils n'étaientt pas membres d'un ordre, d'une organisation ou d'une association qui enseignait, conseillait, ou encourageait toutes personnes à pratiquer la bigamie ou la polygamie. Finalement, la Cour a soutenu la révocation de la Charte de l'Eglise de Mormon ainsi que la confiscation de toutes propriétés de l'Eglise des Mormons qui n'étaient pas utilisées pour le besoin de la religion[7].

[6] Murphy v. Ramsey, 114 U.S. 15 (1885).

[7] Church of Jesus Christ of Latter Day Saints v. US 136 US 1 (1890).

Plus tard, des membres de Mormons ont été reconnus coupables au regard de la Loi Mann pour avoir transporté leurs nombreuses épouses entre plusieurs Etats[8].

Dans l'arrêt *Chatwin v. United States 326 US 455 (1946)*, toutefois, la Cour a jugé que l'accusé qui a persuadé un mineur à le se joindre à lui dans un mariage "céleste" n'était pas coupable du kidnapping de mineurs.

2. Le cas des Témoins de Jéhovah

L'église des Témoins de Jéhovah a aussi été à l'origine d'une longue série de décisions de justice bien que celles-ci n'étaient toujours motivées par la liberté religieuse, beaucoup concernant le rassemblement des témoins de Jéhovah dans des lieux publics, ainsi que la distribution de la littérature religieuse par les membres de la secte.

Dans les années 40, certaines villes telles que Maryland et New York ont mis en place un système d'autorisation pour des manifestations dans des endroits publics (parc, voies publiques). Dans certaines affaires, des Témoins de Jéhovah ont été arrêtés par la police pour avoir organisé leurs manifestations sans autorisation[9], ou au motif du trouble de l'ordre public[10].

Des adeptes de la secte des Témoins de Jéhovah ont été poursuivis pour avoir distribué sans autorisation des brochures et magazines à caractère religieux[11]; ou pour avoir distribué des prospectus dans les rues de Dallas, en violation d'une ordonnance municipale qui interdisait ce genre de pratiques[12].

Dans toutes ces affaires, la Cour Suprême n'a pas suivi les arguments des autorités locales, au motif que leurs mesures étaient contraires à la Constitution.

Dans d'autres affaires, des administrations ont décidé d'assujettir à l'impôt la vente de littérature religieuse par les Témoins de Jéhovah. La Cour Suprême a considéré que l'imposition de la vente de littérature religieuse par les Témoins de Jéhovah n'était pas justifiée[13].

Dans l'arrêt *Follett v. McCormick*, la Cour a même jugé que la taxation de la vente de la littérature religieuse était contraire à la Constitution.

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[8] Cleveland v. United States 329 US 14 (1946).

[9] Niemotko v. Maryland

[10] CANTWELL v. STATE OF CONNECTICUT, 310 U.S. 296 (1940).

[11] LOVELL v. CITY OF GRIFFIN, GA., 303 U.S. 444 (1938) (et LARGENT v. STATE OF TEX., 318 U.S. 418 (1943) .

[12] JAMISON v. STATE OF TEX., 318 U.S. 413 (1943).

[13] Jones v. Opelika), (Murdock v. Pennsylvania)

En revanche, la Cour Suprême a condamné un témoin de Jéhovah, tuteur d'un enfant de 9 ans, pour avoir laissé l'enfant s'engager dans la vente des publications religieuses à une heure tardive, car cette pratique constituait une infraction d'une loi étatique en matière du travail des enfants[14].

Dans une autre affaire, la Cour Suprême a jugé que la transfusion sanguine pouvait être administrée à d'un mineur malgré l'objection de ses parents pour des motifs religieux[15].

C. Annexes

1. The U.S. Constitution - First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

2. “ Religious Freedom Restoration Act of 1993 ”

An Act

To protect the free exercise of religion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1, SHORT TITLE.

This Act may be cited as the "Religious Freedom Restoration Act of 1993".

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.

(a) FINDINGS.---The Congress finds---

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

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[14] Prince v. Massachusetts, 321 U.S. 158 (1944).

[15] (Jehovah's Witnesses v. King County Hospital 390 US 598 (1968) (affd. Per curiam)).

(2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) PURPOSES.---The purposes of this Act are---

(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972)[16] and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

SEC. 3. FREE EXERCISE OF RELIGION PROTECTED.

(a) IN GENERAL.---Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) EXCEPTION.---Government may substantially burden a person's exercise of religion only if it determines that application of the burden to the person---

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) JUDICIAL RELIEF.---A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

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[16] Les Amish ne veulent pas envoyer leurs enfants dans une école publique. Il a été jugé que l'intérêt de l'état de l'éducation universelle ne peut pas prévaloir dès lors que les Amish préparent leurs enfants pour une vie d'adultes dans la communauté d'Amish qui a été productive et juridiquement durable (?).

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SEC. 4. ATTORNEYS FEES.

(a) JUDICIAL PROCEEDINGS.---Section 722 of the Revised Statutes of the United States (42 U.S.C. 1988) is amended by inserting "the Religious Freedom Restoration Act of 1993," before "or title VI of the Civil Rights Act of 1964".

(b) ADMINISTRATIVE PROCEEDINGS.---Section 504(b)(1)(C) of title 5, United States Code, is amended---

(1) by striking "and" at the end of clause (ii);

(2) by striking the semicolon at the end of clause (iii) and inserting ";and"; and

(3) by inserting "(iv) the Religious Freedom Restoration Act of 1993" after clause (iii).

SEC. 5. DEFINITIONS.

As used in this Act---

(1) the term "government includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State, or a subdivision of a State;

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burden of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means exercise of religion under the First Amendment to the Constitution.

SEC. 6. APPLICABILITY.

(a) IN GENERAL.---This Act applies to all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of the Act.

(b) RULE OF CONSTRUCTION.---Federal statutory law adopted after the date of the enactment of this Act is subject to this Act unless such law explicitly excludes such application by reference to this Act.

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(c) RELIGIOUS BELIEF UNAFFECTED.---Nothing in this Act shall be construed to authorize any government to burden any religious belief.

SEC. 7. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause of the First Amendment, shall not constitute a violation of this Act. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include a denial of government funding, benefits, or exemptions.

Approved November 16, 1993.

3. “ The Constitution of the State of California ”

Completed May 13, 1998

ARTICLE 1 - DECLARATION OF RIGHTS

…

Section 4. Religious freedom. - Free exercise and enjoyment of religion without discrimination orpreference are guaranteed. This liberty of conscience does not excuse acts that are licentious orinconsistent with the peace or safety of the State. The Legislature shall make no law respecting anestablishment of religion. A person is not incompetent to be a witness or juror because of his or heropinions on religious beliefs.

...

4. “ The Constitution for the Commonwealth of Massachusetts ”

Entered Tuesday, December 19, 1995

DECLARATION OF RIGHTS

...

Article III. Religious Societies

As the public worship of God and instructions in piety, religion andmorality, promote the happiness and prosperity of a people and the security of a republicangovernment; - hterefore, the

several religious societies of this commonwealth, whether corporate orunincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right toelect their pastors or religious teachers, to contract with them for their support, to raise money forerecting and repairing houses for public worship, for the maintenance of religious instruction, and forthe payment of necessary expenses; and all persons belonging to any religious society shall be takenand held to be members, until they shall file with the clerk of such society, a written notice, declaringthe dissolution of their membership, and thenceforth shall not be liable for any grant or contract whichmay be thereafter made, or entered into by such society: - and all religious sects and denominations,demeaning themselves peacably, and as good citizens of the commonwealth, shall be equally under theprotection of the law; and no subordination of any one sect or denomination to another shall ever beestablished by law.

5. Arrêt SHERBERT v. VERNER

U.S. Supreme Court

SHERBERT v. VERNER, 374 U.S. 398 (1963) 374 U.S. 398
SHERBERT v. VERNER ET AL., MEMBERS OF SOUTH CAROLINA
EMPLOYMENT SECURITY COMMISSION, ET AL.
APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA. No. 526.
Argued April 24, 1963.
Decided June 17, 1963.

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. She was unable to obtain other employment because she would not work on Saturday, and she filed a claim for unemployment compensation benefits under the South Carolina Unemployment Compensation Act, which provides that a claimant is ineligible for benefits if he has failed, without good cause, to accept available suitable work when offered him. The State Commission denied appellant's application on the ground that she would not accept suitable work when offered, and its action was sustained by the State Supreme Court. Held: As so applied, the South Carolina statute abridged appellant's right to the free exercise of her religion, in violation of the First Amendment, made applicable to the states by the Fourteenth Amendment. Pp. 399-410.

(a) Disqualification of appellant for unemployment compensation benefits, solely because of her refusal to accept employment in which she would have to work on Saturday contrary to her religious belief, imposes an unconstitutional burden on the free exercise of her religion. Pp. 403-406.

(b) There is no compelling state interest enforced in the eligibility provisions of the South Carolina statute which justifies the substantial infringement of appellant's right to religious freedom under the First Amendment. Pp. 406-409.

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(c) This decision does not foster the "establishment" of the Seventh-Day Adventist religion in South Carolina contrary to the First Amendment. Pp. 409-410.

240 S. C. 286, 125 S. E. 2d 737, reversed.

William D. Donnelly argued the cause and filed briefs for appellant. [374 U.S. 398, 399]

Daniel R. McLeod, Attorney General of South Carolina, argued the cause for appellees. With him on the brief was Victor S. Evans, Assistant Attorney General.

Briefs of amici curiae, urging reversal, were filed by Morris B. Abram, Edwin J. Lukas, Arnold Forster, Melvin L. Wulf, Paul Hartman, Theodore Leskes and Sol Rabkin for the American Jewish Committee et al., and by Leo Pfeffer, Lewis H. Weinstein, Albert Wald, Shad Polier, Ephraim S. London, Samuel Lawrence Brennglass and Jacob Sheinkman for the Synagogue Council of America et al.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

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.1 When she was unable to obtain other employment because from conscientious scruples she would not take Saturday work,2 she filed a claim for [374 U.S. 398, 400] unemployment compensation benefits under the South Carolina Unemployment Compensation Act.3 That law provides that, to be eligible for benefits, a claimant must be "able to work and . . . available for work"; and, further, [374 U.S. 398, 401] that a claimant is ineligible for benefits "[i]f. . . 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, in administrative proceedings under the statute, 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." 240 S. C. 286, 303-304, 125 S. E. 2d 737, 746.4 We noted probable [374 U.S. 398, 402] jurisdiction of appellant's appeal. 371 U.S. 938. We reverse the judgment of the South Carolina Supreme Court and remand for further proceedings not inconsistent with this opinion.

I.

The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such, Cantwell v. Connecticut, 310 U.S. 296, 303. Government may neither compel affirmation of a repugnant belief, Torcaso v. Watkins, 367 U.S. 488; nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, Fowler v. Rhode Island, 345 U.S. 67; nor employ the taxing power to inhibit the dissemination of particular religious views, Murdock v. Pennsylvania, 319 U.S. 105; Follett v. McCormick, 321 U.S. 573; cf. Grosjean v. American Press Co., 297 U.S. 233. On the other hand, [374 U.S. 398, 403] 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, 366 U.S. 599, 603. The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order. See, e. g., Reynolds v. United States, 98 U.S. 145; Jacobson v. Massachusetts, 197 U.S. 11; Prince v. Massachusetts, 321 U.S. 158; Cleveland v. United States, 329 U.S. 14.

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, 371 U.S. 415, 438.

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 [374 U.S. 398, 404] inquiry.5 For "[i]f 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 constitutionally invalid even though the burden may be characterized as being only indirect." Braunfeld v. Brown, supra, at 607. 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.

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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.6 American [374 U.S. 398, 405] Communications Assn. v. Douds, 339 U.S. 382, 390; Wieman v. Updegraff, 344 U.S. 183, 191-192; Hannegan v. Esquire, Inc., 327 U.S. 146, 155-156. For example, in Flemming v. Nestor, 363 U.S. 603, 611, the Court recognized with respect to Federal Social Security benefits that "[t]he 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, 357 U.S. 513, 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." 357 U.S., [374 U.S. 398, 406] at 526. "To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech." Id., at 518. 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, 64-4. 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, "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation," Thomas v. Collins, 323 U.S. 516, 530. [374 U.S. 398, 407] 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, United States v. Ballard, 322 U.S. 78 - 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.7 Cf. Shelton v. Tucker, 364 U.S. 479, [374 U.S. 398, 408] 487-490; Talley v. California, 362 U.S. 60, 64; Schneider v. State, 308 U.S. 147, 161; Martin v. Struthers, 319 U.S. 141, 144-149.

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, supra. 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," 366 U.S., at 605. 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 [374 U.S. 398, 409] problem of such magnitude, or to afford the exempted class so great a competitive advantage, that such a requirement would haverendered the entire statutory scheme unworkable.8 In the present case no such justifications underlie the determination of the state court that appellant's religion makes her ineligible to receive benefits.9

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. See School District of Abington Township v. Schempp, ante, p. 203. 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 on the part [374 U.S. 398, 410] 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. See note 2, supra. 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, 330 U.S. 1, 16.

In view of the result we have reached under the First and Fourteenth Amendments' guarantee of free exercise of religion, we have no occasion to consider appellant's claim that the denial of benefits also deprived her of the equal protection of the laws in violation of the Fourteenth Amendment.

The judgment of the South Carolina Supreme Court is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Footnotes

[Footnote 1] Appellant became a member of the Seventh-day Adventist Church in 1957, at a time when her employer, a textile-mill operator, permitted her to work a five-day week. It was not until 1959 that the work week was changed to six days, including Saturday, for all three shifts in the employer's mill. No question has been raised in this case concerning the sincerity of appellant's religious beliefs. Nor is there any doubt that the prohibition against Saturday labor is a basic tenet of the Seventh-day Adventist creed, based upon that religion's interpretation of the Holy Bible.

[Footnote 2] After her discharge, appellant sought employment with three other mills in the Spartanburg area, but found no suitable five-day work available at any of the mills. In filing her claim with the Commission, she expressed a willingness to accept employment at other mills, or even in another industry, so long as Saturday work was not required. The record indicates that of the 150 or more Seventh-day Adventists in the Spartanburg area, only appellant and one other have been unable to find suitable non-Saturday employment.

[Footnote 3] The pertinent sections of the South Carolina Unemployment Compensation Act (S. C. Code, Tit. 68, 68-1 to 68-404) are as follows:

" 68-113. Conditions of eligibility for benefits. - An unemployed insured worker shall be eligible to receive benefits with respect to any week only if the Commission finds that: . . .

"(3) He is able to work and is available for work, but no claimant shall be considered

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available for work if engaged in self-employment of such nature as to return or promise

remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over such period of time. . . .

" 68-114. Disqualification for benefits. - Any insured worker shall be ineligible for benefits: . .

.

"(2) Discharge for misconduct. - If the Commission finds that he has been discharged for misconduct connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with such ineligibility beginning with the effective date of such request, and continuing not less than five nor more than the next twenty-two consecutive weeks (in addition to the waiting period), as determined by the Commission in each case according to the seriousness of the misconduct . . . .

"(3) Failure to accept work. -

(a) If the Commission finds that he has failed, without good cause, (i) either to apply for available suitable work, when so directed by the employment office or the Commission, (ii) to accept available suitable work when offered him by the employment office or the employer or (iii) to return to his customary self-employment (if any) when so directed by the Commission, such ineligibility shall continue for a period of five weeks (the week in which such failure occurred and the next four weeks in addition to the waiting period) as determined by the Commission according to the circumstances in each case . . . .

"(b) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation and the distance of the available work from his residence."

[Footnote 4] It has been suggested that appellant is not within the class entitled to benefits under the South Carolina statute because her unemployment did not result from discharge or layoff due to lack of work. It is true that unavailability for work for some personal reasons not having to do with matters of conscience or religion has been held to be a basis of disqualification for benefits. See, e. g., Judson Mills v. South Carolina Unemployment Compensation Comm'n, 204 S. C. 37, 28 S. E. 2d 535; Stone Mfg. Co. v. South Carolina Employment Security Comm'n, 219 S. C. 239, 64 S. E. 2d 644. But appellant claims that the Free Exercise Clause prevents the State from basing the denial of benefits upon the "personal reason" she gives for not working on [374 U.S. 398, 402] Saturday. Where the consequence of disqualification so directly affects First Amendment rights, surely we should not conclude that every "personal reason" is a basis for disqualification in the absence of explicit language to that effect in the statute or decisions of the South Carolina Supreme Court. Nothing we have found in the statute or in the cited decisions, cf. Lee v. Spartan Mills, 7 CCH Unemployment Ins. Rep. S. C. _ 8156 (C. P. 1944), and certainly nothing in the South Carolina Court's opinion in this case so construes the statute. Indeed, the contrary seems to have been that court's basic assumption, for if the eligibility provisions were thus limited, it would have been unnecessary for the court to have decided appellant's constitutional challenge to the application of the statute under the Free Exercise Clause.

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Likewise, the decision of the State Supreme Court does not rest upon a finding that appellant was disqualified for benefits because she had been "discharged for misconduct" - by reason of her Saturday absences - within the meaning of 68-114 (2). That ground was not adopted by the South Carolina Supreme Court, and the appellees do not urge in this Court that the disqualification rests upon that ground.

[Footnote 5] In a closely analogous context, this Court said:

". . . the fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free speech question. Under some circumstances, indirect `discouragements' undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions or taxes. A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature." American Communications Assn. v. Douds, 339 U.S. 382, 402. Cf. Smith v. California, 361 U.S. 147, 153-155.

[Footnote 6] See for examples of conditions and qualifications upon governmental privileges and benefits which have been invalidated because of their tendency to inhibit constitutionally protected activity, Steinberg v. United States, 143 Ct. Cl. 1, 163 F. Supp. 590; Syrek v. California [374 U.S. 398, 405] Unemployment Ins. Board, 54 Cal. 2d 519, 354 P.2d 625; Fino v. Maryland Employment Security Board, 218 Md. 504, 147 A. 2d 738; Chicago Housing Authority v. Blackman, 4 Ill. 2d 319, 122 N. E. 2d 522; Housing Authority of Los Angeles v. Cordova, 130 Cal. App. 2d 883, 279 P.2d 215; Lawson v. Housing Authority of Milwaukee, 270 Wis. 269, 70 N. W. 2d 605; Danskin v. San Diego Unified School District, 28 Cal. 2d 536, 171 P.2d 885; American Civil Liberties Union v. Board of Education, 55 Cal. 2d 167, 359 P.2d 45; cf. City of Baltimore v. A. S. Abell Co., 218 Md. 273, 145 A. 2d 111. See also Willcox, Invasions of the First Amendment Through Conditioned Public Spending, 41 Cornell L. Q. 12 (1955); Emerson, Toward a General Theory of the First Amendment, 72 Yale L. J. 877, 942-943 (1963); 36 N. Y. U. L. Rev. 1052 (1961); 9 Kan. L. Rev. 346 (1961); Note, Unconstitutional Conditions, 73 Harv. L. Rev. 1595, 1599-1602 (1960).

