PEPPERDINE UNIVERSITY

Pepperdine Law Review

Volume 10 | Issue 4 Article 5

5-15-1983

A New Standard of Review in Free Exercise Cases: Thomas v. Review Board of the Indiana Employment & Security Division

Lynn McCutchen Gardner

A New Standard of Review in Free Exercise Cases: *Thomas v. Review Board of the Indiana Employment & Security Division.*

In Thomas v. Review Board of the Indiana Employment Security Division, *the United States Supreme Court was called upon to clarify the appropriate level of review to be applied in cases which examine the first amendment right to free exercise of religion. The Court ruled that the "compelling state interest" test is the proper standard to be used. The Court also accorded first amendment protection to beliefs which are not shared by other members of a religious group and which are instead the unique interpertation of an individual member and not acceptable, logical, consistent, or comprehensible to others.*

I. INTRODUCTION

In *Thomas v. Review Board of the Indiana Employment Security Division,*[1] the United States Supreme Court was asked to determine whether interference with the free exercise of religion may be constitutionally tolerated when such interference results from the application of facially neutral welfare legislation well within the acknowledged police powers of a state.[2] Prior decisions of the Court had left the question largely unresolved because of an unwillingness or inability to clearly define the appropriate test to be applied. In *Thomas,* the Court applied the "compelling state interest" test and ruled that Thomas could not be denied unemployment compensation benefits for terminating his employment with a foundry producing turrets for military tanks, when his religious beliefs prevented him from participating in the production of war materials. The case is significant both because it establishes a well defined test to be applied in free exercise cases, and because it broadens the range of beliefs included under the pro-

1. 450 U.S. 707 (1981).

2. The authority of the state to enact such a statute is granted under:

> what is commonly called the police power — a power which the State did not surrender when becoming a member of the Union under the Constitution. Although this Court has refrained from any attempt to define the limits of that power, . . . the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and public safety.

Jacobson v. Massachusetts, 197 U.S. 11, 25 (1905).

tection of the first amendment to those that are neither well defined nor clearly articulated.

Although earlier cases had afforded protection to the free exercise of readily identifiable tenets of a recognized religious faith, the decision in *Thomas* extends first amendment protection to beliefs which are not shared by other members of a religious group, and which appear to be the unique interpretation of an individual member and not "acceptable, logical, consistent or comprehensible to others."[3] So long as the religious belief is honestly and in good faith held, and not so "bizarre, so clearly non-religious in motivation as not to be entitled to protection under the Free Exercise Clause,"[4] under *Thomas,* the Court will not subject it to further scrutiny.

In analyzing the Supreme Court's decision in *Thomas,* this note will examine the history of the free exercise clause and the various approaches the Court has taken in its effort to safeguard the liberties embodied therein.

II. HISTORICAL BACKGROUND

> The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretaion of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment.[5]

As made applicable to the states by the fourteenth amendment,[6] the first amendment commands that a state "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[7] To fully appreciate the significance of the first amendment, it is necessary to first review the background and environment of the period in which the amendment was drafted and adopted.

Many of the early colonists in America left their homes in Europe to avoid religious persecution, hoping to find freedom to ex-

---

3. 450 U.S. at 712.

4. *Id.* at 713.

5. School Dist. of Abington Township v. Schempp, 374 U.S. 203, 226 (1963) (holding that the establishment clause prohibited a state from requiring that passages from the Bible be read or the Lord's Prayer be recited in the public schools).

6. Murdock v. Pennsylvania, 319 U.S. 105 (1943) (holding that religious handbilling is not made commercial merely because religious materials were sold rather than donated).

7. U.S. CONST. amend. I.

ercise religions of their own choosing in the new world.[8] Governments took extreme measures in their efforts to force loyalty to the religious group currently in favor. To those who failed to attend government-established churches, expressed disbelief of their doctrines, spoke disrespectfully of the views propounded by their ministers, or failed to pay taxes and tithes to support them, punishments were meted out. To perpetuate in the new land the ways of the old, the charters granted by England authorized those who received them to establish churches in the colonies which all settlers, whether or not they shared in the belief, would be required to attend and to support. Many of the old world evils of religious persecution and oppression began to be duplicated in the new.[9] Burgeoning religious intolerance, and the imposition of taxes to pay ministers' salaries and build churches espousing beliefs they did not share, eventually stirred the colonists into taking action to secure the religious freedoms they left Europe to find. "The people . . . reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group."[10] Thus the religion clauses of the first

8. The centuries immediately before and contemporaneous with the colonization of America had been filled with turmoil, civil strife, and persecutions, generated in large part by established sects determined to maintain their absolute political and religious supremacy. With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted the Jews.