[Footnote 7] We note that before the instant decision, state supreme courts had, without exception, granted benefits to persons who were physically available for work but unable to find suitable employment solely because of a religious prohibition against Saturday work. E. g., In re Miller, 243 N.C. 509, 91 S. E. 2d 241; Swenson v. Michigan Employment Security Comm'n, 340 Mich. 430, 65 N. W. 2d 709; Tary v. Board of Review, 161 Ohio St. 251, 119 N. E. 2d 56. Cf. Kut v. Albers Super Markets, Inc., 146 Ohio St. 522, 66 N. E. 2d 643, appeal dismissed sub nom. Kut v. Bureau of Unemployment Compensation, 329 U.S. 669. One author has observed, "the law was settled that [374 U.S. 398, 408] conscientious objections to work on the Sabbath made such work unsuitable and that such objectors were nevertheless available for work. . . . A contrary opinion would make the unemployment compensation law unconstitutional, as a violation of freedom of religion. Religious convictions, strongly held, are so impelling as to constitute good cause for refusal. Since availability refers to suitable work, religious observers were not unavailable because they excluded Sabbath work." Altman, Availability for Work: A Study in

Unemployment Compensation (1950), 187. See also Sanders, Disqualification for Unemployment Insurance, 8 Vand. L. Rev. 307, 327-328 (1955); 34 N.C. L. Rev. 591 (1956); cf. Freeman, Able To Work and Available for Work, 55 Yale L. J. 123, 131 (1945). Of the 47 States which have eligibility provisions similar to those of the South Carolina statute, only 28 appear to have given administrative rulings concerning the eligibility of persons whose religious convictions prevented them from accepting available work. Twenty-two of those States have held such persons entitled to benefits, although apparently only one such decision rests exclusively upon the federal constitutional ground which constitutes the basis of our decision. See 111 U. of Pa. L. Rev. 253, and n. 3 (1962); 34 N.C. L. Rev. 591, 602, n. 60 (1956).

[Footnote 8] See Note, State Sunday Laws and the Religious Guarantees of the Federal Constitution, 73 Harv. L. Rev. 729, 741-745 (1960).

[Footnote 9] These considerations also distinguish the quite different case of Flemming v. Nestor, supra, upon which appellees rely. In that case the Court found that the compelling federal interests which underlay the decision of Congress to impose such a disqualification justified whatever effect the denial of social security benefits may have had upon the disqualified class. See 363 U.S., at 612. And compare Torcaso v. Watkins, supra, in which an undoubted state interest in ensuring the veracity and trustworthiness of Notaries Public was held insufficient to justify the substantial infringement upon the religious freedom of applicants for that position which resulted from a required oath of belief in God. See 74 Harv. L. Rev. 611, 612-613 (1961); 109 U. of Pa. L. Rev. 611, 614-616 (1961).

MR. JUSTICE DOUGLAS, concurring.

The case we have for decision seems to me to be of small dimensions, though profoundly important. 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. [374 U.S. 398, 411] 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.1 Religious scruples of a Sikh require him to carry a regular or a symbolic sword. Rex v. Singh, 39 A. I. R. 53 (Allahabad, 1952). 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. See Murdock v. Pennsylvania, 319 U.S. 105. Religious scruples of a Quaker compel him to refrain from swearing and to affirm instead. See King v. Fearson, Fed. Cas. No. 7,790, 14 Fed. Cas. 520; 1 U.S.C. 1; Federal Rules of Civil Procedure, Rule 43 (d); United States v. Schwimmer, 279 U.S. 644, 655 (dissenting opinion). Religious scruples of a Buddhist may require him to refrain from partaking of any flesh, even of fish.2

The examples could be multiplied, including those of the Seventh-day Adventist whose Sabbath is Saturday and who is advised not to eat some meats.3

These suffice, however, to show that 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. [374 U.S. 398, 412] That was the essence of the Court's decision in the Sunday Blue Law Cases (Gallagher v. Crown Kosher Market, 366 U.S. 617; Braunfeld v. Brown, 366 U.S. 599; McGowan v. Maryland, 366 U.S. 420), a ruling from which I then dissented (McGowan v. Maryland, supra, pp. 575-576) and still dissent. See Arlan's Dept. Store v. Kentucky, 371 U.S. 218.

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.

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, [374 U.S. 398, 413] 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.

[Footnote 1] See Shorter Encyclopaedia of Islam (Cornell Press, 1953), 336, 493.

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[Footnote 2] See Narasu, The Essence of Buddhism (3d ed. 1948), 52-55; 6 Encyclopaedia of Religion and Ethics (1913), 63-65.

[Footnote 3] See Seventh-day Adventists Answer Questions on Doctrine (1957), 149-153, 622-624; Mitchell, Seventh-Day Adventists (1st ed. 1958), 127, 176-178.

MR. JUSTICE STEWART, concurring in the result.

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.

Twenty-three years ago in Cantwell v. Connecticut, 310 U.S. 296, 303, the Court said that both the Establishment Clause and the Free Exercise Clause of the First Amendment were made wholly applicable to the States by the Fourteenth Amendment. In the intervening years several cases involving claims of state abridgment of individual religious freedom have been decided here - most recently Braunfeld v. Brown, 366 U.S. 599, and Torcaso v. Watkins, 367 U.S. 488. During the same period "cases dealing with the specific problems arising under the `Establishment' Clause which have reached this Court are few in number."1 The most recent are last Term's Engel v. Vitale, 370 U.S. 421, and this Term's Schempp and Murray cases, ante, p. 203.

I am convinced that no liberty is more essential to the continued vitality of the free society which our Constitution guarantees than is the religious liberty protected by the Free Exercise Clause explicit in the First Amendment and imbedded in the Fourteenth. And I regret that on [374 U.S. 398, 414] occasion, and specifically in Braunfeld v. Brown, supra, the Court has shown what has seemed to me a distressing insensitivity to the appropriate demands of this constitutional guarantee. By contrast I think that the Court's approach to the Establishment Clause has on occasion, and specifically in Engel, Schempp and Murray, been not only insensitive, but positively wooden, and that the Court has accorded to the Establishment Clause a meaning which neither the words, the history, nor the intention of the authors of that specific constitutional provision even remotely suggests.

But my views as to the correctness of the Court's decisions in these cases are beside the point here. The point is that the decisions are on the books. And the result is that there are many situations where legitimate claims under the Free Exercise Clause will run into head-on collision with the Court's insensitive and sterile construction of the Establishment Clause.2 The controversy now before us is clearly such a case.

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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 [374 U.S. 398, 415] 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, 330 U.S. 1, 11, 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 . . . ." Id., at 15. In Mr. Justice Rutledge's words, adopted by the Court today in Schempp, ante, p. 217, the Establishment Clause forbids "every form of public aid or support for religion." 330 U.S., at 32. In the words of the Court in Engel v. Vitale, 370 U.S., at 431, reaffirmed today in the Schempp case, ante, p. 221, 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 broadbrushed 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 [374 U.S. 398, 416] 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.3 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

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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, [374 U.S. 398, 417] or to be undiscriminatingly invoked as in the Schempp case, ante, p. 203, 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, supra. 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 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." 366 U.S., at 611.

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,4 the appellant at the worst would be denied [374 U.S. 398, 418] 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.

[Footnote 1] McGowan v. Maryland, 366 U.S. 420, 442.

[Footnote 2] The obvious potentiality of such collision has been studiously ignored by the Court, but has not escaped the perception of commentators. See, e. g., Katz, Freedom of Religion and State Neutrality, 20 U. of Chi. L. Rev. 426, 428 (1953); Kauper, Prayer, Public Schools and the Supreme Court, 61 Mich. L. Rev. 1031, 1053 (1963).

[Footnote 3] See Judson Mills v. South Carolina Unemployment Compensation Comm'n, 204 S. C. 37, 28 S. E. 2d 535; Hartsville Cotton Mill v. South Carolina Employment Security Comm'n, 224 S. C. 407, 79 S. E. 2d 381.

[Footnote 4] As noted by the Court, "The record indicates that of the 150 or more Seventh-day Adventists in the Spartanburg area, only appellant and one other have been unable to find suitable non-Saturday employment." Ante, P. 399, n. 2.

MR. JUSTICE HARLAN, whom MR. JUSTICE WHITE joins, dissenting.

Today's decision is disturbing both in its rejection of existing precedent and in its implications for the future. The significance of the decision can best be understood after an examination of the state law applied in this case.

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. As stated in the statute itself:

"Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern . . .; the achievement of social security requires protection against this greatest hazard of our economic life; this can be provided by encouraging the employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance." 68-38. (Emphasis added.) [374 U.S. 398, 419]

Thus 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, in 68-113, that "[a]n unemployed insured worker shall be eligible to receive benefits with respect to any week only if the Commission finds that . . . [h]e is able to work and is available for work . . . ." (Emphasis added.)

The South Carolina Supreme Court has uniformly applied this law in conformity with its clearly expressed purpose. It has consistently held that one is not "available for work" if his

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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. See, e. g., Judson Mills v. South Carolina Unemployment Compensation Comm'n, 204 S. C. 37, 28 S. E. 2d 535 (claimant was "unavailable for work" when she became unable to work the third shift, and limited her availability to the other two, because of the need to care for her four children); Stone Mfg. Co. v. South Carolina Employment Security Comm'n, 219 S. C. 239, 64 S. E. 2d 644; Hartsville Cotton Mill v. South Carolina Employment Security Comm'n, 224 S. C. 407, 79 S. E. 2d 381.

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 [374 U.S. 398, 420] prevented her from accepting employment on a fulltime 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.1

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.2 Such a holding has particular significance in two respects. [374 U.S. 398, 421]

First, despite the Court's protestations to the contrary, the decision necessarily overrules Braunfeld v. Brown, 366 U.S. 599, 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. See 68-104, 68-105. Clearly, any difference between this case and Braunfeld cut against the present appellant.3 [374 U.S. 398, 422]

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Second, the implications of the present decision are far more troublesome than its apparently narrow dimensions would indicate at first glance. The meaning of today's holding, as already noted, 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. See Kurland, Of Church and State and The Supreme Court, 29 U. of Chi. L. Rev. 1; cf. Cammarano v. United States, 358 U.S. 498, 515 (concurring opinion). 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," see School District of Abington Township v. Schempp, ante, p. 222, 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 [374 U.S. 398, 423] 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. See Engel v. Vitale, 370 U.S. 421; School District of Abington Township v. Schempp, supra. 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. See, e. g., Braunfeld v. Brown, supra; Cleveland v. United States, 329 U.S. 14; Prince v. Massachusetts, 321 U.S. 158; Jacobson v. Massachusetts, 197 U.S. 11; Reynolds v. United States, 98 U.S. 145. 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.

For these reasons I respectfully dissent from the opinion and judgment of the Court.4

[Footnote 1] I am completely at a loss to understand note 4 of the Court's opinion. Certainly the Court is not basing today's decision on the unsupported supposition that some day, the South Carolina Supreme Court may conclude that there is some personal reason for unemployment that may not disqualify a claimant for relief. In any event, I submit it is perfectly clear that South Carolina would not compensate persons who became unemployed for any

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personal reason, as distinguished from layoffs or lack of work, since the State Supreme Court's decisions make it plain that such persons would not be regarded as "available for work" within the manifest meaning of the eligibility requirements. Nor can I understand what this Court means when it says that "if the eligibility provisions were thus limited, it would have been unnecessary for the [South Carolina] court to have decided appellant's constitutional challenge . . . ."

[Footnote 2] The Court does suggest, in a rather startling disclaimer, ante, pp. 409-410, that its holding is limited in applicability to those whose religious convictions do not make them "nonproductive" members of society, nothing that most of the Seventh-day Adventists in the Spartanburg area are employed. But surely this disclaimer cannot be [374 U.S. 398, 421] taken seriously, for the Court cannot mean that the case would have come out differently if none of the Seventh-day Adventists in Spartanburg had been gainfully employed, or if the appellant's religion had prevented her from working on Tuesdays instead of Saturdays. Nor can the Court be suggesting that it will make a value judgment in each case as to whether a particular individual's religious convictions prevent him from being "productive." I can think of no more inappropriate function for this Court to perform.

[Footnote 3] The Court's reliance on South Carolina Code 64-4, ante, p. 406, to support its conclusion with respect to free exercise, is misplaced. Section 64-4, which is not a part of the Unemployment Compensation [374 U.S. 398, 422] Law, is an extremely narrow provision that becomes operative only during periods of national emergency and thus has no bearing in the circumstances of the present case. And plainly under our decisions in the "Sunday law" cases, appellant can derive no support for her position from the State's general statutory provisions setting aside Sunday as a uniform day of rest.

[Footnote 4] Since the Court states, ante, p. 410, that it does not reach the appellant's "equal protection" argument, based upon South Carolina's emergency Sunday-work provisions, 64-4, 64-6, I do not consider it appropriate for me to do so. [374 U.S. 398, 424]

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6. Arrêt Smith

U.S. Supreme Court

EMPLOYMENT DIV., ORE. DEPT. OF HUMAN RES. v. SMITH, 494 U.S. 872 (1990) 494 U.S. 872

EMPLOYMENT DIVISION, DEPARTMENT OF HUMAN RESOURCES OF OREGON, ET AL. v. SMITH ET AL. CERTIORARI

TO THE SUPREME COURT OF OREGON No. 88-1213.

Argued November 6, 1989

Decided April 17, 1990

Respondents Smith and Black were fired by a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug, for sacramental purposes at a ceremony of their Native American Church. Their applications for unemployment compensation were denied by the State of Oregon under a state law disqualifying employees discharged for work-related "misconduct." Holding that the denials violated respondents' First Amendment free exercise rights, the State Court of Appeals reversed. The State Supreme Court affirmed, but this Court vacated the judgment and remanded for a determination whether sacramental peyote use is proscribed by the State's controlled substance law, which makes it a felony to knowingly or intentionally possess the drug. Pending that determination, the Court refused to decide whether such use is protected by the Constitution. On remand, the State Supreme Court held that sacramental peyote use violated, and was not excepted from, the state-law prohibition, but concluded that that prohibition was invalid under the Free Exercise Clause.

Held:

The Free Exercise Clause permits the State to prohibit sacramental peyote use and thus to deny unemployment benefits to persons discharged for such use. Pp. 876-890.

(a) Although a State would be "prohibiting the free exercise [of religion]" in violation of the Clause if it sought to ban the performance of (or abstention from) physical acts solely because of their religious motivation, the Clause does not relieve an individual of the obligation to comply with a law that incidentally forbids (or requires) the performance of an act that his religious belief requires (or forbids) if the law is not specifically directed to religious practice and is otherwise constitutional as applied to those who engage in the specified act for nonreligious reasons. See, e. g., Reynolds v. United States, 98 U.S. 145, 166-167. The only decisions in which this Court has held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action are distinguished on the ground that they involved not the Free Exercise Clause alone, but that [494 U.S. 872, 873] Clause in conjunction with other constitutional protections. See, e. g., Cantwell v. Connecticut, 310 U.S. 296, 304-307; Wisconsin v. Yoder, 406 U.S. 205. Pp. 876-882.

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(b) Respondents' claim for a religious exemption from the Oregon law cannot be evaluated under the balancing test set forth in the line of cases following Sherbert v. Verner, 374 U.S. 398, 402-403, whereby governmental actions that substantially burden a religious practice must be justified by a "compelling governmental interest." That test was developed in a context - unemployment compensation eligibility rules - that lent itself to individualized governmental assessment of the reasons for the relevant conduct. The test is inapplicable to an across-the-board criminal prohibition on a particular form of conduct. A holding to the contrary would create an extraordinary right to ignore generally applicable laws that are not supported by "compelling governmental interest" on the basis of religious belief. Nor could such a right be limited to situations in which the conduct prohibited is "central" to the individual's religion, since that would enmesh judges in an impermissible inquiry into the centrality of particular beliefs or practices to a faith. Cf. Hernandez v. Commissioner, 490 U.S. 680, 699. Thus, although it is constitutionally permissible to exempt sacramental peyote use from the operation of drug laws, it is not constitutionally required. Pp. 882-890.

307 Ore. 68, 763 P.2d 146, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, and KENNEDY, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment, in Parts I and II of which BRENNAN, MARSHALL, and BLACKMUN, JJ., joined without concurring in the judgment, post, p. 891. BLACKMUN, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined, post, p. 907.

Dave Frohnmayer, Attorney General of Oregon, argued the cause for petitioners. With him on the briefs were James E. Mountain, Jr., Deputy Attorney General, Virginia L. Linder, Solicitor General, and Michael D. Reynolds, Assistant Solicitor General.

Craig J. Dorsay argued the cause and filed briefs for respondents.*

[Footnote *] Briefs of amici curiae urging affirmance were filed for the American Civil Liberties Union et al. by Steven R. Shapiro and John A. Powell; for the American Jewish Congress by Amy Adelson, Lois C. Waldman, and Marc D. Stern; for the Association on American Indian Affairs et al. by Steven C. Moore and Jack Trope; and for the Council on Religious Freedom by Lee Boothby and Robert W. Nixon. [494 U.S. 872, 874]

JUSTICE SCALIA delivered the opinion of the Court.

This case requires us to decide whether the Free Exercise Clause of the First Amendment permits the State of Oregon to include religiously inspired peyote use within the reach of its general criminal prohibition on use of that drug, and thus permits the State to deny unemployment benefits to persons dismissed from their jobs because of such religiously inspired use.

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I

Oregon law prohibits the knowing or intentional possession of a "controlled substance" unless the substance has been prescribed by a medical practitioner. Ore. Rev. Stat. 475.992(4) (1987). The law defines "controlled substance" as a drug classified in Schedules I through V of the Federal Controlled Substances Act, 21 U.S.C. 811-812, as modified by the State Board of Pharmacy. Ore. Rev. Stat. 475.005(6) (1987). Persons who violate this provision by possessing a controlled substance listed on Schedule I are "guilty of a Class B felony." 475.992(4)(a). As compiled by the State Board of Pharmacy under its statutory authority, see 475.035, Schedule I contains the drug peyote, a hallucinogen derived from the plant Lophophora williamsii Lemaire. Ore. Admin. Rule 855-80-021(3)(s) (1988).

Respondents Alfred Smith and Galen Black (hereinafter respondents) were fired from their jobs with a private drug rehabilitation organization because they ingested peyote for sacramental purposes at a ceremony of the Native American Church, of which both are members. When respondents applied to petitioner Employment Division (hereinafter petitioner) for unemployment compensation, they were determined to be ineligible for benefits because they had been discharged for work-related "misconduct." The Oregon Court of Appeals reversed that determination, holding that the denial of benefits violated respondents' free exercise rights under the First Amendment. [494 U.S. 872, 875]

On appeal to the Oregon Supreme Court, petitioner argued that the denial of benefits was permissible because respondents' consumption of peyote was a crime under Oregon law. The Oregon Supreme Court reasoned, however, that the criminality of respondents' peyote use was irrelevant to resolution of their constitutional claim - since the purpose of the "misconduct" provision under which respondents had been disqualified was not to enforce the State's criminal laws but to preserve the financial integrity of the compensation fund, and since that purpose was inadequate to justify the burden that disqualification imposed on respondents' religious practice. Citing our decisions in Sherbert v. Verner, 374 U.S. 398 (1963), and Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707 (1981), the court concluded that respondents were entitled to payment of unemployment benefits. Smith v. Employment Div., Dept. of Human Resources, 301 Ore. 209, 217-219, 721 P.2d 445, 449-450 (1986). We granted certiorari. 480 U.S. 916 (1987).

Before this Court in 1987, petitioner continued to maintain that the illegality of respondents' peyote consumption was relevant to their constitutional claim. We agreed, concluding that "if a State has prohibited through its criminal laws certain kinds of religiously motivated conduct without violating the First Amendment, it certainly follows that it may impose the lesser burden of denying unemployment compensation benefits to persons who engage in that conduct." Employment Div., Dept. of Human Resources of Oregon v. Smith, 485 U.S. 660, 670 (1988) (Smith I). We noted, however, that the Oregon Supreme Court had not decided whether respondents' sacramental use of peyote was in fact proscribed by Oregon's controlled substance law, and that this issue was a matter of dispute between the parties. Being "uncertain about the

legality of the religious use of peyote in Oregon," we determined that it would not be "appropriate for us to decide whether the practice is protected by the Federal Constitution." Id., at 673. Accordingly, we [494 U.S. 872, 876] vacated the judgment of the Oregon Supreme Court and remanded for further proceedings. Id., at 674.

On remand, the Oregon Supreme Court held that respondents' religiously inspired use of peyote fell within the prohibition of the Oregon statute, which "makes no exception for the sacramental use" of the drug. 307 Ore. 68, 72-73, 763 P.2d 146, 148 (1988). It then considered whether that prohibition was valid under the Free Exercise Clause, and concluded that it was not. The court therefore reaffirmed its previous ruling that the State could not deny unemployment benefits to respondents for having engaged in that practice.

We again granted certiorari. 489 U.S. 1077 (1989).

II

Respondents' claim for relief rests on our decisions in Sherbert v. Verner, supra, Thomas v. Review Bd. of Indiana Employment Security Div., supra, and Hobbie v. Unemployment Appeals Comm'n of Florida, 480 U.S. 136 (1987), in which we held that a State could not condition the availability of unemployment insurance on an individual's willingness to forgo conduct required by his religion. As we observed in Smith I, however, the conduct at issue in those cases was not prohibited by law. We held that distinction to be critical, for "if Oregon does prohibit the religious use of peyote, and if that prohibition is consistent with the Federal Constitution, there is no federal right to engage in that conduct in Oregon," and "the State is free to withhold unemployment compensation from respondents for engaging in work-related misconduct, despite its religious motivation." 485 U.S., at 672. Now that the Oregon Supreme Court has confirmed that Oregon does prohibit the religious use of peyote, we proceed to consider whether that prohibition is permissible under the Free Exercise Clause.

A

The Free Exercise Clause of the First Amendment, which has been made applicable to the States by incorporation into [494 U.S. 872, 877] the Fourteenth Amendment, see Cantwell v. Connecticut, 310 U.S. 296, 303 (1940), provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const., Amdt. 1 (emphasis added). The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all "governmental regulation of religious beliefs as such." Sherbert v. Verner, supra, at 402. The government may not compel affirmation of religious belief, see Torcaso v. Watkins, 367 U.S. 488 (1961), punish the expression of religious doctrines it believes to be false, United States v. Ballard, 322 U.S. 78, 86-88 (1944), impose special disabilities on the basis of religious views or religious status, see McDaniel v. Paty, 435 U.S. 618 (1978); Fowler v. Rhode Island, 345 U.S. 67, 69 (1953); cf. Larson v. Valente, 456 U.S. 228, 245 (1982), or lend its power to one or the other

side in controversies over religious authority or dogma, see Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 445-452 (1969); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 95-119 (1952); Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 708-725 (1976).

But the "exercise of religion" often involves not only belief and profession but the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation. It would be true, we think (though no case of ours has involved the point), that a State would be "prohibiting the free exercise [of religion]" if it sought to ban such acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display. It would doubtless be unconstitutional, for example, to ban the casting of "statues that are to be used [494 U.S. 872, 878] for worship purposes," or to prohibit bowing down before a golden calf.

Respondents in the present case, however, seek to carry the meaning of "prohibiting the free exercise [of religion]" one large step further. They contend that their religious motivation for using peyote places them beyond the reach of a criminal law that is not specifically directed at their religious practice, and that is concededly constitutional as applied to those who use the drug for other reasons. They assert, in other words, that "prohibiting the free exercise [of religion]" includes requiring any individual to observe a generally applicable law that requires (or forbids) the performance of an act that his religious belief forbids (or requires). As a textual matter, we do not think the words must be given that meaning. It is no more necessary to regard the collection of a general tax, for example, as "prohibiting the free exercise [of religion]" by those citizens who believe support of organized government to be sinful, than it is to regard the same tax as "abridging the freedom . . . of the press" of those publishing companies that must pay the tax as a condition of staying in business. It is a permissible reading of the text, in the one case as in the other, to say that if prohibiting the exercise of religion (or burdening the activity of printing) is not the object of the tax but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended. Compare Citizen Publishing Co. v. United States, 394 U.S. 131, 139 (1969) (upholding application of antitrust laws to press), with Grosjean v. American Press Co., 297 U.S. 233, 250-251 (1936) (striking down license tax applied only to newspapers with weekly circulation above a specified level); see generally Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue, 460 U.S. 575, 581 (1983).

Our decisions reveal that the latter reading is the correct one. We have never held that an individual's religious beliefs [494 U.S. 872, 879] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition. As described succinctly by Justice Frankfurter in Minersville School Dist. Bd. of Ed. v. Gobitis, 310 U.S. 586, 594-595 (1940):

"Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the

relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities (footnote omitted)." We first had occasion to assert that principle in Reynolds v. United States, 98 U.S. 145 (1879), where we rejected the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice. "Laws," we said, "are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." Id., at 166-167.

Subsequent decisions have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." United States v. Lee, 455 U.S. 252, 263, n. 3 (1982) (STEVENS, J., concurring in judgment); see Minersville School Dist. Bd. of Ed. v. Gobitis, supra, at 595 (collecting cases). In Prince v. Massachusetts, 321 U.S. 158 (1944), we held that a mother could be prosecuted under the child labor laws [494 U.S. 872, 880] for using her children to dispense literature in the streets, her religious motivation notwithstanding. We found no constitutional infirmity in "excluding [these children] from doing there what no other children may do." Id., at 171. In Braunfeld v. Brown, 366 U.S. 599 (1961) (plurality opinion), we upheld Sunday-closing laws against the claim that they burdened the religious practices of persons whose religions compelled them to refrain from work on other days. In Gillette v. United States, 401 U.S. 437, 461 (1971), we sustained the military Selective Service System against the claim that it violated free exercise by conscripting persons who opposed a particular war on religious grounds.

Our most recent decision involving a neutral, generally applicable regulatory law that compelled activity forbidden by an individual's religion was United States v. Lee, 455 U.S., at 258-261. There, an Amish employer, on behalf of himself and his employees, sought exemption from collection and payment of Social Security taxes on the ground that the Amish faith prohibited participation in governmental support programs. We rejected the claim that an exemption was constitutionally required. There would be no way, we observed, to distinguish the Amish believer's objection to Social Security taxes from the religious objections that others might have to the collection or use of other taxes. "If, for example, a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief." Id., at 260. Cf. Hernandez v. Commissioner, 490 U.S. 680 (1989) (rejecting free exercise challenge to payment of income taxes alleged to make religious activities more difficult). [494 U.S. 872, 881]

The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional

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protections, such as freedom of speech and of the press, see Cantwell v. Connecticut, 310 U.S., at 304-307 (invalidating a licensing system for religious and charitable solicitations under which the administrator had discretion to deny a license to any cause he deemed nonreligious); Murdock v. Pennsylvania, 319 U.S. 105 (1943) (invalidating a flat tax on solicitation as applied to the dissemination of religious ideas); Follett v. McCormick, 321 U.S. 573 (1944) (same), or the right of parents, acknowledged in Pierce v. Society of Sisters, 268 U.S. 510 (1925), to direct the education of their children, see Wisconsin v. Yoder, 406 U.S. 205 (1972) (invalidating compulsory school-attendance laws as applied to Amish parents who refused on religious grounds to send their children to school).1 [494 U.S. 872, 882] Some of our cases prohibiting compelled expression, decided exclusively upon free speech grounds, have also involved freedom of religion, cf. Wooley v. Maynard, 430 U.S. 705 (1977) (invalidating compelled display of a license plate slogan that offended individual religious beliefs); West Virginia Bd. of Education v. Barnette, 319 U.S. 624 (1943) (invalidating compulsory flag salute statute challenged by religious objectors). And it is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns. Cf. Roberts v. United States Jaycees, 468 U.S. 609, 622 (1984) ("An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State [if] a correlative freedom to engage in group effort toward those ends were not also guaranteed").

The present case does not present such a hybrid situation, but a free exercise claim unconnected with any communicative activity or parental right. Respondents urge us to hold, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from governmental regulation. We have never held that, and decline to do so now. There being no contention that Oregon's drug law represents an attempt to regulate religious beliefs, the communication of religious beliefs, or the raising of one's children in those beliefs, the rule to which we have adhered ever since Reynolds plainly controls. "Our cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government." Gillette v. United States, supra, at 461.

B

Respondents argue that even though exemption from generally applicable criminal laws need not automatically be extended to religiously motivated actors, at least the claim for a [494 U.S. 872, 883] religious exemption must be evaluated under the balancing test set forth in Sherbert v. Verner, 374 U.S. 398 (1963). Under the Sherbert test, governmental actions that substantially burden a religious practice must be justified by a compelling governmental interest. See id., at 402-403; see also Hernandez v. Commissioner, 490 U.S., at 699. Applying that test we have, on three occasions, invalidated state unemployment compensation rules that conditioned the availability of benefits upon an applicant's willingness to work under conditions forbidden by his religion. See Sherbert v. Verner, supra; Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707 (1981); Hobbie v. Unemployment Appeals Comm'n of Florida, 480 U.S. 136 (1987). We have never invalidated any governmental action on the basis of the Sherbert test

except the denial of unemployment compensation. Although we have sometimes purported to apply the Sherbert test in contexts other than that, we have always found the test satisfied, see United States v. Lee, 455 U.S. 252 (1982); Gillette v. United States, 401 U.S. 437 (1971). In recent years we have abstained from applying the Sherbert test (outside the unemployment compensation field) at all. In Bowen v. Roy, 476 U.S. 693 (1986), we declined to apply Sherbert analysis to a federal statutory scheme that required benefit applicants and recipients to provide their Social Security numbers. The plaintiffs in that case asserted that it would violate their religious beliefs to obtain and provide a Social Security number for their daughter. We held the statute's application to the plaintiffs valid regardless of whether it was necessary to effectuate a compelling interest. See 476 U.S., at 699-701. In Lyng v. Northwest Indian Cemetery Protective Assn., 485 U.S. 439 (1988), we declined to apply Sherbert analysis to the Government's logging and road construction activities on lands used for religious purposes by several Native American Tribes, even though it was undisputed that the activities "could have devastating effects on traditional Indian religious practices," 485 U.S., at 451. [494 U.S. 872, 884] In Goldman v. Weinberger, 475 U.S. 503 (1986), we rejected application of the Sherbert test to military dress regulations that forbade the wearing of yarmulkes. In O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987), we sustained, without mentioning the Sherbert test, a prison's refusal to excuse inmates from work requirements to attend worship services.

Even if we were inclined to breathe into Sherbert some life beyond the unemployment compensation field, we would not apply it to require exemptions from a generally applicable criminal law. The Sherbert test, it must be recalled, was developed in a context that lent itself to individualized governmental assessment of the reasons for the relevant conduct. As a plurality of the Court noted in Roy, a distinctive feature of unemployment compensation programs is that their eligibility criteria invite consideration of the particular circumstances behind an applicant's unemployment: "The statutory conditions [in Sherbert and Thomas] 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." Bowen v. Roy, supra, at 708 (opinion of Burger, C. J., joined by Powell and REHNQUIST, JJ.). See also Sherbert, supra, at 401, n. 4 (reading state unemployment compensation law as allowing benefits for unemployment caused by at least some "personal reasons"). As the plurality pointed out in Roy, our decisions in the unemployment cases stand for the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of "religious hardship" without compelling reason. Bowen v. Roy, supra, at 708.

Whether or not the decisions are that limited, they at least have nothing to do with an across-the-board criminal prohibition on a particular form of conduct. Although, as noted earlier, we have sometimes used the Sherbert test to analyze free exercise challenges to such laws, see United States v. [494 U.S. 872, 885] Lee, supra, at 257-260; Gillette v. United States, supra, at 462, we have never applied the test to invalidate one. We conclude today that the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the test inapplicable to such challenges. The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, "cannot depend on measuring the effects of a governmental action on a religious objector's

spiritual development." Lyng, supra, at 451. To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is "compelling" - permitting him, by virtue of his beliefs, "to become a law unto himself," Reynolds v. United States, 98 U.S., at 167 – contradicts both constitutional tradition and common sense.2

The "compelling government interest" requirement seems benign, because it is familiar from other fields. But using it as the standard that must be met before the government may accord different treatment on the basis of race, see, e. g., [494 U.S. 872, 886] Palmore v. Sidoti, 466 U.S. 429, 432 (1984), or before the government may regulate the content of speech, see, e. g., Sable Communications of California v. FCC, 492 U.S. 115, 126 (1989), is not remotely comparable to using it for the purpose asserted here. What it produces in those other fields - equality of treatment and an unrestricted flow of contending speech - are constitutional norms; what it would produce here - a private right to ignore generally applicable laws - is a constitutional anomaly.3

Nor is it possible to limit the impact of respondents' proposal by requiring a "compelling state interest" only when the conduct prohibited is "central" to the individual's religion. Cf. Lyng v. Northwest Indian Cemetery Protective Assn., 485 U.S., at 474-476 (BRENNAN, J., dissenting). It is no [494 U.S. 872, 887] more appropriate for judges to determine the "centrality" of religious beliefs before applying a "compelling interest" test in the free exercise field, than it would be for them to determine the "importance" of ideas before applying the "compelling interest" test in the free speech field. What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is "central" to his personal faith? Judging the centrality of different religious practices is akin to the unacceptable "business of evaluating the relative merits of differing religious claims." United States v. Lee, 455 U.S., at 263 n. 2 (STEVENS, J., concurring). As we reaffirmed only last Term, "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." Hernandez v. Commissioner, 490 U.S., at 699. Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim. See, e. g., Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S., at 716; Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S., at 450; Jones v. Wolf, 443 U.S. 595, 602-606 (1979); United States v. Ballard, 322 U.S. 78, 85-87 (1944).4 [494 U.S. 872, 888]

If the "compelling interest" test is to be applied at all, then, it must be applied across the board, to all actions thought to be religiously commanded. Moreover, if "compelling interest" really means what it says (and watering it down here would subvert its rigor in the other fields where it is applied), many laws will not meet the test. Any society adopting such a system would be courting anarchy, but that danger increases in direct proportion to the society's diversity of religious beliefs, and its determination to coerce or suppress none of them. Precisely because "we are a cosmopolitan nation made up of people of almost every conceivable religious preference," Braunfeld v. Brown, 366 U.S., at 606, and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming presumptively invalid, as applied to the

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religious objector, every regulation of conduct that does not protect an interest of the highest order. The rule respondents favor would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind - ranging from [494 U.S. 872, 889] compulsory military service, see, e. g., Gillette v. United States, 401 U.S. 437 (1971), to the payment of taxes, see, e. g., United States v. Lee, supra; to health and safety regulation such as manslaughter and child neglect laws, see, e. g., Funkhouser v. State, 763 P.2d 695 (Okla. Crim. App. 1988), compulsory vaccination laws, see, e. g., Cude v. State, 237 Ark. 927, 377 S. W. 2d 816 (1964), drug laws, see, e. g., Olsen v. Drug Enforcement Administration, 279 U.S. App. D.C. 1, 878 F.2d 1458 (1989), and traffic laws, see Cox v. New Hampshire, 312 U.S. 569 (1941); to social welfare legislation such as minimum wage laws, see Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290 (1985), child labor laws, see Prince v. Massachusetts, 321 U.S. 158 (1944), animal cruelty laws, see, e. g., Church of the Lukumi Babalu Aye Inc. v. City of Hialeah, 723 F. Supp. 1467 (SD Fla. 1989), cf. State v. Massey, 229 N.C. 734, 51 S. E. 2d 179, appeal dism'd, 336 U.S. 942 (1949), environmental protection laws, see United States v. Little, 638 F. Supp. 337 (Mont. 1986), and laws providing for equality of opportunity for the races, see, e. g., Bob Jones University v. United States, 461 U.S. 574, 603-604 (1983). The First Amendment's protection of religious liberty does not require this.5 [494 U.S. 872, 890]

Values that are protected against government interference through enshrinement in the Bill of Rights are not thereby banished from the political process. Just as a society that believes in the negative protection accorded to the press by the First Amendment is likely to enact laws that affirmatively foster the dissemination of the printed word, so also a society that believes in the negative protection accorded to religious belief can be expected to be solicitous of that value in its legislation as well. It is therefore not surprising that a number of States have made an exception to their drug laws for sacramental peyote use. See, e. g., Ariz. Rev. Stat. Ann. 13-3402(B)(1)-(3) (1989); Colo. Rev. Stat. 12-22-317(3) (1985); N. M. Stat. Ann. 30-31-6(D) (Supp. 1989). But to say that a nondiscriminatory religious-practice exemption is permitted, or even that it is desirable, is not to say that it is constitutionally required, and that the appropriate occasions for its creation can be discerned by the courts. It may fairly be said that leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in; but that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs.

* * *

Because respondents' ingestion of peyote was prohibited under Oregon law, and because that prohibition is constitutional, Oregon may, consistent with the Free Exercise Clause, deny respondents unemployment compensation when their dismissal results from use of the drug. The decision of the Oregon Supreme Court is accordingly reversed.

It is so ordered.

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Footnotes

[Footnote 1] Both lines of cases have specifically adverted to the non-free-exercise principle involved. Cantwell, for example, observed that "[t]he fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged." 310 U.S., at 307. Murdock said:

"We do not mean to say that religious groups and the press are free from all financial burdens of government. . . . We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. . . . Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation." 319 U.S., at 112.

Yoder said that "the Court's holding in Pierce stands as a charter of the rights of parents to direct the religious upbringing of their children. And, when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a `reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment." 406 U.S., at 233.