Everson v. Board of Educ., 330 U.S. 1, 8-9 (1947) (upheld New Jersey legislation designating tax raised funds to reimburse cost of bus fares for parochial school students as part of a general program under which New Jersey pays such fares for pupils attending public and other schools). *See generally* SWEET, RELIGION IN COLONIAL AMERICA (1941).

9. Catholics found themselves hounded and proscribed because of their faith; Quakers who followed their conscience went to jail; Baptists were peculiarly obnoxious to certain dominant Protestant sects; men and women of varied faiths who happened to be in a minority in a particular locality were persecuted because they steadfastly persisted in worshipping God only as their own consciences dictated. And all of these dissenters were compelled to pay tithes and taxes to support government-sponsored churches whose ministers preached inflammatory sermons designed to strengthen and consolidate the established faith by generating a burning hatred against dissenters.

330 U.S. at 10.

10. Everson v. Board of Educ., 330 U.S. at 11.

amendment were drafted.

The meaning and scope of the first amendment, designed to prevent laws respecting the establishment of religion and protect the free exercise thereof, have been analyzed on several occasions by the Court with varying results. In *Reynolds v. United States,*[11] decided in 1878, the Court examined the history of the first amendment and the evils it was intended forever to suppress. It gave special weight to the comments made by Thomas Jefferson in his reply to an address by the Danbury Baptist Association:

> Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions, — I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties.[12]

Because Jefferson was a leader among the advocates of religious freedom, the Court accepted his declaration of the scope and effect of the amendment as authoritative. The Court held that "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order."[13] The Court reasoned that to excuse a man's otherwise criminal actions because of his religious beliefs "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. Government could exist only in name under such circumstances."[14] A dichotomy was thus held to exist between religious *beliefs,* which were sacred from interference, and religious *practices,* which were subject to legislative enactments, when in violation of social duties or subversive of good order.

In *Cantwell v. Connecticut,*[15] decided over half a century later, the Court again held that while freedom of belief is absolute and inviolate, the freedom to act is subject to regulation for the pro-

11. 98 U.S. 145 (1878) (holding that that legislature may enact laws prohibiting bigamy despite the resulting interference with the tenets of the Mormon religion, because the practice of bigamy is in violation of social duties and subversive of good order).

12. *Id.* at 164.

13. *Id.*

14. *Id.* at 167.

15. 310 U.S. 296 (1940).

tection of society.[16] The Court in *Cantwell* stated that "[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."[17] Although at first blush the language employed by the Court in *Cantwell* sounds like the traditional "rational basis" test,[18] closer examination reveals that the Court actually applied a balancing approach.[19] In concluding that a statute which required a member of the Jehovah's Witness faith to obtain a certificate from the public welfare council as a condition to soliciting support for his religious views constituted a prohibited restraint on his free exercise of religion, the Court stated:

> The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise.[20]

However, where the secretary of the public welfare council exercises his own judgment and opinions in deciding whether or not a particular cause is a "religious" one, "[s]uch a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth."[21]

Cantwell, then, departed from the Court's earlier decision in *Reynolds* in its holding that while a state's reasonable interference with an individual's religious practices is permissible, an unreasonable obstruction "is to lay a forbidden burden upon the exercise of liberty protected by the Constitution."[22] No longer were all state regulations of religious practices (in contrast to religious beliefs) permissible.

---

16. "The Amendment embraces two concepts, — freedom to believe and freedom to act. The first is absolute but, in the nature of things the second cannot be." *Id.* at 303-04.

17. *Id.*

18. Developed in the context of substantive due process, the "rational basis" test requires only that "the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory. . . ." Nebbia v. New York, 291 U.S. 502 (1934).

19. "The State's policy *would weigh heavily* in any challenge of the law as infringing constitutional limitations." 310 U.S. at 307-08.

20. *Id.* at 305.