[Footnote 2] JUSTICE O'CONNOR seeks to distinguish Lyng v. Northwest Indian Cemetery Protective Assn., 485 U.S. 439 (1988), and Bowen v. Roy, 476 U.S. 693 (1986), on the ground that those cases involved the government's conduct of "its own internal affairs," which is different because, as Justice Douglas said in Sherbert, "`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.'" Post, at 900 (O'CONNOR, J., concurring in judgment), quoting Sherbert v. Verner, 374 U.S. 398, 412 (1963) (Douglas, J., concurring). But since Justice Douglas voted with the majority in Sherbert, that quote obviously envisioned that what "the government cannot do to the individual" includes not just the prohibition of an individual's freedom of action through criminal laws but also the running of its programs (in Sherbert, state unemployment compensation) in such fashion as to harm the individual's religious interests. Moreover, it is hard to see any reason in principle or practically why the government should have to tailor its health and safety laws to conform to the diversity of religious belief, but should not have to tailor its management of public lands, Lyng, supra, or its administration of welfare programs, Roy, supra.

[Footnote 3] JUSTICE O'CONNOR suggests that "[t]here is nothing talismanic about neutral laws of general applicability," and that all laws burdening religious practices should be subject to compelling-interest scrutiny because "the First Amendment unequivocally makes freedom of religion, like freedom from race discrimination and freedom of speech, a `constitutional nor[m],' not an `anomaly.'" Post, at 901 (opinion concurring in judgment). But this comparison with other fields supports, rather than undermines, the conclusion we draw today. Just as we subject to the most exacting scrutiny laws that make classifications based on race, see

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Palmore v. Sidoti, 466 U.S. 429 (1984), or on the content of speech, see Sable Communications of California v. FCC, 492 U.S. 115 (1989), so too we strictly scrutinize governmental classifications based on religion, see McDaniel v. Paty, 435 U.S. 618 (1978); see also Torcaso v. Watkins, 367 U.S. 488 (1961). But we have held that race-neutral laws that have the effect of disproportionately disadvantaging a particular racial group do not thereby become subject to compelling-interest analysis under the Equal Protection Clause, see Washington v. Davis, 426 U.S. 229 (1976) (police employment examination); and we have held that generally applicable laws unconcerned with regulating speech that have the effect of interfering with speech do not thereby become subject to compelling-interest analysis under the First Amendment, see Citizen Publishing Co. v. United States, 394 U.S. 131, 139 (1969) (antitrust laws). Our conclusion that generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice need not be justified by a compelling governmental interest is the only approach compatible with these precedents.

[Footnote 4] While arguing that we should apply the compelling interest test in this case, JUSTICE O'CONNOR nonetheless agrees that "our determination of the constitutionality of Oregon's general criminal prohibition cannot, and should not, turn on the centrality of the particular religious practice at issue," post, at 906-907 (opinion concurring in judgment). This means, presumably, that compelling-interest scrutiny must be applied to generally applicable laws that regulate or prohibit any religiously motivated activity, no matter how unimportant to the claimant's religion. Earlier in her opinion, however, JUSTICE O'CONNOR appears to contradict this, saying that the proper approach is "to determine whether the burden on the specific plaintiffs before us is constitutionally significant and whether the particular criminal interest asserted by the State before us is compelling." Post, at 899. "Constitutionally significant burden" would seem to be "centrality" [494 U.S. 872, 888] under another name. In any case, dispensing with a "centrality" inquiry is utterly unworkable. It would require, for example, the same degree of "compelling state interest" to impede the practice of throwing rice at church weddings as to impede the practice of getting married in church. There is no way out of the difficulty that, if general laws are to be subjected to a "religious practice" exception, both the importance of the law at issue and the centrality of the practice at issue must reasonably be considered.

Nor is this difficulty avoided by JUSTICE BLACKMUN's assertion that "although . . . courts should refrain from delving into questions whether, as a matter of religious doctrine, a particular practice is `central' to the religion, . . . I do not think this means that the courts must turn a blind eye to the severe impact of a State's restrictions on the adherents of a minority religion." Post, at 919 (dissenting opinion). As JUSTICE BLACKMUN's opinion proceeds to make clear, inquiry into "severe impact" is no different from inquiry into centrality. He has merely substituted for the question "How important is X to the religious adherent?" the question "How great will be the harm to the religious adherent if X is taken away?" There is no material difference.

[Footnote 5] JUSTICE O'CONNOR contends that the "parade of horribles" in the text only "demonstrates . . . that courts have been quite capable of . . . strik[ing] sensible balances between religious liberty and competing state interests." Post, at 902 (opinion concurring in

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judgment). But the cases we cite have struck "sensible balances" only because they have all applied the general laws, despite the claims for religious exemption. In any event, JUSTICE O'CONNOR mistakes the purpose of our parade: it is not to suggest that courts would necessarily permit harmful exemptions from these laws (though they might), but to suggest that courts would constantly be in the business of determining whether the "severe impact" of various laws on religious practice (to use JUSTICE BLACKMUN's terminology, post, at 919) or the "constitutiona[l] significan[ce]" of the "burden on the specific plaintiffs" (to use JUSTICE O'CONNOR's terminology, post, at 899) suffices to permit us to confer an exemption. It is a parade of horribles because it is horrible to [494 U.S. 872, 890] contemplate that federal judges will regularly balance against the importance of general laws the significance of religious practice. [494 U.S. 872, 891]

JUSTICE O'CONNOR, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN join as to Parts I and II, concurring in the judgment.*

Although I agree with the result the Court reaches in this case, I cannot join its opinion. In my view, today's holding dramatically departs from well-settled First Amendment jurisprudence, appears unnecessary to resolve the question presented, and is incompatible with our Nation's fundamental commitment to individual religious liberty.

I

At the outset, I note that I agree with the Court's implicit determination that the constitutional question upon which we granted review - whether the Free Exercise Clause protects a person's religiously motivated use of peyote from the reach of a State's general criminal law prohibition – is properly presented in this case. As the Court recounts, respondents Alfred Smith and Galen Black (hereinafter respondents) were denied unemployment compensation benefits because their sacramental use of peyote constituted work-related "misconduct," not because they violated Oregon's general criminal prohibition against possession of peyote. We held, however, in Employment Div., Dept. of Human Resources of Oregon v. Smith, 485 U.S. 660 (1988) (Smith I), that whether a State may, consistent with federal law, deny unemployment compensation benefits to persons for their religious use of peyote depends on whether the State, as a matter of state law, has criminalized the underlying conduct. See id., at 670-672. The Oregon Supreme Court, on remand from this Court, concluded that "the Oregon statute against possession of controlled substances, which include peyote, makes no exception for the sacramental use of peyote." 307 Ore. 68, 72-73, 763 P.2d 146, 148 (1988) (footnote omitted). [494 U.S. 872, 892]

Respondents contend that, because the Oregon Supreme Court declined to decide whether the Oregon Constitution prohibits criminal prosecution for the religious use of peyote, see id., at 73, n. 3, 763 P.2d, at 148, n. 3, any ruling on the federal constitutional question would be premature. Respondents are of course correct that the Oregon Supreme Court may eventually decide that the Oregon Constitution requires the State to provide an exemption from its general criminal prohibition for the religious use of peyote. Such a decision would then reopen the

question whether a State may nevertheless deny unemployment compensation benefits to claimants who are discharged for engaging in such conduct. As the case comes to us today, however, the Oregon Supreme Court has plainly ruled that Oregon's prohibition against possession of controlled substances does not contain an exemption for the religious use of peyote. In light of our decision in Smith I, which makes this finding a "necessary predicate to a correct evaluation of respondents' federal claim," 485 U.S., at 672, the question presented and addressed is properly before the Court.

II

The Court today extracts from our long history of free exercise precedents the single categorical rule that "if prohibiting the exercise of religion . . . is . . . merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended." Ante, at 878 (citations omitted). Indeed, the Court holds that where the law is a generally applicable criminal prohibition, our usual free exercise jurisprudence does not even apply. Ante, at 884. To reach this sweeping result, however, the Court must not only give a strained reading of the First Amendment but must also disregard our consistent application of free exercise doctrine to cases involving generally applicable regulations that burden religious conduct. [494 U.S. 872, 893]

A

The Free Exercise Clause of the First Amendment commands that "Congress shall make no law . . . prohibiting the free exercise [of religion]." In Cantwell v. Connecticut, 310 U.S. 296 (1940), we held that this prohibition applies to the States by incorporation into the Fourteenth Amendment and that it categorically forbids government regulation of religious beliefs. Id., at 303. As the Court recognizes, however, the "free exercise" of religion often, if not invariably, requires the performance of (or abstention from) certain acts. Ante, at 877; cf. 3 A New English Dictionary on Historical Principles 401-402 (J. Murray ed. 1897) (defining "exercise" to include "[t]he practice and performance of rites and ceremonies, worship, etc.; the right or permission to celebrate the observances (of a religion)" and religious observances such as acts of public and private worship, preaching, and prophesying). "[B]elief and action cannot be neatly confined in logic-tight compartments." Wisconsin v. Yoder, 406 U.S. 205, 220 (1972). Because the First Amendment does not distinguish between religious belief and religious conduct, conduct motivated by sincere religious belief, like the belief itself, must be at least presumptively protected by the Free Exercise Clause.

The Court today, however, interprets the Clause to permit the government to prohibit, without justification, conduct mandated by an individual's religious beliefs, so long as that prohibition is generally applicable. Ante, at 878. But a law that prohibits certain conduct - conduct that happens to be an act of worship for someone - manifestly does prohibit that person's free exercise of his religion. A person who is barred from engaging in religiously motivated conduct is barred from freely exercising his religion. Moreover, that person is barred from freely

exercising his religion regardless of whether the law prohibits the conduct only when engaged in for religious reasons, only by members of that religion, or by all persons. It is difficult to deny that a law that prohibits [494 U.S. 872, 894] religiously motivated conduct, even if the law is generally applicable, does not at least implicate First Amendment concerns.

The Court responds that generally applicable laws are "one large step" removed from laws aimed at specific religious practices. Ibid. The First Amendment, however, does not distinguish between laws that are generally applicable and laws that target particular religious practices. Indeed, few States would be so naive as to enact a law directly prohibiting or burdening a religious practice as such. Our free exercise cases have all concerned generally applicable laws that had the effect of significantly burdening a religious practice. If the First Amendment is to have any vitality, it ought not be construed to cover only the extreme and hypothetical situation in which a State directly targets a religious practice. As we have noted in a slightly different context, "`[s]uch a test has no basis in precedent and relegates a serious First Amendment value to the barest level of minimum scrutiny that the Equal Protection Clause already provides.'" Hobbie v. Unemployment Appeals Comm'n of Florida, 480 U.S. 136, 141-142 (1987) (quoting Bowen v. Roy, 476 U.S. 693, 727 (1986) (O'CONNOR, J., concurring in part and dissenting in part)).

To say that a person's right to free exercise has been burdened, of course, does not mean that he has an absolute right to engage in the conduct. Under our established First Amendment jurisprudence, we have recognized that the freedom to act, unlike the freedom to believe, cannot be absolute. See, e. g., Cantwell, supra, at 304; Reynolds v. United States, 98 U.S. 145, 161-167 (1879). Instead, we have respected both the First Amendment's express textual mandate and the governmental interest in regulation of conduct by requiring the government to justify any substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest. See Hernandez v. Commissioner, 490 U.S. 680, 699 [494 U.S. 872, 895] (1989); Hobbie, supra, at 141; United States v. Lee, 455 U.S. 252, 257-258 (1982); Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707, 718 (1981); McDaniel v. Paty, 435 U.S. 618, 626-629 (1978) (plurality opinion); Yoder, supra, at 215; Gillette v. United States, 401 U.S. 437, 462 (1971); Sherbert v. Verner, 374 U.S. 398, 403 (1963); see also Bowen v. Roy, supra, at 732 (opinion concurring in part and dissenting in part); West Virginia State Bd. of Ed. v. Barnette, 319 U.S. 624, 639 (1943). The compelling interest test effectuates the First Amendment's command that religious liberty is an independent liberty, that it occupies a preferred position, and that the Court will not permit encroachments upon this liberty, whether direct or indirect, unless required by clear and compelling governmental interests "of the highest order," Yoder, supra, at 215. "Only an especially important governmental interest pursued by narrowly tailored means can justify exacting a sacrifice of First Amendment freedoms as the price for an equal share of the rights, benefits, and privileges enjoyed by other citizens." Roy, supra, at 728 (opinion concurring in part and dissenting in part).

The Court attempts to support its narrow reading of the Clause by claiming that "[w]e have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." Ante, at 878-879. But as the Court later notes, as it must, in cases such as Cantwell and Yoder we have in fact

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interpreted the Free Exercise Clause to forbid application of a generally applicable prohibition to religiously motivated conduct. See Cantwell, supra, at 304-307; Yoder, 406 U.S., at 214-234. Indeed, in Yoder we expressly rejected the interpretation the Court now adopts:

"[O]ur decisions have rejected the idea that religiously grounded conduct is always outside the protection of the Free Exercise Clause. It is true that activities of individuals, even when religiously based, are often subject [494 U.S. 872, 896] to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare, or the Federal Government in the exercise of its delegated powers. But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability. . . . .

". . . A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for government neutrality if it unduly burdens the free exercise of religion." Id., at 219-220 (emphasis added; citations omitted).

The Court endeavors to escape from our decisions in Cantwell and Yoder by labeling them "hybrid" decisions, ante, at 892, but there is no denying that both cases expressly relied on the Free Exercise Clause, see Cantwell, 310 U.S., at 303-307; Yoder, supra, at 219-229, and that we have consistently regarded those cases as part of the mainstream of our free exercise jurisprudence. Moreover, in each of the other cases cited by the Court to support its categorical rule, ante, at 879-880, we rejected the particular constitutional claims before us only after carefully weighing the competing interests. See Prince v. Massachusetts, 321 U.S. 158, 168-170 (1944) (state interest in regulating children's activities justifies denial of religious exemption from child labor laws); Braunfeld v. Brown, 366 U.S. 599, 608-609 (1961) (plurality opinion) (state interest in uniform day of rest justifies denial of religious exemption from Sunday closing law); Gillette, supra, at 462 (state interest in military affairs justifies denial of religious exemption from conscription laws); Lee, supra, at 258-259 (state interest in comprehensive Social Security system justifies denial of religious exemption from mandatory participation requirement). That we rejected the free exercise [494 U.S. 872, 897] claims in those cases hardly calls into question the applicability of First Amendment doctrine in the first place. Indeed, it is surely unusual to judge the vitality of a constitutional doctrine by looking to the win-loss record of the plaintiffs who happen to come before us.

B

Respondents, of course, do not contend that their conduct is automatically immune from all governmental regulation simply because it is motivated by their sincere religious beliefs. The Court's rejection of that argument, ante, at 882, might therefore be regarded as merely harmless dictum. Rather, respondents invoke our traditional compelling interest test to argue that the Free Exercise Clause requires the State to grant them a limited exemption from its general criminal prohibition against the possession of peyote. The Court today, however, denies them even the

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opportunity to make that argument, concluding that "the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the [compelling interest] test inapplicable to" challenges to general criminal prohibitions. Ante, at 885.

In my view, however, the essence of a free exercise claim is relief from a burden imposed by government on religious practices or beliefs, whether the burden is imposed directly through laws that prohibit or compel specific religious practices, or indirectly through laws that, in effect, make abandonment of one's own religion or conformity to the religious beliefs of others the price of an equal place in the civil community. As we explained in Thomas:

"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." 450 U.S., at 717-718. [494 U.S. 872, 898]

See also Frazee v. Illinois Dept. of Employment Security, 489 U.S. 829, 832 (1989); Hobbie, 480 U.S., at 141. A State that makes criminal an individual's religiously motivated conduct burdens that individual's free exercise of religion in the severest manner possible, for it "results in the choice to theindividual of either abandoning his religious principle or facing criminal prosecution." Braunfeld, supra, at 605. I would have thought it beyond argument that such laws implicate free exercise concerns.

Indeed, we have never distinguished between cases in which a State conditions receipt of a benefit on conduct prohibited by religious beliefs and cases in which a State affirmatively prohibits such conduct. The Sherbert compelling interest test applies in both kinds of cases. See, e. g., Lee, 455 U.S., at 257-260 (applying Sherbert to uphold Social Security tax liability); Gillette, 401 U.S., at 462 (applying Sherbert to uphold military conscription requirement); Yoder, 406 U.S., at 215-234 (applying Sherbert to strike down criminal convictions for violation of compulsory school attendance law). As I noted in Bowen v. Roy:

"The fact that the underlying dispute involves an award of benefits rather than an exaction of penalties does not grant the Government license to apply a different version of the Constitution. . . .

". . . The fact that appellees seek exemption from a precondition that the Government attaches to an award of benefits does not, therefore, generate a meaningful distinction between this case and one where appellees seek an exemption from the Government's imposition of penalties upon them." 476 U.S., at 731-732 (opinion concurring in part and dissenting in part).

See also Hobbie, supra, at 141-142; Sherbert, 374 U.S., at 404. I would reaffirm that principle today: A neutral criminal law prohibiting conduct that a State may legitimately regulate

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is, if anything, more burdensome than a neutral civil [494 U.S. 872, 899] statute placing legitimate conditions on the award of a state benefit.

Legislatures, of course, have always been "left free to reach actions which were in violation of social duties or subversive of good order." Reynolds, 98 U.S., at 164; see also Yoder, supra, at 219-220; Braunfeld, 366 U.S., at 603-604. Yet because of the close relationship between conduct and religious belief, "[i]n every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." Cantwell, 310 U.S., at 304. Once it has been shown that a government regulation or criminal prohibition burdens the free exercise of religion, we have consistently asked the government to demonstrate that unbending application of its regulation to the religious objector "is essential to accomplish an overriding governmental interest," Lee, supra, at 257-258, or represents "the least restrictive means of achieving some compelling state interest," Thomas, supra, at 718. See, e. g., Braunfeld, supra, at 607; Sherbert, supra, at 406; Yoder, supra, at 214-215; Roy, 476 U.S., at 728-732 (opinion concurring in part and dissenting in part). To me, the sounder approach - the approach more consistent with our role as judges to decide each case on its individual merits - is to apply this test in each case to determine whether the burden on the specific plaintiffs before us is constitutionally significant and whether the particular criminal interest asserted by the State before us is compelling. Even if, as an empirical matter, a government's criminal laws might usually serve a compelling interest in health, safety, or public order, the First Amendment at least requires a case-by-case determination of the question, sensitive to the facts of each particular claim. Cf. McDaniel, 435 U.S., at 628, n. 8 (plurality opinion) (notingapplication of Sherbert to general criminal prohibitions and the "delicate balancing required by our decisions in" Sherbert and Yoder). Given the range of conduct that a State might legitimately make [494 U.S. 872, 900] criminal, we cannot assume, merely because a law carries criminal sanctions and is generally applicable, that the First Amendment never requires the State to grant a limited exemption for religiously motivated conduct.