21. *Id.*

22. *Id.* at 307.

In *Prince v. Massachusetts,*[23] the Court was presented with the conflict between the proselytism required by the tenets of the Jehovah's Witness faith and the state's prohibition of child labor. A nine-year-old girl and her mother were selling religious magazines on a public street in contravention of a state statute prohibiting minors from engaging in such activities. The Court, appearing to employ the "compelling state interest" test,[24] held that the state's interest in protecting children from the harmful consequences of work permitted the consequential infringement on the minor's free exercise of religion.[25] Again, in *Cleveland v. United States,*[26] the Court held that the defense of one's actions as merely being in compliance with the dictates of one's faith is inadequate to excuse the breach of a law protecting an important societal interest. In *Cleveland,* a Mormon polygamist was charged with violating the Mann Act[27] when he transported a woman across state lines for the purpose of entering into a plural marriage. In defense, the petitioner stated that he was motivated by his religious beliefs to engage in polygamy,[28] and that to charge him with the offense would be an interference with his free exercise of religion. The Court was singularly unimpressed with this defense: "If upheld, it would place beyond the law any act done under claim of religious sanction. But it has long been held that the fact that polygamy is supported by a religious creed affords no defense in a prosecution for bigamy."[29] Without providing an indication of the method used to reach its conclusion other than its reliance on *Reynolds,* the Court determined that the protection granted by the free exercise clause was insufficient

23. 321 U.S. 158 (1944).

24. Developed in the context of equal protection controversies involving suspect classifications or the infringement of fundamental liberties, the test requires that state legislation interfering with the exercise of a fundamental right be necessary to promote a compelling state interest. *See generally* Gunther, *The Supreme Court, 1971 Term Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection,* 86 HARV. L. REV. 1 (1972).

25. While the Court held that the state's interest was compelling enough to overcome the infringement on the minor's free exercise of religion, the Court did indicate that an identical statute for adults or all persons generally would clearly be invalid. 321 U.S. at 167.

26. 329 U.S. 14 (1946).

27. White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (1976 & Supp. III 1979)).

28. An accepted doctrine of the Mormon Church was:

> that it was the duty of male members of [the] Church, circumstances permitting, to practice polygamy; . . . that this duty was enjoined by different books which the members of [the] Church believed to be of divine origin, . . . [and] that the failing or refusing to practice polygamy . . . would be punished, and that the penalty for such failure and refusal would be damnation in the life to come.

Reynolds v. United States, 89 U.S. 145, 161 (1878).

29. 329 U.S. at 20.

to justify the practice of polygamy. In both *Prince* and *Cleveland,* the Court held that where the exercise of a religious belief conflicts with an important public interest, practices otherwise protected under the free exercise clause must yield.

In *Braunfeld v. Brown,*[30] decided in 1961, the Court held that where the purpose and effect of legislation is to advance the state's secular goals, the statute is constitutionally valid "despite its indirect burden on religious observance unless the state may accomplish its purpose by means which do not impose such a burden."[31] In *Braunfeld,* Jewish merchants sought an exception from the Sunday closing laws, claiming that their faith required them to remain closed on their Sabbath and that, therefore, to remain closed on Sunday put them at an economic disadvantage in relation to merchants of other faiths who were not so compelled to close both days.[32] In upholding the constitutionality of the Sunday closing law, the Court applied a "rational basis" test. "To strike down, without the most critical scrutiny, legislation which imposes only an indirect burden on the exercise of religion, i.e., legislation which does not make unlawful the religious practice itself, would radically restrict the operating latitude of the legislature."[33] The Court recognized that in a country composed of individuals holding so many different religious philosophies and beliefs "it cannot be expected, much less required, that legislators enact no law regulating conduct that may in some way result in an economic disadvantage to some religious sects and not to others because of the special practices of the various religions."[34]

Three Justices dissented to the majority's opinion in *Braunfeld.*[35] In his dissent, Justice Brennan argued that where fundamental liberties are infringed, the application of a rational basis

30. 366 U.S. 599 (1961).

31. *Id.* at 607.

32. Appellant's argument was that the result of imposing Sunday closing laws "will either compel appellants to give up their Sabbath observance, a basic tenet of the Orthodox Jewish faith, or will put appellants at a serious economic disadvantage if they continue to adher to their Sabbath." *Id.* at 602.

33. *Id.* at 606.

34. *Id.*

35. Justices Brennan and Stewart concurred regarding the findings on the establishment clause, but dissented from the majority's holding regarding the free exercise clause. Justice Frankfurter filed a separate concurring opinion and Justice Douglas dissented.

test is hardly adequate to safeguard the liberty.[36] Justice Brennan concluded that questions concerning the infringement of first amendment freedoms demand nothing short of the strict scrutiny afforded by the "compelling state interest" test.[37] Justice Stewart stated that he substantially agreed with Justice Brennan's dissent, but he did not indicate whether he agreed specifically with Brennan's application of a compelling state interest test. Taking a different approach altogether, Justice Douglas argued[38] that the selection of Sunday as the uniform day of rest was largely made in conformance with the majority's religious beliefs and for that reason both the issue of establishment of religion and that of free exercise were raised.

> There is an "establishment" of religion in the constitutional sense if any practice of any religious group has the sanction of law behind it. There is an interference with the "free exercise" of religion if what in conscience one can do or omit doing is required because of the religious scruples of the community.[39]

Although the majority held that Sunday closing laws did not impermissibly infringe free exercise of religion, the lack of agreement among the Justices on the issue was manifest.

On facts substantially similar to those in *Thomas,* the subject of this note, the Court in *Sherbert v. Verner*[40] held a law denying unemployment compensation to a Seventh-Day Adventist, who, because of her religious beliefs was unable to work on her Sabbath, to be an impermissible restraint on her free exercise of religion. The Court, speaking through Justice Brennan, applied the "compelling state interest" test. "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.' "[41] After determining that the disqualifica-

---

36. The first question to be resolved, however, is somewhat broader than the facts of this case. That question concerns the appropriate standard of constitutional adjudication in cases in which a statute is assertedly in conflict with the First Amendment, whether that limitation applies of its own force, or as absorbed through the less definite words of the Fourteenth Amendment. The Court in such cases is not confined to the narrow inquiry whether the challenged law is rationally related to some legitimate legislative end. Nor is the case decided by a finding that the State's interest is substantial and important, as well as rationally justifiable.

336 U.S. at 611 (Justice Brennan concurring and dissenting).

37. Significantly, Justice Brennan's dissent cites to Prince v. Massachusetts, 321 U.S. 158 (1944), for authority. In *Prince,* the Court applied the "compelling state interest" test. *See supra* notes 23-24 and accompanying text.

38. Justice Douglas' dissent is included in his dissent to McGowan v. Maryland, 366 U.S. 420, 561-81 (1961) also a Sunday closing law case.

39. *Id.* at 576-77.

40. 374 U.S. 398 (1963).

41. *Id.* at 403, (quoting Thomas v. Collins, 323 U.S. 516, 530 (1945)).

tion for benefits imposed a burden on the free exercise of appellant's religion,[42] the Court stated that "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."[43] Finally, the Court turned to consider whether some compelling state interest enforced in the eligibility provisions of the state statute justified the infringement of Mrs. Sherbert's first amendment rights. None was found. The Court distinguished *Braunfeld* on its facts, finding that the burden on religious practices there was "less direct" and that the State's interest in providing a uniform day of rest was strong.[44] Until its decision in *Wisconsin v. Yoder,*[45] nine years later, the majority of the Court was in agreement that the "compelling state interest" was the appropriate test in situations where a law neutral on its face impacted on an individual's free exercise of religion.

In *Wisconsin v. Yoder,* the Court retreated somewhat from the "compelling state interest" analysis employed in *Sherbert.* In *Yoder,* the Court was asked to decide whether the application of Wisconsin's compulsory education law violated the right to free exercise of religion of members of the Old Order Amish faith. The testimony at trial showed that the Amish people "believed, in accordance with the tenets of Old Order Amish communities generally, that their children's attendance at high school, public or private, was contrary to the Amish religion and way of life."[46] Although the Court upheld the parents' free exercise claim, it failed to apply the *Sherbert* "compelling state interest" standard and instead appears to have applied a balancing test.[47] After listening

42. 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.

Id. at 404.

43. *Id.* at 406.