Moreover, we have not "rejected" or "declined to apply" the compelling interest test in our recent cases. Ante, at 883-884. Recent cases have instead affirmed that test as a fundamental part of our First Amendment doctrine. See, e. g., Hernandez, 490 U.S., at 699; Hobbie, supra, at 141-142 (rejecting Chief Justice Burger's suggestion in Roy, supra, at 707-708, that free exercise claims be assessed under a less rigorous "reasonable means" standard). The cases cited by the Court signal no retreat from our consistent adherence to the compelling interest test. In both Bowen v. Roy, supra, and Lyng v. Northwest Indian Cemetery Protective Assn., 485 U.S. 439 (1988), for example, we expressly distinguished Sherbert on the ground that the First Amendment does not "require the Government itself to behave in ways that the individual believes will further his or her spiritual development . . . . 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." Roy, supra, at 699; see Lyng, supra, at 449. This distinction makes sense because "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." Sherbert, supra, at 412 (Douglas, J., concurring). Because the case sub judice, like the other cases in which we have applied Sherbert, plainly falls into the former category, I would apply those established precedents to the facts of this case.

Similarly, the other cases cited by the Court for the proposition that we have rejected application of the Sherbert test outside the unemployment compensation field, ante, at 884, are distinguishable because they arose in the narrow, specialized contexts in which we have not traditionally required [494 U.S. 872, 901] the government to justify a burden on religious conduct by articulating a compelling interest. See Goldman v. Weinberger, 475 U.S. 503, 507 (1986) ("Our review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society"); O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987) ("[P]rison regulations alleged to infringe constitutional rights are judged under a `reasonableness' test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights") (citation omitted). That we did not apply the compelling interest test in these cases says nothing about whether the test should continue to apply in paradigm free exercise cases such as the one presented here.

The Court today gives no convincing reason to depart from settled First Amendment jurisprudence. There is nothing talismanic about neutral laws of general applicability or general criminal prohibitions, for laws neutral toward religion can coerce a person to violate his religious conscience or intrude upon his religious duties just as effectively as laws aimed at religion. Although the Court suggests that the compelling interest test, as applied to generally applicable laws, would result in a "constitutional anomaly," ante, at 886, the First Amendment unequivocally makes freedom of religion, like freedom from race discrimination and freedom of speech, a "constitutional nor[m]," not an "anomaly." Ibid. Nor would application of our established free exercise doctrine to this case necessarily be incompatible with our equal protection cases. Cf. Rogers v. Lodge, 458 U.S. 613, 618 (1982) (race-neutral law that "`bears more heavily on one race than another'" may violate equal protection) (citation omitted); Castaneda v. Partida, 430 U.S. 482, 492-495 (1977) (grand jury selection). We have in any event recognized that the Free Exercise Clause protects values distinct from those protected by the Equal Protection Clause. See Hobbie, 480 U.S., at 141-142. As the language of the [494 U.S. 872, 902] Clause itself makes clear, an individual's free exercise of religion is a preferred constitutional activity. See, e. g., McConnell, Accommodation of Religion, 1985 S. Ct. Rev. 1, 9 ("[T]he text of the First Amendment itself `singles out' religion for special protections"); P. Kauper, Religion and the Constitution 17 (1964). A law that makes criminal such an activity therefore triggers constitutional concern - and heightened judicial scrutiny - even if it does not target the particular religious conduct at issue. Our free speech cases similarly recognize that neutral regulations that affect free speech values are subject to a balancing, rather than categorical, approach. See, e. g., United States v. O'Brien, 391 U.S. 367, 377 (1968); Renton v. Playtime Theatres, Inc., 475 U.S. 41, 46-47 (1986); cf. Anderson v. Celebrezze, 460 U.S. 780, 792-794 (1983) (generally applicable laws may impinge on free association concerns). The Court's parade of horribles, ante, at 888-889, not only fails as a reason for discarding the compelling interest test, it instead demonstrates just the opposite: that courts have been quite capable of applying our free exercise jurisprudence to strike sensible balances between religious liberty and competing state interests.

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Finally, the Court today suggests that the disfavoring of minority religions is an "unavoidable consequence" under our system of government and that accommodation of such religions must be left to the political process. Ante, at 890. In my view, however, the First Amendment was enacted precisely to protect the rights of those whose religious practices are not shared by the majority and may be viewed with hostility. The history of our free exercise doctrine amply demonstrates the harsh impact majoritarian rule has had on unpopular or emerging religious groups such as the Jehovah's Witnesses and the Amish. Indeed, the words of Justice Jackson in West Virginia State Bd. of Ed. v. Barnette (overruling Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940)) are apt: [494 U.S. 872, 903]

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." 319 U.S., at 638.

See also United States v. Ballard, 322 U.S. 78, 87 (1944) ("The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views"). The compelling interest test reflects the First Amendment's mandate of preserving religious liberty to the fullest extent possible in a pluralistic society. For the Court to deem this command a "luxury," ante, at 888, is to denigrate "[t]he very purpose of a Bill of Rights."

III

The Court's holding today not only misreads settled First Amendment precedent; it appears to be unnecessary to this case. I would reach the same result applying our established free exercise jurisprudence.

A

There is no dispute that Oregon's criminal prohibition of peyote places a severe burden on the ability of respondents to freely exercise their religion. Peyote is a sacrament of the Native American Church and is regarded as vital to respondents' ability to practice their religion. See O. Stewart, Peyote Religion: A History 327-336 (1987) (describing modern status of peyotism); E. Anderson, Peyote: The Divine Cactus 41-65 (1980) (describing peyote ceremonies); Teachings from [494 U.S. 872, 904] the American Earth: Indian Religion and Philosophy 96-104 (D. Tedlock & B. Tedlock eds. 1975) (same); see also People v. Woody, 61 Cal. 2d 716, 721-722, 394 P.2d 813, 817-818 (1964). As we noted in Smith I, the Oregon Supreme Court concluded that "the Native American Church is a recognized religion, that peyote is a sacrament of that

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church, and that respondent's beliefs were sincerely held." 485 U.S., at 667. Under Oregon law, as construed by that State's highest court, members of the Native American Church must choose between carrying out the ritual embodying their religious beliefs and avoidance of criminal prosecution. That choice is, in my view, more than sufficient to trigger First Amendment scrutiny.

There is also no dispute that Oregon has a significant interest in enforcing laws that control the possession and use of controlled substances by its citizens. See, e. g., Sherbert, 374 U.S., at 403 (religiously motivated conduct may be regulated where such conduct "pose[s] some substantial threat to public safety, peace or order"); Yoder, 406 U.S., at 220 ("[A]ctivities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare"). As we recently noted, drug abuse is "one of the greatest problems affecting the health and welfare of our population" and thus "one of the most serious problems confronting our society today." Treasury Employees v. Von Raab, 489 U.S. 656, 668, 674 (1989). Indeed, under federal law (incorporated by Oregon law in relevant part, see Ore. Rev. Stat. 475.005(6) (1987)), peyote is specifically regulated as a Schedule I controlled substance, which means that Congress has found that it has a high potential for abuse, that there is no currently accepted medical use, and that there is a lack of accepted safety for use of the drug under medical supervision. See 21 U.S.C. 812(b)(1). See generally R. Julien, A Primer of Drug Action 149 (3d ed. 1981). In light of our recent decisions holding that the governmental [494 U.S. 872, 905] interests in the collection of income tax, Hernandez, 490 U.S., at 699-700, a comprehensive Social Security system, see Lee, 455 U.S., at 258-259, and military conscription, see Gillette, 401 U.S., at 460, are compelling, respondents do not seriously dispute that Oregon has a compelling interest in prohibiting the possession of peyote by its citizens.

B

Thus, the critical question in this case is whether exempting respondents from the State's general criminal prohibition "will unduly interfere with fulfillment of the governmental interest." Lee, supra, at 259; see also Roy, 476 U.S., at 727 ("[T]he Government must accommodate a legitimate free exercise claim unless pursuing an especially important interest by narrowly tailored means"); Yoder, supra, at 221; Braunfeld, 366 U.S., at 605-607. Although the question is close, I would conclude that uniform application of Oregon's criminal prohibition is "essential to accomplish," Lee, supra, at 257, its overriding interest in preventing the physical harm caused by the use of a Schedule I controlled substance. Oregon's criminal prohibition represents that State's judgment that the possession and use of controlled substances, even by only one person, is inherently harmful and dangerous. Because the health effects caused by the use of controlled substances exist regardless of the motivation of the user, the use of such substances, even for religious purposes, violates the very purpose of the laws that prohibit them. Cf. State v. Massey, 229 N.C. 734, 51 S. E. 2d 179 (denying religious exemption to municipal ordinance prohibiting handling of poisonous reptiles), appeal dism'd sub nom. Bunn v. North Carolina, 336 U.S. 942 (1949). Moreover, in view of the societal interest in preventing trafficking in controlled substances, uniform application of the criminal prohibition at issue is essential to the effectiveness of Oregon's stated interest in preventing any possession of peyote. Cf. Jacobson v.

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[494 U.S. 872, 906] Massachusetts, 197 U.S. 11 (1905) (denying exemption from small pox vaccination requirement).

For these reasons, I believe that granting a selective exemption in this case would seriously impair Oregon's compelling interest in prohibiting possession of peyote by its citizens. Under such circumstances, the Free Exercise Clause does not require the State to accommodate respondents' religiously motivated conduct. See, e. g., Thomas, 450 U.S., at 719. Unlike in Yoder, where we noted that "[t]he record strongly indicates that accommodating the religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society," 406 U.S., at 234; see also id., at 238-240 (WHITE, J., concurring), a religious exemption in this case would be incompatible with the State's interest in controlling use and possession of illegal drugs.

Respondents contend that any incompatibility is belied by the fact that the Federal Government and several States provide exemptions for the religious use of peyote, see 21 CFR 1307.31 (1989); 307 Ore., at 73, n. 2, 763 P.2d, at 148, n. 2 (citing 11 state statutes that expressly exempt sacramental peyote use from criminal proscription). But other governments may surely choose to grant anexemption without Oregon, with its specific asserted interest in uniform application of its drug laws, being required to do so by the First Amendment. Respondents also note that the sacramental use of peyote is central to the tenets of the Native American Church, but I agree with the Court, ante, at 886-887, that because "`[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith,'" quoting Hernandez, supra, at 699, our determination of the constitutionality of Oregon's general criminal prohibition cannot, and should not, turn on the centrality of the particular [494 U.S. 872, 907] religious practice at issue. This does not mean, of course, that courts may not make factual findings as to whether a claimant holds a sincerely held religious belief that conflicts with, and thus is burdened by, the challenged law. The distinction between questions of centrality and questions of sincerity and burden is admittedly fine, but it is one that is an established part of our free exercise doctrine, see Ballard, 322 U.S., at 85-88, and one that courts are capable of making. See Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 303-305 (1985).

I would therefore adhere to our established free exercise jurisprudence and hold that the State in this case has a compelling interest in regulating peyote use by its citizens and that accommodating respondents' religiously motivated conduct "will unduly interfere with fulfillment of the governmental nterest." Lee, supra, at 259. Accordingly, I concur in the judgment of the Court.

[Footnote *] Although JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN join Parts I and II of this opinion, they do not concur in the judgment.

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JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

This Court over the years painstakingly has developed a consistent and exacting standard to test the constitutionality of a state statute that burdens the free exercise of religion. Such a statute may stand only if the law in general, and the State's refusal to allow a religious exemption in particular, are justified by a compelling interest that cannot be served by less restrictive means.1 [494 U.S. 872, 908]

Until today, I thought this was a settled and inviolate principle of this Court's First Amendment jurisprudence. The majority, however, perfunctorily dismisses it as a "constitutional anomaly." Ante, at 886. As carefully detailed in JUSTICE O'CONNOR's concurring opinion, ante, p. 891, the majority is able to arrive at this view only by mischaracterizing this Court's precedents. The Court discards leading free exercise cases such as Cantwell v. Connecticut, 310 U.S. 296 (1940), and Wisconsin v. Yoder, 406 U.S. 205 (1972), as "hybrid." Ante, at 882. The Court views traditional free exercise analysis as somehow inapplicable to criminal prohibitions (as opposed to conditions on the receipt of benefits), and to state laws of general applicability (as opposed, presumably, to laws that expressly single out religious practices). Ante, at 884-885. The Court cites cases in which, due to various exceptional circumstances, we found strict scrutiny inapposite, to hint that the Court has repudiated that standard altogether. Ante, at 882-884. In short, it effectuates a wholesale overturning of settled law concerning the Religion Clauses of our Constitution. One hopes that the Court is aware of the consequences, and that its result is not a product of overreaction to the serious problems the country's drug crisis has generated.

This distorted view of our precedents leads the majority to conclude that strict scrutiny of a state law burdening the free exercise of religion is a "luxury" that a well-ordered society [494 U.S. 872, 909] cannot afford, ante, at 888, and that the repression of minority religions is an "unavoidable consequence of democratic government." Ante, at 890. I do not believe the Founders thought their dearly bought freedom from religious persecution a "luxury," but an essential element of liberty – and they could not have thought religious intolerance "unavoidable," for they drafted the Religion Clauses precisely in order to avoid that intolerance.

For these reasons, I agree with JUSTICE O'CONNOR's analysis of the applicable free exercise doctrine, and I join parts I and II of her opinion.2 As she points out, "the critical question in this case is whether exempting respondents from the State's general criminal prohibition `will unduly interfere with fulfillment of the governmental interest.'" Ante, at 905, quoting United States v. Lee, 455 U.S. 252, 259 (1982). I do disagree, however, with her specific answer to that question.

I

In weighing the clear interest of respondents Smith and Black (hereinafter respondents) in the free exercise of their religion against Oregon's asserted interest in enforcing its drug laws, it is

important to articulate in precise terms the state interest involved. It is not the State's broad interest [494 U.S. 872, 910] in fighting the critical "war on drugs" that must be weighed against respondents' claim, but the State's narrow interest in refusing to make an exception for the religious, ceremonial use of peyote. See Bowen v. Roy, 476 U.S. 693, 728 (1986) (O'CONNOR, J., concurring in part and dissenting in part) ("This Court has consistently asked the Government to demonstrate that unbending application of its regulation to the religious objector `is essential to accomplish an overriding governmental interest,'" quoting Lee, 455 U.S., at 257-258); Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707, 719 (1981) ("focus of the inquiry" concerning State's asserted interest must be "properly narrowed"); Yoder, 406 U.S., at 221 ("Where fundamental claims of religious freedom are at stake," the Court will not accept a State's "sweeping claim" that its interest in compulsory education is compelling; despite the validity of this interest "in the generality of cases, we must searchingly examine the interests that the State seeks to promote . . . and the impediment to those objectives that would flow from recognizing the claimed Amish exemption"). Failure to reduce the competing interests to the same plane of generality tends to distort the weighing process in the State's favor. See Clark, Guidelines for the Free Exercise Clause, 83 Harv. L. Rev. 327, 330-331 (1969) ("The purpose of almost any law can be traced back to one or another of the fundamental concerns of government: public health and safety, public peace and order, defense, revenue. To measure an individual interest directly against one of these rarified values inevitably makes the individual interest appear the less significant"); Pound, A Survey of Social Interests, 57 Harv. L. Rev. 1, 2 (1943) ("When it comes to weighing or valuing claims or demands with respect to other claims or demands, we must be careful to compare them on the same plane . . . [or else] we may decide the question in advance in our very way of putting it").

The State's interest in enforcing its prohibition, in order to be sufficiently compelling to outweigh a free exercise claim, [494 U.S. 872, 911] cannot be merely abstract or symbolic. The State cannot plausibly assert that unbending application of a criminal prohibition is essential to fulfill any compelling interest, if it does not, in fact, attempt to enforce that prohibition. In this case, the State actually has not evinced any concrete interest in enforcing its drug laws against religious users of peyote. Oregon has never sought to prosecute respondents, and does not claim that it has made significant enforcement efforts against other religious users of peyote.3 The State's asserted interest thus amounts only to the symbolic preservation of an unenforced prohibition. But a government interest in "symbolism, even symbolism for so worthy a cause as the abolition of unlawful drugs," Treasury Employees v. Von Raab, 489 U.S. 656, 687 (1989) (SCALIA, J., dissenting), cannot suffice to abrogate the constitutional rights of individuals.

Similarly, this Court's prior decisions have not allowed a government to rely on mere speculation about potential harms, but have demanded evidentiary support for a refusal to allow a religious exception. See Thomas, 450 U.S., at 719 (rejecting State's reasons for refusing religious exemption, for lack of "evidence in the record"); Yoder, 406 U.S., at 224-229 (rejecting State's argument concerning the dangers of a religious exemption as speculative, and unsupported by the record); Sherbert v. Verner, 374 U.S. 398, 407 (1963) ("[T]here is no proof whatever to warrant such fears . . . as those which the [State] now advance[s]"). In this case, the State's justification for refusing to recognize an exception to its criminal laws for religious peyote use is entirely speculative.

The State proclaims an interest in protecting the health and safety of its citizens from the dangers of unlawful drugs. It offers, however, no evidence that the religious use of peyote [494 U.S. 872, 912] has ever harmed anyone.4 The factual findings of other courts cast doubt on the State's assumption that religious use of peyote is harmful. See State v. Whittingham, 19 Ariz. App. 27, 30, 504 P.2d 950, 953 (1973) ("[T]he State failed to prove that the quantities of peyote used in the sacraments of the Native American Church are sufficiently harmful to the health and welfare of the participants so as to permit a legitimate intrusion under the State's police power"); People v. Woody, 61 Cal. 2d 716, 722-723, 394 P.2d 813, 818 (1964) ("[A]s the Attorney General . . . admits, . . . the opinion of scientists and other experts is `that peyote . . . works no permanent deleterious injury to the Indian'").

The fact that peyote is classified as a Schedule I controlled substance does not, by itself, show that any and all uses of peyote, in any circumstance, are inherently harmful and dangerous. The Federal Government, which created the classifications of unlawful drugs from which Oregon's drug laws are derived, apparently does not find peyote so dangerous as to preclude an exemption for religious use.5 Moreover, [494 U.S. 872, 913] other Schedule I drugs have lawful uses. See Olsen v. Drug Enforcement Admin., 279 U.S. App. D.C. 1, 6, n. 4, 878 F.2d 1458, 1463, n. 4 (medical and research uses of marijuana).