44. Although the majority only distinguishes *Braunfeld,* Justice Stewart, in a concurring opinion, concluded that to reach its decision in *Sherbert,* the "Court must explicitly reject the reasoning of Braunfeld v. Brown." *Id.* at 418.

45. 406 U.S. 205 (1972).

46. *Id.* at 209. "Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence." *Id.* at 210.

47. Confusion as to the test applied unavoidably arises when the Court in-

to extensive testimony by experts in both the fields of education and religion, the Court concluded that the state's requirement of compulsory formal education after the eighth grade would endanger if not destroy the free exercise of the Amish people's religious beliefs. The Court held that:

> In light of this convincing showing, . . . and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish.[48]

Although the Court agreed that the state's interest in compulsory education was a legitimate one, it held that the competing interest of free exercise of religion overbalanced the state's interest.

With *Yoder* the free exercise of religion cases ended until *Thomas*. Every decision has agreed that under the religion clauses of the first amendment, religious beliefs are beyond the reach of state control. Conduct, however, has not been so absolutely protected. Even when religiously based, some activities of individuals have been subject to regulation by the state, through its exercise of general police powers to promote the health, safety, and welfare of its citizens, or by the federal government in the exercise of its enumerated powers.[49] The decisions have yielded inconsistent results because the Court has been unable to agree on a uniform standard by which to judge an infringement. *Thomas* provides that standard, the "compelling state interest" test.

III. Facts of the Case

When Thomas first applied for a position in the roll foundry at Blaw-Knox Foundry and Machinery Company, he did so at the suggestion of another employee, also a Jehovah's Witness. He listed under "hobbies" on his application form "Bible study" and "Bible reading." Beyond the religious nature of the hobbies he noted, Thomas gave no indication of his faith, Jehovah's Witness, or any restrictions his faith made on his ability to perform his job.

---

cludes bits and pieces of several classic approaches: "Thus a State's interest . . . is not totally free from a *balancing process* when it impinges on *fundamental rights* . . . ." 406 U.S. at 214 (emphasis added); "only those interests of the highest order and those not otherwise served can *overbalance* legitimate claims to the free exercise of religion." *Id.* at 215 (emphasis added); "[w]e turn, then, to the *State's* broader contention that its *interest* in the system of compulsory education *is so compelling* that even the established religious practices of the Amish must give way." *Id.* at 221 (emphasis added).

48. *Id.* at 235-36 (citing Sherbert v. Verner, 374 U.S. 398 (1963)).

49. *See e.g.*, Gillette v. United States, 401 U.S. 437 (1971) (conscientious objector); Braunfeld v. Brown, 336 U.S. 599 (1961) (Sunday closing law); Prince v. Massachusetts, 321 U.S. 158 (1944) (child labor law); Reynolds v. United States, 98 U.S. 145 (1878) (polygamy).

In the roll foundry, Thomas worked with equipment fabricating sheet steel to be used for various industrial purposes.

About a year later, Blaw-Knox decided to close its roll foundry and emphasize the production of weaponry. The roll foundry employees were transferred to other departments. Thomas was transferred to a department responsible for the fabrication of turrets for military tanks. It became clear to Thomas on his first day in the new department that his work involved the production of armaments, something his personal religious beliefs strictly forbade.

In an effort to find a position in a department not engaged in the production of weaponry, Thomas checked the company bulletin board listing plant openings. It was then Thomas realized that all remaining departments were similarly engaged in the production of weaponry. Realizing that a transfer to another department within the company would not eliminate his problem, Thomas requested Blaw-Knox to lay him off until non-weapons-related work became available. This request was refused.[50] Thomas explained to the management that his religious beliefs prevented him from participating in the production of weaponry or other war materials, and he quit.

When he was unable to find other work, Thomas applied for unemployment compensation benefits as provided for under the Indiana Employment Security Act.[51] An administrative hearing was conducted at which Thomas, unrepresented by counsel, again stated that he was unable to participate in the manufacture of weaponry without violating his religious beliefs. He testified that

---

50. Management rejected Thomas' request because it did not anticipate the availability of non-weapons-related work.

51. IND. CODE § 22-4-15-1 (amended 1980), in pertinent part, provided:

> With respect to benefit periods including extended benefit periods established subsequent to July 6, 1974, and before July 3, 1977, an individual who has voluntarily left his employment without good cause in connection with the work or who was discharged from his employment for just cause shall be ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until he has subsequently earned remuneration in employment equal to or exceeding the weekly benefit amount of this claim in each of ten (10) weeks. The weeks of a disqualification period remaining at the expiration of an individual's benefit period will be carried forward to an extended benefit period or to the benefit period of a subsequent claim only if the first week of such extended benefit period or subsequent benefit period falls within ten (10) consecutive weeks from the beginning of the disqualification period imposed on the prior claim.

450 U.S. at 709-10 n.1.

after he was transferred to the tank turret department he was uncomfortable with his work, believing it to be "unscriptural." Thomas explained that he sought the counsel of a co-worker and fellow member of the Jehovah's Witness faith about the conflict their new duties posed with Thomas' reading of the Bible. Although Thomas testified that his friend did not feel that his job at Blaw-Knox violated any of the tenets of the Jehovah's Witness faith, Thomas felt that it did. Unconvinced, Thomas concluded that his friend's interpretation of the principles of their faith was less strict than his own.

While the hearing officer was convinced that Thomas quit his job at Blaw-Knox because of his religious convictions,[52] he concluded that Thomas voluntarily terminated his employment without good cause in connection with the work, a requirement of the Indiana statute.[53] Because he failed to establish the requisite good cause, Thomas was found not to be entitled to benefits. The findings and conclusions of the referee were adopted by the Review Board, which affirmed the denial of benefits to Thomas.

On appeal, the Indiana Court of Appeals reversed the lower court's decision and held that the disqualifying provision of the Indiana statute violated Thomas' first amendment guarantee to the free exercise of religion.[54] The appeals court applied the "compelling state interest" test, in reliance on the Supreme Court's decision in *Sherbert v. Verner:*

> Under the authority of *Sherbert,* we are compelled to hold that the disqualifying provision of I.C.22-4-15-1 (Burns Code Ed. 1974), as it applies to Thomas, casts an impermissible burden on his First Amendment guarantee to the free exercise of his religion. Because the Board has conceded that no "compelling state interest" exists to justify such a burden, we must hold that the statute is unconstitutional as applied to Thomas.[55]

The Supreme Court of Indiana examined the record and determined that Thomas voluntarily and without good cause in connection with his work left his employment with Blaw-Knox.[56] Further, the court was not convinced that Thomas was religiously motivated to leave his job. "Thomas' reasons for leaving his employment were unique, personal and subjective."[57] Once it was ruled that Thomas' beliefs were more philosophical than reli-

52. In his decision, the referee concluded that Thomas "continually searched for a transfer to another department which would not be so armament related; however, this did not materialize, and prior to the date of his leaving, claimant requested a layoff, which was denied; and on November 6, 1975, *claimant did quit due to his religious convictions."* 450 U.S. at 711-12 (emphasis in original).

53. *See supra* note 50.

54. Thomas v. Review Bd., 381 N.E.2d 888 (Ind. 1978).

55. *Id.* at 895.

56. Thomas v. Review Bd., 391 N.E.2d 1127, 1133 (Ind. 1979).

57. *Id.* at 1130.

gious, the Review Board's decision to deny him benefits was no longer subject to the "compelling state interest" level of scrutiny afforded to first amendment violations. Stripped of constitutional protection to counter the state's legitimate interest in protecting people from "the menace of periods of unemployment and to encourage stable employment,"[58] the court ruled that the incidental burden on Thomas' free exercise right was justified.

IV. THE MAJORITY OPINION

A. Scope of Religious Beliefs Protected

The Indiana Supreme Court placed a great deal of weight on the fact that Thomas was unable to narrowly define or clearly articulate his religious beliefs. Testimony from the administrative hearing was presented in the court's decision in an effort to demonstrate that doubt existed as to whether Thomas quit for religious or merely philosophical reasons.[59]

The Supreme Court, in an opinion written by Chief Justice Burger, stated that the job of the trier of fact is only to determine whether Thomas honestly and in good faith believed[60] that his religion prevented him from continuing his employment with Blaw-Knox, not whether his interpretation of the tenets of the Jehovah's Witness faith was shared by others.