The carefully circumscribed ritual context in which respondents used peyote is far removed from the irresponsible and unrestricted recreational use of unlawful drugs.6 The Native American Church's internal restrictions on, and supervision of, its members' use of peyote substantially obviate the State's health and safety concerns. See id., at 10, 878 F.2d, at 1467 ("`The Administrator [of the Drug Enforcement Administration (DEA)] finds that . . . the Native American Church's use of peyote is isolated to specific ceremonial occasions,'" and so "`an accommodation can be made for a religious organization which uses peyote in circumscribed ceremonies'" (quoting DEA Final Order)); id., at 7, 878 F.2d, at 1464 ("[F]or members of the Native American Church, use of peyote outside the ritual is sacrilegious"); Woody, 61 Cal. 2d, at 721, 394 P.2d, at 817 ("[T]o use peyote for nonreligious purposes is sacrilegious"); R. Julien, A Primer of Drug Action 148 (3d ed. 1981) ("[P]eyote is seldom abused by members of the Native American [494 U.S. 872, 914] Church"); Slotkin, The Peyote Way, in Teachings from the American Earth 96, 104 (D. Tedlock & B. Tedlock eds. 1975) ("[T]he Native American Church . . . refuses to permit the presence of curiosity seekers at its rites, and vigorously opposes the sale or use of Peyote for non-sacramental purposes"); Bergman, Navajo Peyote Use: Its Apparent Safety, 128 Am. J. Psychiatry 695 (1971) (Bergman).7

Moreover, just as in Yoder, the values and interests of those seeking a religious exemption in this case are congruent, to a great degree, with those the State seeks to promote through its drug laws. See Yoder, 406 U.S., at 224, 228-229 (since the Amish accept formal schooling up to 8th grade, and then provide "ideal" vocational education, State's interest in enforcing its law against the Amish is "less substantial than . . . for children generally"); id., at 238 (WHITE, J., concurring). Not only does the church's doctrine forbid nonreligious use of peyote; it also generally advocates self-reliance, familial responsibility, and abstinence from alcohol. See Brief

for Association on American Indian Affairs et al. as Amici Curiae 33-34 (the church's "ethical code" has four parts: brotherly love, care of family, self-reliance, and avoidance of alcohol (quoting from the church membership card)); Olsen, 279 U.S. App. D.C., at 7, 878 F.2d, at 1464 (the Native American Church, "for all purposes other than the special, stylized ceremony, reinforced the state's prohibition"); [494 U.S. 872, 915] Woody, 61 Cal. 2d, at 721-722, n. 3, 394 P.2d, at 818, n. 3 ("[M]ost anthropological authorities hold Peyotism to be a positive, rather than negative, force in the lives of its adherents . . . the church forbids the use of alcohol . . ."). There is considerable evidence that the spiritual and social support provided by the church has been effective in combating the tragic effects of alcoholism on the Native American population. Two noted experts on peyotism, Dr. Omer C. Stewart and Dr. Robert Bergman, testified by affidavit to this effect on behalf of respondent Smith before the Employment Appeal Board. Smith Tr., Exh. 7; see also E. Anderson, Peyote: The Divine Cactus 165-166 (1980) (research by Dr. Bergman suggests "that the religious use of peyote seemed to be directed in an ego-strengthening direction with an emphasis on interpersonal relationships where each individual is assured of his own significance as well as the support of the group"; many people have "`come through difficult crises with the help of this religion . . . . It provides real help in seeing themselves not as people whose place and way in the world is gone, but as people whose way can be strong enough to change and meet new challenges'" (quoting Bergman 698)); Pascarosa & Futterman, Ethnopsychedelic Therapy for Alcoholics: Observations in the Peyote Ritual of the Native American Church, 8 J. of Psychedelic Drugs, No. 3, p. 215 (1976) (religious peyote use has been helpful in overcoming alcoholism); Albaugh & Anderson, Peyote in the Treatment of Alcoholism among American Indians, 131 Am. J. Psychiatry 1247, 1249 (1974) ("[T]he philosophy, teachings, and format of the [Native American Church] can be of great benefit to the Indian alcoholic"); see generally O. Stewart, Peyote Religion 75 et seq. (1987) (noting frequent observations, across many tribes and periods in history, of correlation between peyotist religion and abstinence from alcohol). Far from promoting the lawless and irresponsible use of drugs, Native American Church members' spiritual [494 U.S. 872, 916] code exemplifies values that Oregon's drug laws are presumably intended to foster.

The State also seeks to support its refusal to make an exception for religious use of peyote by invoking its interest in abolishing drug trafficking. There is, however, practically no illegal traffic in peyote. See Olsen, 279 U.S. App. D.C., at 6, 7, 878 F.2d, at 1463, 1467 (quoting DEA Final Order to the effect that total amount of peyote seized and analyzed by federal authorities between 1980 and 1987 was 19.4 pounds; in contrast, total amount of marijuana seized during that period was over 15 million pounds). Also, the availability of peyote for religious use, even if Oregon were to allow an exemption from its criminal laws, would still be strictly controlled by federal regulations, see 21 U.S.C. 821-823 (registration requirements for distribution of controlled substances); 21 CFR 1307.31 (1989) (distribution of peyote to Native American Church subject to registration requirements), and by the State of Texas, the only State in which peyote grows in significant quantities. See Texas Health & Safety Code Ann. 481.111 (1990 pamphlet); Texas Admin. Code, Tit. 37, pt. 1, ch. 13, Controlled Substances Regulations, 13.35-13.41 (1989); Woody, 61 Cal. 2d, at 720, 394 P.2d, at 816 (peyote is "found in the Rio Grande Valley of Texas and northern Mexico"). Peyote simply is not a popular drug; its distribution for use in religious rituals has nothing to do with the vast and violent traffic in illegal narcotics that plagues this country.

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Finally, the State argues that granting an exception for religious peyote use would erode its interest in the uniform, fair, and certain enforcement of its drug laws. The State fears that, if it grants an exemption for religious peyote use, a flood of other claims to religious exemptions will follow. It would then be placed in a dilemma, it says, between allowing a patchwork of exemptions that would hinder its law enforcement efforts, and risking a violation of the Establishment Clause by arbitrarily limiting its religious exemptions. This [494 U.S. 872, 917] argument, however, could be made in almost any free exercise case. See Lupu, Where Rights Begin: The Problem of Burdens on the Free Exercise of Religion, 102 Harv. L. Rev. 933, 947 (1989) ("Behind every free exercise claim is a spectral march; grant this one, a voice whispers to each judge, and you will be confronted with an endless chain of exemption demands from religious deviants of every stripe"). This Court, however, consistently has rejected similar arguments in past free exercise cases, and it should do so here as well. See Frazee v. Illinois Dept. of Employment Security, 489 U.S. 829, 835 (1989) (rejecting State's speculation concerning cumulative effect of many similar claims); Thomas, 450 U.S., at 719 (same); Sherbert, 374 U.S., at 407.

The State's apprehension of a flood of other religious claims is purely speculative. Almost half the States, and the Federal Government, have maintained an exemption for religious peyote use for many years, and apparently have not found themselves overwhelmed by claims to other religious exemptions.8 Allowing an exemption for religious peyote use [494 U.S. 872, 918] would not necessarily oblige the State to grant a similar exemption to other religious groups. The unusual circumstances that make the religious use of peyote compatible with the State's interests in health and safety and in preventing drug trafficking would not apply to other religious claims. Some religions, for example, might not restrict drug use to a limited ceremonial context, as does the Native American Church. See, e. g., Olsen, 279 U.S. App. D.C., at 7, 878 F.2d, at 1464 ("[T]he Ethiopian Zion Coptic Church . . . teaches that marijuana is properly smoked `continually all day'"). Some religious claims, see n. 8, supra, involve drugs such as marijuana and heroin, in which there is significant illegal traffic, with its attendant greed and violence, so that it would be difficult to grant a religious exemption without seriously compromising law enforcement efforts.9 That the State might grant an exemption for religious peyote use, but deny other religious claims arising in different circumstances, would not violate the Establishment Clause. Though the State must treat all religions equally, and not favor one over another, this obligation is fulfilled by the uniform application of the "compelling interest" test to all free exercise claims, not by reaching uniform results as to all claims. A showing that religious peyote use does not unduly interfere with the State's interests is "one that probably few other religious groups or sects could make," Yoder, 406 U.S., at 236; this does not mean that an exemption limited to peyote use is tantamount to an establishment of religion. See Hobbie v. Unemployment Appeals Comm'n of Fla., 480 U.S. 136, 144-145 (1987) ("[T]he government may (and [494 U.S. 872, 919] sometimes must) accommodate religious practices and . . . may do so without violating the Establishment Clause"); Yoder, 406 U.S., at 220-221 ("Court must not ignore the danger that an exception from a general [law] . . . may run afoul of the Establishment Clause, but that danger cannot be allowed to prevent any exception no matter how vital it may be to the protection of values promoted by the right of free exercise"); id., at 234, n. 22.

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II

Finally, although I agree with JUSTICE O'CONNOR that courts should refrain from delving into questions whether, as a matter of religious doctrine, a particular practice is "central" to the religion, ante, at 906-907, I do not think this means that the courts must turn a blind eye to the severe impact of a State's restrictions on the adherents of a minority religion. Cf. Yoder, 406 U.S., at 219 (since "education is inseparable from and a part of the basic tenets of their religion . . . [, just as] baptism, the confessional, or a sabbath may be for others," enforcement of State's compulsory education law would "gravely endanger if not destroy the free exercise of respondents' religious beliefs").

Respondents believe, and their sincerity has never been at issue, that the peyote plant embodies their deity, and eating it is an act of worship and communion. Without peyote, they could not enact the essential ritual of their religion. See Brief for Association on American Indian Affairs et al. as Amici Curiae 5-6 ("To the members, peyote is consecrated with powers to heal body, mind and spirit. It is a teacher; it teaches the way to spiritual life through living in harmony and balance with the forces of the Creation. The rituals are an integral part of the life process. They embody a form of worship in which the sacrament Peyote is the means for communicating with the Great Spirit"). See also O. Stewart, Peyote Religion 327-330 (1987) (description of peyote ritual); [494 U.S. 872, 920] T. Hillerman, People of Darkness 153 (1980) (description of Navajo peyote ritual).

If Oregon can constitutionally prosecute them for this act of worship, they, like the Amish, may be "forced to migrate to some other and more tolerant region." Yoder, 406 U.S., at 218. This potentially devastating impact must be viewed in light of the federal policy - reached in reaction to many years of religious persecution and intolerance - of protecting the religious freedom of Native Americans. See American Indian Religious Freedom Act, 92 Stat. 469, 42 U.S.C. 1996 (1982 ed.) ("[I]t 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 . . ., including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites").10 Congress recognized that certain substances, such as peyote, "have religious significance because they are sacred, they have power, they heal, they are necessary to the exercise of [494 U.S. 872, 921] the rites of the religion, they are necessary to the cultural integrity of the tribe, and, therefore, religious survival." H. R. Rep. No. 95-1308, p. 2 (1978).

The American Indian Religious Freedom Act, in itself, may not create rights enforceable against government action restricting religious freedom, but this Court must scrupulously apply its free exercise analysis to the religious claims of Native Americans, however unorthodox they may be. Otherwise, both the First Amendment and the stated policy of Congress will offer to Native Americans merely an unfulfilled and hollow promise.

III

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For these reasons, I conclude that Oregon's interest in enforcing its drug laws against religious use of peyote is not sufficiently compelling to outweigh respondents' right to the free exercise of their religion. Since the State could not constitutionally enforce its criminal prohibition against respondents, the interests underlying the State's drug laws cannot justify its denial of unemployment benefits. Absent such justification, the State's regulatory interest in denying benefits for religiously motivated "misconduct," see ante, at 874, is indistinguishable from the state interests this Court has rejected in Frazee, Hobbie, Thomas, and Sherbert. The State of Oregon cannot, consistently with the Free

Exercise Clause, deny respondents unemployment benefits.

I dissent.

[Footnote 1] See Hernandez v. Commissioner, 490 U.S. 680, 699 (1989) ("The free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden"); Hobbie v. Unemployment Appeals Comm'n of Fla., 480 U.S. 136, 141 (1987) (state laws burdening religions "must be subjected to strict scrutiny and could be justified only by proof by the State of a compelling interest"); Bowen v. Roy, 476 U.S. 693, 732 (1986) (O'CONNOR, J., concurring in part and dissenting in part) ("Our precedents have long required the Government to show that a compelling state interest is served by its refusal to grant a religious exemption"); United States v. Lee, 455 U.S. 252, 257-258 [494 U.S. 872, 908] (1982) ("The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest"); Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707, 718 (1981) ("The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest"); Wisconsin v. Yoder, 406 U.S. 205, 215 (1972) ("[O]nly those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion"); Sherbert v. Verner, 374 U.S. 398, 406 (1963) (question is "whether some compelling state interest . . . justifies the substantial infringement of appellant's First Amendment right").

[Footnote 2] I reluctantly agree that, in light of this Court's decision in Employment Division, Dept. of Human Resources of Ore. v. Smith, 485 U.S. 660 (1988), the question on which certiorari was granted is properly presented in this case. I have grave doubts, however, as to the wisdom or propriety of deciding the constitutionality of a criminal prohibition which the State has not sought to enforce, which the State did not rely on in defending its denial of unemployment benefits before the state courts, and which the Oregon courts could, on remand, either invalidate on state constitutional grounds, or conclude that it remains irrelevant to Oregon's interest in administering its unemployment benefits program.

It is surprising, to say the least, that this Court which so often prides itself about principles of judicial restraint and reduction of federal control over matters of state law would stretch its

jurisdiction to the limit in order to reach, in this abstract setting, the constitutionality of Oregon's criminal prohibition of peyote use.

[Footnote 3] The only reported case in which the State of Oregon has sought to prosecute a person for religious peyote use is State v. Soto, 21 Ore. App. 794, 537 P.2d 142 (1975), cert. denied, 424 U.S. 955 (1976).

[Footnote 4] This dearth of evidence is not surprising, since the State never asserted this health and safety interest before the Oregon courts; thus, there was no opportunity for factfinding concerning the alleged dangers of peyote use. What has now become the State's principal argument for its view that the criminal prohibition is enforceable against religious use of peyote rests on no evidentiary foundation at all.

[Footnote 5] See 21 CFR 1307.31 (1989) ("The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law"); see Olsen v. Drug Enforcement Admin., 279 U.S. App. D.C. 1, 6-7, 878 F.2d 1458, 1463-1464 (1989) (explaining DEA's rationale for the exception).

Moreover, 23 States, including many that have significant Native American populations, have statutory or judicially crafted exemptions in their drug laws for religious use of peyote. See 307 Ore. 68, 73, n. 2, 763 P.2d 146, 148, n. 2 (1988) (case below). Although this does not prove that Oregon [494 U.S. 872, 913] must have such an exception too, it is significant that these States, and the Federal Government, all find their (presumably compelling) interests in controlling the use of dangerous drugs compatible with an exemption for religious use of peyote. Cf. Boos v. Barry, 485 U.S. 312, 329 (1988) (finding that an ordinance restricting picketing near a foreign embassy was not the least restrictive means of serving the asserted government interest; existence of an analogous, but more narrowly drawn, federal statute showed that "a less restrictive alternative is readily available").

[Footnote 6] In this respect, respondents' use of peyote seems closely analogous to the sacramental use of wine by the Roman Catholic Church. During Prohibition, the Federal Government exempted such use of wine from its general ban on possession and use of alcohol. See National Prohibition Act, Title II, 3, 41 Stat. 308. However compelling the Government's then general interest in prohibiting the use of alcohol may have been, it could not plausibly have asserted an interest sufficiently compelling to outweigh Catholics' right to take communion.

[Footnote 7] The use of peyote is, to some degree, self-limiting. The peyote plant is extremely bitter, and eating it is an unpleasant experience, which would tend to discourage casual or recreational use. See State v. Whittingham, 19 Ariz. App. 27, 30, 504 P.2d 950, 953 (1973) ("`[P]eyote can cause vomiting by reason of its bitter taste'"); E. Anderson, Peyote: The Divine

Cactus 161 (1980) ("[T]he eating of peyote usually is a difficult ordeal in that nausea and other unpleasant physical manifestations occur regularly. Repeated use is likely, therefore, only if one is a serious researcher or is devoutly involved in taking peyote as part of a religious ceremony"); Slotkin, The Peyote Way, in Teachings from the American Earth 96, 98 (D. Tedlock & B. Tedlock eds. 1975) ("[M]any find it bitter, inducing indigestion or nausea").

[Footnote 8] Over the years, various sects have raised free exercise claims regarding drug use. In no reported case, except those involving claims of religious peyote use, has the claimant prevailed. See, e. g., Olsen v. Iowa, 808 F.2d 652 (CA8 1986) (marijuana use by Ethiopian Zion Coptic Church); United States v. Rush, 738 F.2d 497 (CA1 1984) (same), cert. denied, 470 U.S. 1004 (1985); United States v. Middleton, 690 F.2d 820 (CA11 1982) (same), cert denied, 460 U.S. 1051 (1983); United States v. Hudson, 431 F.2d 468 (CA5 1970) (marijuana and heroin use by Moslems), cert denied, 400 U.S. 1011 (1971); Leary v. United States, 383 F.2d 851 (CA5 1967) (marijuana use by Hindu), rev'd on other grounds, 395 U.S. 6 (1969); Commonwealth v. Nissenbaum, 404 Mass. 575, 536 N. E. 2d 592 (1989) (marijuana use by Ethiopian Zion Coptic Church); State v. Blake, 5 Haw. App. 411, 695 P.2d 336 (1985) (marijuana use in practice of Hindu Tantrism); Whyte v. United States, 471 A. 2d 1018 (D.C. App. 1984) (marijuana use by Rastafarian); State v. Rocheleau, 142 Vt. 61, 451 A. 2d 1144 (1982) (marijuana use by Tantric Buddhist); State v. Brashear, 92 N. M. 622, 593 P.2d 63 (1979) (marijuana use by nondenominational Christian); State v. Randall, 540 S. W. 2d 156 (Mo. App. 1976) (marijuana, LSD, and hashish use by Aquarian Brotherhood Church). See generally Annotation, Free [494 U.S. 872, 918] Exercise of Religion as Defense to Prosecution for Narcotic or Psychedelic Drug Offense, 35 A. L. R. 3d 939 (1971 and Supp. 1989).

[Footnote 9] Thus, this case is distinguishable from United States v. Lee, 455 U.S. 252 (1982), in which the Court concluded that there was "no principled way" to distinguish other exemption claims, and the "tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief." Id., at 260.

[Footnote 10] See Federal Agencies Task Force, Report to Congress on American Indian Religious Freedom Act of 1978, pp. 1-8 (Aug. 1979) (history of religious persecution); Barsh, The Illusion of Religious Freedom for Indigenous Americans, 65 Ore. L. Rev. 363, 369-374 (1986).

Indeed, Oregon's attitude toward respondents' religious peyote use harkens back to the repressive federal policies pursued a century ago:

"In the government's view, traditional practices were not only morally degrading, but unhealthy. `Indians are fond of gatherings of every description,' a 1913 public health study complained, advocating the restriction of dances and `sings' to stem contagious diseases. In 1921, Commissioner of Indian Affairs Charles Burke reminded his staff to punish any Indian engaged in `any dance which involves . . . the reckless giving away of property . . . frequent or prolonged

periods of celebration . . . in fact, any disorderly or plainly excessive performance that promotes superstitious cruelty, licentiousness, idleness, danger to health, and shiftless indifference to family welfare.' Two years later, he forbid Indians under the age of 50 from participating in any dances of any kind, and directed federal employees `to educate public opinion' against them." Id., at 370-371 (footnotes omitted). [494 U.S. 872, 922]

7. Arrêt Boerne

U.S. Supreme Court No. 95-2074

CITY OF BOERNE, PETITIONER v. P. F. FLORES, ARCHBISHOP OF SAN ANTONIO, AND UNITED STATES

on writ of certiorari to the united states court of appeals for the fifth circuit

[June 25, 1997]

Justice Kennedy delivered the opinion of the Court. *

A decision by local zoning authorities to deny a church a building permit was challenged under the Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat. 1488, 42 U.S.C. § 2000bb et seq. The case calls into question the authority of Congress to enact RFRA. We conclude the statute exceeds Congress' power.

Situated on a hill in the city of Boerne, Texas, some 28 miles northwest of San Antonio, is St. Peter Catholic Church. Built in 1923, the church's structure replicates the mission style of the region's earlier history. The church seats about 230 worshippers, a number too small for its growing parish. Some 40 to 60 parishioners cannot be accommodated at some Sunday masses. In order to meet the needs of the congregation the Archbishop of San Antonio gave permission to the parish to plan alterations to enlarge the building.

A few months later, the Boerne City Council passed an ordinance authorizing the city's Historic LandmarkCommission to prepare a preservation plan with proposed historic landmarks and districts. Under the ordinance, the Commission must preapprove construction affecting historic landmarks or buildings in a historic district.

Soon afterwards, the Archbishop applied for a building permit so construction to enlarge the church could proceed. City authorities, relying on the ordinance and the designation of a historic district (which, they argued, included the church), denied the application. The Archbishop brought this suit challenging the permit denial in the United States District Court for the Western District of Texas. 877 F. Supp. 355 (1995).

The complaint contained various claims, but to this point the litigation has centered on RFRA and the question of its constitutionality. The Archbishop relied upon RFRA as one basis

for relief from the refusal to issue the permit. The District Court concluded that by enacting RFRA Congress exceeded the scope of its enforcement power under §5 of the Fourteenth Amendment. The court certified its order for interlocutory appeal and the Fifth Circuit reversed, finding RFRA to be constitutional. 73 F. 3d 1352 (1996). We granted certiorari, 519 U. S (1996), and now reverse.

Congress enacted RFRA in direct response to the Court's decision in Employment Div., Dept. Of Human Resources of Ore. v. Smith, 494 U.S. 872 (1990). There we considered a Free Exercise Clause claim brought by members of the Native American Church who were denied unemployment benefits when they lost their jobs because they had used peyote. Their practice was to ingest peyote for sacramental purposes, and they challenged an Oregon statute of general applicability which made use of the drug criminal. In evaluating the claim, we declined to apply the balancing test set forthin Sherbert v. Verner, 374 U.S. 398 (1963), under which we would have asked whether Oregon's prohibition substantially burdened a religious practice and, if it did, whether the burden was justified by a compelling government interest. We stated:

"[G]overnment's ability to enforce generally applicable prohibitions of socially harmful conduct . . . cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development. To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is `compelling' . . . contradicts both constitutional tradition and common sense." 494 U.S., at 885 (internal quotation marks and citation omitted).

The application of the Sherbert test, the Smith decision explained, would have produced an anomaly in the law, a constitutional right to ignore neutral laws of general applicability. The anomaly would have been accentuated, the Court reasoned, by the difficulty of determining whether a particular practice was central to an individual's religion. We explained, moreover, that it "is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." 494 U.S., at 887 (internal quotation marks and citation omitted).

I

he only instances where a neutral, generally applicable law had failed to pass constitutional muster, the Smith Court noted, were cases in which other constitutional protections were at stake. Id., at 881-882. In Wisconsin v. Yoder, 406 U.S. 205 (1972), for example, we invalidated Wisconsin's mandatory school attendance law as applied to Amish parents who refused on religious grounds to send their children to school. Thatcase implicated not only the right to the free exercise of religion but also the right of parents to control their children's education.

The Smith decision acknowledged the Court had employed the Sherbert test in considering free exercise challenges to state unemployment compensation rules on three

occasions where the balance had tipped in favor of the individual. See Sherbert, supra; Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707 (1981); Hobbie v. Unemployment Appeals Comm'n of Fla., 480 U.S. 136 (1987). Those cases, the Court explained, stand for "the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of religious hardship without compelling reason." 494 U.S., at 884 (internal quotation marks omitted). By contrast, where a general prohibition, such as Oregon's, is at issue, "the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the test inapplicable to [free exercise] challenges." Id., at 885. Smith held that neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest.

Four Members of the Court disagreed. They argued the law placed a substantial burden on the Native American Church members so that it could be upheld only if the law served a compelling state interest and was narrowly tailored to achieve that end. Id., at 894. Justice O'Connor concluded Oregon had satisfied the test, while Justice Blackmun, joined by Justice Brennan and Justice Marshall, could see no compelling interest justifying the law's application to the members.

These points of constitutional interpretation were debated by Members of Congress in hearings and floor debates. Many criticized the Court's reasoning, and this disagreement resulted in the passage of RFRA. Congress announced:

"(1) [T]he framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

"(2) laws `neutral' toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

"(3) governments should not substantially burden religious exercise without compelling justification;

"(4) in Employment Division v. Smith, 494 U.S. 872 (1990), the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

"(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests." 42 U.S.C. § 2000bb(a).

The Act's stated purposes are:

"(1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

"(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government." §2000bb(b).

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RFRA prohibits "[g]overnment" from "substantially burden[ing]" a person's exercise of religion even the burden results from a rule of general applicability unless the government can demonstrate the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." §2000bb-1. TheAct's mandate applies to any "branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States," as well as to any "State, or . . . subdivision of a State." §2000bb 2(1). The Act's universal coverage is confirmed in §2000bb 3(a), under which RFRA "applies to all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after [RFRA's enactment]." In accordance with RFRA's usage of the term, we shall use "state law" to include local and municipal ordinances.

Under our Constitution, the Federal Government is one of enumerated powers. McCulloch v. Maryland, 4 Wheat. 316, 405 (1819); see also The Federalist No. 45, p. 292 (C. Rossiter ed. 1961) (J. Madison). The judicial authority to determine the constitutionality of laws, in cases and controversies, is based on the premise that the "powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." Marbury v. Madison, 1 Cranch 137, 176 (1803).

Congress relied on its Fourteenth Amendment enforcement power in enacting the most far reaching and substantial of RFRA's provisions, those which impose its requirements on the States. See Religious Freedom Restoration Act of 1993, S. Rep. No. 103-111, pp. 13-14 (1993) (Senate Report); H. R. Rep. No. 103-88, p. 9 (1993) (House Report). The Fourteenth Amendment provides, in relevant part:

"Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any personwithin its jurisdiction the equal protection of the laws.

. . . . .

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The parties disagree over whether RFRA is a proper exercise of Congress' §5 power "to enforce" by "appropriate legislation" the constitutional guarantee that no State shall deprive any person of "life, liberty, or property, without due process of law" nor deny any person "equal protection of the laws."

In defense of the Act respondent contends, with support from the United States as amicus, that RFRA is permissible enforcement legislation. Congress, it is said, is only protecting by legislation one of the liberties guaranteed by the Fourteenth Amendment's Due Process Clause,

the free exercise of religion, beyond what is necessary under Smith. It is said the congressional decision to dispense with proof of deliberate or overt discrimination and instead concentrate on a law's effects accords with the settled understanding that §5 includes the power to enact legislation designed to prevent as well as remedy constitutional violations. It is further contended that Congress' §5 power is not limited to remedial or preventive legislation.

All must acknowledge that §5 is "a positive grant of legislative power" to Congress, Katzenbach v. Morgan, 384 U.S. 641, 651 (1966). In Ex parte Virginia, 100 U.S. 339, 345-346 (1880), we explained the scope of Congress' §5 power in the following broad terms:

"Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to allpersons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

Legislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into "legislative spheres of autonomy previously reserved to the States." Fitzpatrick v. Bitzer, 427 U.S. 445, 455 (1976). For example, the Court upheld a suspension of literacy tests and similar voting requirements under Congress' parallel power to enforce the provisions of the Fifteenth Amendment, see U. S. Const., Amdt. 15, §2, as a measure to combat racial discrimination in voting, South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966), despite the facial constitutionality of the tests under Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45 (1959). We have also concluded that other measures protecting voting rights are within Congress' power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures placed on the States. South Carolina v. Katzenbach, supra (upholding several provisions of the Voting Rights Act of 1965); Katzenbach v. Morgan, supra (upholding ban on literacy tests that prohibited certain people schooled in Puerto Rico from voting); Oregon v. Mitchell, 400 U.S. 112 (1970) (upholding 5 year nationwide ban on literacy tests and similar voting requirements for registering to vote); City of Rome v. United States, 446 U.S. 156, 161 (1980) (upholding 7 year extension of the Voting Rights Act's requirement that certain jurisdictions preclear any change to a " `standard, practice, or procedure with respect to voting' "); see also James Everard's Breweries v. Day, 265 U.S. 545 (1924) (upholding ban on medical prescription of intoxicating malt liquors as appropriate to enforce Eighteenth Amendment ban on manufacture,sale, or transportation of intoxicating liquors for beverage purposes).

It is also true, however, that "[a]s broad as the congressional enforcement power is, it is not unlimited." Oregon v. Mitchell, supra, at 128 (opinion of Black, J.). In assessing the breadth of §5's enforcement power, we begin with its text. Congress has been given the power "to enforce" the "provisions of this article." We agree with respondent, of course, that Congress can enact legislation under §5 enforcing the constitutional right to the free exercise of religion. The "provisions of this article," to which §5 refers, include the Due Process Clause of the Fourteenth Amendment. Congress' power to enforce the Free Exercise Clause follows from our holding in

Cantwell v. Connecticut, 310 U.S. 296, 303 (1940), that the "fundamental concept of liberty embodied in [the Fourteenth Amendment's Due Process Clause] embraces the liberties guaranteed by the First Amendment." See also United States v. Price, 383 U.S. 787, 789 (1966) (there is "no doubt of the power of Congress to enforce by appropriate criminal sanction every right guaranteed by the Due Process Clause of the Fourteenth Amendment") (internal quotation marks and citation omitted).

Congress' power under §5, however, extends only to "enforc[ing]" the provisions of the Fourteenth Amendment. The Court has described this power as "remedial," South Carolina v. Katzenbach, supra, at 326. The design of the Amendment and the text of §5 are inconsistent with the suggestion that Congress has the power to decree the substance of the Fourteenth Amendment's restrictions on the States. Legislation which alters the meaning of the Free Exercise Clause cannot be said to be enforcing the Clause. Congress does not enforce a constitutional right by changing what the right is.

It has been given the power "to enforce," not the power to determine what constitutes a constitutional violation. Were it not so, what Congress would be enforcing would no longer be, in any meaningful sense, the "provisions of [the Fourteenth Amendment]."

While the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies, the distinction exists and must be observed. There must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end. Lacking such a connection, legislation may become substantive in operation and effect. History and our case law support drawing the distinction, one apparent from the text of the Amendment.

The Fourteenth Amendment's history confirms the remedial, rather than substantive, nature of the Enforcement Clause. The Joint Committee on Reconstruction of the 39th Congress began drafting what would become the Fourteenth Amendment in January 1866. The objections to the Committee's first draft of the Amendment, and the rejection of the draft, have a direct bearing on the central issue of defining Congress' enforcement power. In February, Republican Representative John Bingham of Ohio reported the following draft amendment to the House of Representatives on behalf of the Joint Committee:

"The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States, and to all persons in the several States equal protection in the rights of life, liberty, and property." Cong. Globe, 39th Cong., 1st Sess., 1034 (1866).

The proposal encountered immediate opposition, whichcontinued through three days of debate. Members of Congress from across the political spectrum criticized the Amendment, and the criticisms had a common theme: The proposed Amendment gave Congress too much legislative power at the expense of the existing constitutional structure. E.g., id., at 1063-1065

(statement of Rep. Hale); id., at 1082 (statement of Sen. Stewart); id., at 1095 (statement of Rep. Hotchkiss); id., at App. 133-135 (statement of Rep. Rogers). Democrats and conservative Republicans argued that the proposed Amendment would give Congress a power to intrude into traditional areas of state responsibility, a power inconsistent with the federal design central to the Constitution. Typifying these views, Republican Representative Robert Hale of New York labeled the Amendment "an utter departure from every principle ever dreamed of by the men who framed our Constitution," id., at 1063, and warned that under it "all State legislation, in its codes of civil and criminal jurisprudence and procedures . . . may be overridden, may be repealed or abolished, and the law of Congress established instead." Ibid. Senator William Stewart of Nevada likewise stated the Amendment would permit "Congress to legislate fully upon all subjects affecting life, liberty, and property," such that "there would not be much left for the State Legislatures," and would thereby "work an entire change in our form of government." Id., at 1082; accord, id., at 1087 (statement of Rep. Davis); id., at App. 133 (statement of Rep. Rogers). Some radicals, like their brethren "unwilling that Congress shall have any such power . . . to establish uniform laws throughout the United States upon . . . the protection of life, liberty, and property," id., at 1095 (statement of Rep. Hotchkiss), also objected that giving Congress primary responsibility for enforcing legal equality would place power in the hands of changing congressional majorities. Ibid. See generally Bickel, The Original Understanding and the SegregationDecision, 69 Harv. L. Rev. 1, 57 (1955); Graham, Our "Declaratory" Fourteenth Amendment, 7 Stan. L. Rev. 3, 21 (1954).

As a result of these objections having been expressed from so many different quarters, the House voted to table the proposal until April. See e.g., B. Kendrick, Journal of the Joint Committee of Fifteen on Reconstruction 215, 217 (1914); Cong. Globe, 42d Cong., 1st Sess., App. 115 (1871) (statement of Rep. Farnsworth). The congressional action was seen as marking the defeat of the proposal. See The Nation, Mar. 8, 1866, p. 291 ("The postponement of the amendment . . . is conclusive against the passage of [it]"); New York Times, Mar. 1, 1866, p. 4 ("It is doubtful if this ever comes before the House again . . ."); see also Cong. Globe, 42d Cong., 1st Sess., App., at 115 (statement of Rep. Farnsworth) (The Amendment was "given its quietus by a postponement for two months, where it slept the sleep that knows no waking"). The measure was defeated "chiefly because many members of the legal profession s[aw] in [it] . . . a dangerous centralization of power," The Nation, supra, at 291, and "many leading Republicans of th[e] House [of Representatives] would not consent to so radical a change in the Constitution," Cong. Globe, 42d Cong., 1st Sess., App., at 151 (statement of Rep. Garfield). The Amendment in its early form was not again considered. Instead, the Joint Committee began drafting a new article of Amendment, which it reported to Congress on April 30, 1866.

Section 1 of the new draft Amendment imposed self executing limits on the States. Section 5 prescribed that "[t]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article." See Cong. Globe, 39th Cong., 1st Sess., at 2286. Under the revised Amendment, Congress' power was no longer plenary but remedial. Congress was granted the power to make the substantive constitutional prohibitions against the Stateseffective. Representative Bingham said the new draft would give Congress "the power . . . to protect by national law the privileges and immunities of all the citizens of the Republic . . . whenever the same shall be abridged or denied by the unconstitutional acts of any State." Id., at 2542.

Representative Stevens described the new draft Amendment as "allow[ing] Congress to correct the unjust legislation of the States." Id., at 2459. See also id., at 2768 (statement of Sen. Howard) (§5 "enables Congress, in case the States shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment"). See generally H. Brannon, The Rights and Privileges Guaranteed by the Fourteenth Amendment to the Constitution of the United States 387 (1901) (Congress' "powers are only prohibitive, corrective, vetoing, aimed only at undue process of law"); id., at 420, 452-455 (same); T. Cooley, Constitutional Limitations 294, n. 1 (2d ed. 1871) ("This amendment of the Constitution does not concentrate power in the general government for any purpose of police government within the States; its object is to preclude legislation by any State which shall `abridge the privileges or immunities of citizens of the United States' "). The revised Amendment proposal did not raise the concerns expressed earlier regarding broad congressional power to prescribe uniform national laws with respect to life, liberty, and property. See, e.g., Cong. Globe, 42d Cong., 1st Sess., at App. 151 (statement of Rep. Garfield) ("The [Fourteenth Amendment] limited but did not oust the jurisdiction of the State[s]"). After revisions not relevant here, the new measure passed both Houses and was ratified in July 1868 as the Fourteenth Amendment.

The significance of the defeat of the Bingham proposal was apparent even then. During the debates over the Ku Klux Klan Act only a few years after the Amendment's ratification, Representative James Garfieldargued there were limits on Congress' enforcement power, saying "unless we ignore both the history and the language of these clauses we cannot, by any reasonable interpretation, give to [§5] . . . the force and effect of the rejected [Bingham] clause." Cong. Globe, 42d Cong., 1st Sess., at App. 151; see also id., at App. 115-116 (statement of Rep. Farnsworth). Scholars of successive generations have agreed with this assessment. See H. Flack, The Adoption of the Fourteenth Amendment 64 (1908); Bickel, The Voting Rights Cases, 1966 Sup. Ct. Rev. 79, 97.

The design of the Fourteenth Amendment has proved significant also in maintaining the traditional separation of powers between Congress and the Judiciary. The first eight Amendments to the Constitution set forth self executing prohibitions on governmental action, and this Court has had primary authority to interpret those prohibitions. The Bingham draft, some thought, departed from that tradition by vesting in Congress primary power to interpret and elaborate on the meaning of the new Amendment through legislation. Under it, "Congress, and not the courts, was to judge whether or not any of the privileges or immunities were not secured to citizens in the several States." Flack, supra, at 64. While this separation of powers aspect did not occasion the widespread resistance which was caused by the proposal's threat to the federal balance, it nonetheless attracted the attention of various Members. See Cong. Globe, 39th Cong., 1st Sess., at 1064 (statement of Rep. Hale) (noting that Bill of Rights, unlike the Bingham proposal, "provide safeguards to be enforced by the courts, and not to be exercised by the Legislature"); id., at App. 133 (statement of Rep. Rogers) (prior to Bingham proposal it "was left entirely for the courts . . . to enforce the privileges and immunities of the citizens"). As enacted, the Fourteenth Amendment confers substantive rights against the States which, like the provisionsof the Bill of Rights, are self executing. Cf. South Carolina v. Katzenbach, 383 U.S., at 325 (discussing Fifteenth Amendment). The power to interpret the Constitution in a case or controversy remains in the Judiciary.

The remedial and preventive nature of Congress' enforcement power, and the limitation inherent in the power, were confirmed in our earliest cases on the Fourteenth Amendment. In the Civil Rights Cases, 109 U.S. 3 (1883), the Court invalidated sections of the Civil Rights Act of 1875 which prescribed criminal penalties for denying to any person "the full enjoyment of" public accommodations and conveyances, on the grounds that it exceeded Congress' power by seeking to regulate private conduct. The Enforcement Clause, the Court said, did not authorize Congress to pass "general legislation upon the rights of the citizen, but corrective legislation; that is, such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which, by the amendment, they are prohibited from making or enforcing . . . ." Id., at 13-14. The power to "legislate generally upon" life, liberty, and property, as opposed to the "power to provide modes of redress" against offensive state action, was "repugnant" to the Constitution. Id., at 15. See also United States v. Reese, 92 U.S. 214, 218 (1876); United States v. Harris, 106 U.S. 629, 639 (1883); James v. Bowman, 190 U.S. 127, 139 (1903). Although the specific holdings of these early cases might have been superseded or modified, see, e.g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964); United States v. Guest, 383 U.S. 745 (1966), their treatment of Congress' §5 power as corrective or preventive, not definitional, has not been questioned.

Recent cases have continued to revolve around thequestion of whether §5 legislation can be considered remedial. In South Carolina v. Katzenbach, supra, we emphasized that "[t]he constitutional propriety of [legislation adopted under the Enforcement Clause] must be judged with reference to the historical experience . . . it reflects." 383 U.S., at 308. There we upheld various provisions of the Voting Rights Act of 1965, finding them to be "remedies aimed at areas where voting discrimination has been most flagrant," id., at 315, and necessary to "banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century," id., at 308. We noted evidence in the record reflecting the subsisting and pervasive discriminatory--and therefore unconstitutional--use of literacy tests. Id., at 333-334. The Act's new remedies, which used the administrative resources of the Federal Government, included the suspension of both literacy tests and, pending federal review, all new voting regulations in covered jurisdictions, as well as the assignment of federal examiners to list qualified applicants enabling those listed to vote. The new, unprecedented remedies were deemed necessary given the ineffectiveness of the existing voting rights laws, see id., at 313-315, and the slow costly character of case by case litigation, id., at 328.

After South Carolina v. Katzenbach, the Court continued to acknowledge the necessity of using strong remedial and preventive measures to respond to the widespread and persisting deprivation of constitutional rights resulting from this country's history of racial discrimination. See Oregon v. Mitchell, 400 U.S., at 132 ("In enacting the literacy test ban . . . Congress had before it a long history of the discriminatory use of literacy tests to disfranchise voters on account of their race") (opinion of Black, J.); id., at 147 (Literacy tests "have been used at times as a discriminatory weapon against some minorities, not only Negroes but Americansof Mexican ancestry, and American Indians") (opinion of Douglas, J.); id., at 216 ("Congress could have determined that racial prejudice is prevalent throughout the Nation, and that literacy tests unduly lend themselves to discriminatory application, either conscious or unconscious") (opinion of

Harlan, J.); id., at 235 ("[T]here is no question but that Congress could legitimately have concluded that the use of literacy tests anywhere within the United States has the inevitable effect of denying the vote to members of racial minorities whose inability to pass such tests is the direct consequence of previous governmental discrimination in education") (opinion of Brennan, J.); id., at 284 ("[N]ationwide [suspension of literacy tests] may be reasonably thought appropriate when Congress acts against an evil such as racial discrimination which in varying degrees manifests itself in every part of the country") (opinion of Stewart, J.); City of Rome, 446 U.S., at 182 ("Congress' considered determination that at least another 7 years of statutory remedies were necessary to counter the perpetuation of 95 years of pervasive voting discrimination is both unsurprising and unassailable"); Morgan, 384 U.S., at 656 (Congress had a factual basis to conclude that New York's literacy requirement "constituted an invidious discrimination in violation of the Equal Protection Clause").

Any suggestion that Congress has a substantive, non remedial power under the Fourteenth Amendment is not supported by our case law. In Oregon v. Mitchell, supra, at 112, a majority of the Court concluded Congress had exceeded its enforcement powers by enacting legislation lowering the minimum age of voters from 21 to 18 in state and local elections. The five Members of the Court who reached this conclusion explained that the legislation intruded into an area reserved by the Constitutionto the States. See 400 U.S., at 125 (concluding that the legislation was unconstitutional because the Constitution "reserves to the States the power to set voter qualifications in state and local elections") (opinion of Black, J.); id., at 154 (explaining that the "Fourteenth Amendment was never intended to restrict the authority of the States to allocate their political power as they see fit") (opinion of Harlan, J.); id., at 294 (concluding that States, not Congress, have the power "to establish a qualification for voting based on age") (opinion of Stewart, J., joined by Burger, C. J., and Blackmun, J.). Four of these five were explicit in rejecting the position that §5 endowed Congress with the power to establish the meaning of constitutional provisions. See id., at 209 (opinion of Harlan, J.); id., at 296 (opinion of Stewart, J.). Justice Black's rejection of this position might be inferred from his disagreement with Congress' interpretation of the Equal Protection Clause. See id., at 125.

There is language in our opinion in Katzenbach v. Morgan, 384 U.S. 641 (1966), which could be interpreted as acknowledging a power in Congress to enact legislation that expands the rights contained in §1 of the Fourteenth Amendment. This is not a necessary interpretation, however, or even the best one. In Morgan, the Court considered the constitutionality of §4(e) of the Voting Rights Act of 1965, which provided that no person who had successfully completed the sixth primary grade in a public school in, or a private school accredited by, the Commonwealth of Puerto Rico in which the language of instruction was other than English could be denied the right to ote because of an inability to read or write English. New York's Constitution, on the other hand, required voters to be able to read and write English. The Court provided two related rationales for its conclusion that §4(e) could "be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment bygovernment." Id., at 652. Under the first rationale, Congress could prohibit New York from denying the right to vote to large segments of its Puerto Rican community, in order to give Puerto Ricans "enhanced political power" that would be "helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community." Ibid. Section 4(e) thus could be

justified as a remedial measure to deal with "discrimination in governmental services." Id., at 653. The second rationale, an alternative holding, did not address discrimination in the provision of public services but "discrimination in establishing voter qualifications." Id., at 654. The Court perceived a factual basis on which Congress could have concluded that New York's literacy requirement "constituted an invidious discrimination in violation of the Equal Protection Clause." Id., at 656. Both rationales for upholding §4(e) rested on unconstitutional discrimination by New York and Congress' reasonable attempt to combat it. As Justice Stewart explained in Oregon v. Mitchell, supra, at 296, interpreting Morgan to give Congress the power to interpret the Constitution "would require an enormous extension of that decision's rationale."

If Congress could define its own powers by altering the Fourteenth Amendment's meaning, no longer would the Constitution be "superior paramount law, unchangeable by ordinary means." It would be "on a level with ordinary legislative acts, and, like other acts, . . . alterable when the legislature shall please to alter it." Marbury v. Madison, 1 Cranch, at 177. Under this approach, it is difficult to conceive of a principle that would limit congressional power. See Van Alstyne, The Failure of the Religious Freedom Restoration Act under Section 5 of the Fourteenth Amendment, 46 Duke L. J. 291, 292-303 (1996). Shifting legislative majorities could change the Constitution and effectively circumvent the difficult and detailed amendment process containedin Article V.

We now turn to consider whether RFRA can be considered enforcement legislation under §5 of the Fourteenth Amendment.

Respondent contends that RFRA is a proper exercise of Congress' remedial or preventive power. The Act, it is said, is a reasonable means of protecting the free exercise of religion as defined by Smith. It prevents and remedies laws which are enacted with the unconstitutional object of targeting religious beliefs and practices. See Church of the Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520, 533 (1993) ("[A] law targeting religious beliefs as such is never permissible"). To avoid the difficulty of proving such violations, it is said, Congress can simply invalidate any law which imposes a substantial burden on a religious practice unless it is justified by a compelling interest and is the least restrictive means of accomplishing that interest. If Congress can prohibit laws with discriminatory effects in order to prevent racial discrimination in violation of the Equal Protection Clause, see Fullilove v. Klutznick, 448 U.S. 448, 477 (1980) (plurality opinion); City of Rome, 446 U.S., at 177, then it can do the same, respondent argues, to promote religious liberty.

While preventive rules are sometimes appropriate remedial measures, there must be a congruence between the means used and the ends to be achieved. The appropriateness of remedial measures must be considered in light of the evil presented. See South Carolina v. Katzenbach, 383 U.S., at 308. Strong measures appropriate to address one harm may be an unwarranted response to another, lesser one. Id., at 334.

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A comparison between RFRA and the Voting Rights Act is instructive. In contrast to the record which confronted Congress and the judiciary in the votingrights cases, RFRA's legislative record lacks examples of modern instances of generally applicable laws passed because of religious bigotry. The history of persecution in this country detailed in the hearings mentions no episodes occurring in the past 40 years. See, e.g., Religious Freedom Restoration Act of 1991, Hearings on H. R. 2797 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 102d Cong., 2d Sess., 331-334 (1993) (statement of Douglas Laycock) (House Hearings); The Religious Freedom Restoration Act, Hearing on S. 2969 before the Senate Committee on the Judiciary, 102d Cong., 2d Sess., 30-31 (1993) (statement of Dallin H. Oaks) (Senate Hearing); Senate Hearing 68-76 (statement of Douglas Laycock); Religious Freedom Restoration Act of 1990, Hearing on H. R. 5377 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 101st Cong., 2d Sess., 49 (1991) (statement of John H. Buchanan, Jr.) (1990 House Hearing). The absence of more recent episodes stems from the fact that, as one witness testified, "deliberate persecution is not the usual problem in this country." House Hearings 334 (statement of Douglas Laycock). See also House Report 2 ("[L]aws directly targeting religious practices have become increasingly rare"). Rather, the emphasis of the hearings was on laws of general applicability which place incidental burdens on religion. Much of the discussion centered upon anecdotal evidence of autopsies performed on Jewish individuals and Hmong immigrants in violation of their religious beliefs, see, e.g., House Hearings 81 (statement of Nadine Strossen); id., at 107-110 (statement of William Yang); id., at 118 (statement of Rep. Stephen J. Solarz); id., at 336 (statement of Douglas Laycock); Senate Hearing 5-6, 14-26 (statement of William Yang); id., at 27-28 (statement of Hmong Lao Unity Assn., Inc.); id., at 50(statement of Baptist Joint Committee); see also Senate Report 8; House Report 5-6, and n. 14, and on zoning regulations and historic preservation laws (like the one at issue here), which as an incident of their normal operation, have adverse effects on churches and synagogues. See, e.g. House Hearings 17, 57 (statement of Robert P. Dugan, Jr.); id., at 81 (statement of Nadine Strossen); id., at 122-123 (statement of Rep. Stephen J. Solarz); id., at 157 (statement of Edward M. Gaffney, Jr.); id., at 327 (statement of Douglas Laycock); Senate Hearing 143-144 (statement of Forest D. Montgomery); 1990 House Hearing 39 (statement of Robert P. Dugan, Jr.); see also Senate Report 8; House Report 5-6, and n. 14. It is difficult to maintain that they are examples of legislation enacted or enforced due to animus or hostility to the burdened religious practices or that they indicate some widespread pattern of religious discrimination in this country. Congress' concern was with the incidental burdens imposed, not the object or purpose of the legislation. See House Report 2; Senate Report 4-5; House Hearings 64 (statement of Nadine Strossen); id., at 117-118 (statement of Rep. Stephen J. Solarz); 1990 House Hearing at 14 (statement of Rep. Stephen J. Solarz). This lack of support in the legislative record, however, is not RFRA's most serious shortcoming. Judicial deference, in most cases, is based not on the state of the legislative record Congress compiles but "on due regard for the decision of the body constitutionally appointed to decide." Oregon v. Mitchell, 400 U.S., at 207 (opinion of Harlan, J.). As a general matter, it is for Congress to determine the method by which it will reach a decision. Regardless of the state of the legislative record, RFRA cannot be considered remedial, preventive legislation, if those terms are to have any meaning. RFRA is so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, ordesigned to prevent, unconstitutional behavior. It appears, instead, to attempt a substantive change in constitutional protections. Preventive measures prohibiting certain types of

laws may be appropriate when there is reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional. See City of Rome, 446 U.S., at 177 (since "jurisdictions with a demonstrable history of intentional racial discrimination . . . create the risk of purposeful discrimination" Congress could "prohibit changes that have a discriminatory impact" in those jurisdictions). Remedial legislation under §5 "should be adapted to the mischief and wrong which the [Fourteenth] [A]mendment was intended to provide against." Civil Rights Cases, 109 U.S., at 13.

RFRA is not so confined. Sweeping coverage ensures its intrusion at every level of government, displacing laws and prohibiting official actions of almost every description and regardless of subject matter. RFRA's restrictions apply to every agency and official of the Federal, State, and local Governments. 42 U.S.C. § 2000bb-2(1). RFRA applies to all federal and state law, statutory or otherwise, whether adopted before or after its enactment. §2000bb-3(a). RFRA has no termination date or termination mechanism. Any law is subject to challenge at any time by any individual who alleges a substantial burden on his or her free exercise of religion.

The reach and scope of RFRA distinguish it from other measures passed under Congress' enforcement power, even in the area of voting rights. In South Carolina v. Katzenbach, the challenged provisions were confined to those regions of the country where voting discrimination had been most flagrant, see 383 U.S., at 315, and affected a discrete class of state laws, i.e., state voting laws. Furthermore, to ensure that the reach of the Voting Rights Act was limited to those cases in whichconstitutional violations were most likely (in order to reduce the possibility of overbreadth), the coverage under the Act would terminate "at the behest of States and political subdivisions in which the danger of substantial voting discrimination has not materialized during the preceding five years." Id., at 331. The provisions restricting and banning literacy tests, upheld in Katzenbach v. Morgan, 384 U.S. 641 (1966), and Oregon v. Mitchell, 400 U.S. 112 (1970), attacked a particular type of voting qualification, one with a long history as a "notorious means to deny and abridge voting ights on racial grounds." South Carolina v. Katzenbach, 383 U.S., at 355 (Black, J., concurring and dissenting). In City of Rome, 446 U.S. 156, the Court rejected a challenge to the constitutionality of a Voting Rights Act provision which required certain jurisdictions to submit changes in electoral practices to the Department of Justice for preimplementation review. The requirement was placed only on jurisdictions with a history of intentional racial discrimination in voting. Id., at 177. Like the provisions at issue in South Carolina v. Katzenbach, this provision permitted a covered jurisdiction to avoid preclearance requirements under certain conditions and, moreover, lapsed in seven years. This is not to say, of course, that §5 legislation requires termination dates, geographic restrictions or egregious predicates. Where, however, a congressional enactment pervasively prohibits constitutional state action in an effort to remedy or to prevent unconstitutional state action, limitations of this kind tend to ensure Congress' means are proportionate to ends legitimate under §5.

The stringent test RFRA demands of state laws reflects a lack of proportionality or congruence between the means adopted and the legitimate end to be achieved. If an objector can show a substantial burden on his free exercise, the State must demonstrate acompelling governmental interest and show that the law is the least restrictive means of furthering its interest.

Claims that a law substantially burdens someone's exercise of religion will often be difficult to contest. See Smith, 494 U.S., at 887 ("What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is `central' to his personal faith?"); id., at 907 ("The distinction between questions of centrality and questions of sincerity and burden is admittedly fine . . .") (O'Connor, J., concurring in judgment). Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law. If " `compelling interest' really means what it says . . . many laws will not meet the test. . . . [The test] would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind." Id., at 888. Laws valid under Smith would fall under RFRA without regard to whether they had the object of stifling or punishing free exercise. We make these observations not to reargue the position of the majority in Smith but to illustrate the substantive alteration of its holding attempted by RFRA. Even assuming RFRA would be interpreted in effect to mandate some lesser test, say one equivalent to intermediate scrutiny, the statute nevertheless would require searching judicial scrutiny of state law with the attendant likelihood of invalidation. This is a considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of their citizens.

The substantial costs RFRA exacts, both in practical terms of imposing a heavy litigation burden on the States and in terms of curtailing their traditional general regulatory power, far exceed any pattern or practice of unconstitutional conduct under the FreeExercise Clause as interpreted in Smith. Simply put, RFRA is not designed to identify and counteract state laws likely to be unconstitutional because of their treatment of religion. In most cases, the state laws to which RFRA applies are not ones which will have been motivated by religious bigotry. If a state law disproportionately burdened a particular class of religious observers, this circumstance might be evidence of an impermissible legislative motive. Cf. Washington v. Davis, 426 U.S. 229, 241 (1976). RFRA's substantial burden test, however, is not even a discriminatory effects or disparate impact test. It is a reality of the modern regulatory state that numerous state laws, such as the zoning regulations at issue here, impose a substantial burden on a large class of individuals. When the exercise of religion has been burdened in an incidental way by a law of general application, it does not follow that the persons affected have been burdened any more than other citizens, let alone burdened because of their religious beliefs. In addition, the Act imposes in every case a least restrictive means requirement--a requirement that was not used in the pre-Smith jurisprudence RFRA purported to codify--which also indicates that the legislation is broader than is appropriate if the goal is to prevent and remedy constitutional violations.

When Congress acts within its sphere of power and responsibilities, it has not just the right but the duty to make its own informed judgment on the meaning and force of the Constitution. This has been clear from the early days of the Republic. In 1789, when a Member of the House of Representatives objected to a debate on the constitutionality of legislation based on the theory that "it would be officious" to consider the constitutionality of a measure that did not affect the House, James Madison explained that "it is incontrovertibly of as much importance to this branch of the Government as to any other, that the constitution should be preserved entire. It isour duty." 1 Annals of Congress 500 (1789). Were it otherwise, we would not afford Congress the presumption of validity its enactments now enjoy.

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Our national experience teaches that the Constitution is preserved best when each part of the government respects both the Constitution and the proper actions and determinations of the other branches. When the Court has interpreted the Constitution, it has acted within the province of the Judicial Branch, which embraces the duty to say what the law is. Marbury v. Madison, 1 Cranch, at 177. When the political branches of the Government act against the background of a judicial interpretation of the Constitution already issued, it must be understood that in later cases and controversies the Court will treat its precedents with the respect due them under settled principles, including stare decisis, and contrary expectations must be disappointed. RFRA was designed to control cases and controversies, such as the one before us; but as the provisions of the federal statute here invoked are beyond congressional authority, it is this Court's precedent, not RFRA, which must control.

* * *

It is for Congress in the first instance to "determin[e] whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment," and its conclusions are entitled to much deference. Katzenbach v. Morgan, 384 U.S., at 651. Congress' discretion is not unlimited, however, and the courts retain the power, as they have since Marbury v. Madison, to determine if Congress has exceeded its authority under the Constitution. Broad as the power of Congress is under the Enforcement Clause of the Fourteenth Amendment, RFRA contradicts vital principles necessary to maintain separation of powers and the federal balance. The judgment of the Court of Appeals sustaining the Act's constitutionality is reversed.

It is so ordered.