> The determination of what is a religious belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others to merit First Amendment protection.[61]

Two issues were raised by the Indiana court in support of their view that Thomas' views were merely philosophical and not entitled to constitutional protection. The first was that Thomas was "struggling" with his religious beliefs and his views were inconsistent. That Thomas was able to differentiate religiously between working for United States Steel producing the raw steel

58. *Id.* at 1129.
59. *Id.* at 1131-33.
60. The phrase "honestly and in good faith" appeared first in United States v. Bollard, 322 U.S. 78, 81-82 (1944) (holding that only the question of whether the founders of the "I Am" movement honestly and in good faith believed their representations and promises was properly before the trier of fact. The issue of religion was not).
61. 450 U.S. at 714.

ultimately used in the production of tanks, as being scripturally permissible, and the actual manufacture of a tank itself, scripturally impermissible, was more than the court could accept from a "religious" belief. It has been well established by the Court that "freedom of thought, which includes freedom of religious belief, is basic in a society of free men,"[62] and as such is not required to be purely logical nor reasonable:

> It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. *Men may believe what they cannot prove. They may not be put to the proof of their religious doctines or beliefs.* Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law.[63]

Where, as here, religious beliefs are honestly and in good faith held, they are not subject to further scrutiny by the Court. "Courts should not undertake to dissect religious beliefs because the believer admits that he is 'struggling' with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ."[64]

The second avenue of attack pursued by the Indiana court was that where another follower of the Jehovah's Witness faith believed there to be no religious prohibition against working on tank turrets, any conflict felt by Thomas must stem from his philosophical rather than religious beliefs. Although including a caveat to exclude non-religiously motivated or "bizarre" claims,[65] the Supreme Court held that the existence of intrafaith differences between members of the same faith is commonplace and not properly the subject of judicial examination.[66] Based on the record before it, composed of the conclusions drawn by the referee and adopted by the Review Board,[67] the Supreme Court held that "Thomas terminated his employment for religious reasons."[68] In so doing, the Court's decision in *Thomas* extended the first amendment protection afforded religious beliefs to those which, although honestly and in good faith held, are neither well defined nor shared by all members of the religious group.

---

62. 322 U.S. at 86.

63. *Id.* at 86-87 (emphasis added).

64. 450 U.S. at 715.

65. "One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause. . . ." *Id.*

66. "Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation." *Id.* at 716.

67. *See* Thomas v. Review Bd., 381 N.E.2d 888, 889-90 (Ind. 1978).

68. 450 U.S. at 716.

B. The Applicable Standard

On facts generally similar to those in the present case, the Court in *Sherbert v. Verner* held that absent some "compelling state interest," South Carolina could not deny unemployment compensation to Mrs. Sherbert because of her refusals to work on Saturday in violation of her religious beliefs. Although the cases that followed failed to apply *Sherbert's* standard and succeeded in further obscuring the issue of the proper level of review, in *Thomas,* the Court exhumed its earlier decision in *Sherbert,* establishing the "compelling state interest" test as the appropriate standard to be applied in free exercise cases.[69]

Before reaching the issue of whether or not a "compelling state interest" was present to justify resulting interference with the free exercise of religion, the Court first addressed the threshold issue of whether Thomas' first amendment right to free exercise of religion had in fact been burdened by the state's refusal to grant him unemployment compensation benefits. In *Everson v. Board of Education,*[70] the Court ruled that a state may not "hamper its citizens in the free exercise of their own religion" by excluding "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."[71] In *Sherbert*, the Court reasoned that if Mrs. Sherbert was denied eligibility for unemployment benefits as a result solely of the practice of her religion, her right to free exercise of religion had been burdened. The Court held that to condition the receipt of benefits on the violation of a cardinal principle of her religious faith effectively penalized the free exercise of religion.[72] The Court found that Thomas faced substantially the same choice Mrs. Sherbert had faced "between fidelity to religious belief or cessation of work" and that while the compulsion may have been indirect, a significant infringement upon free exercise nonetheless resulted.[73]

69. *See supra* notes 44-49 and accompanying text.
70. 330 U.S. 1 (1947). *See supra* note 8.
71. *Id.* at 16.
72. *See supra* note 42 and accompanying text.
73. 450 U.S. at 717. While Mrs. Sherbert was dismissed because she refused to work on Saturdays and Thomas voluntarily left his employment, the situations were nearly indistinguishable in that "the termination flowed from the fact that

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While this compulsion may be indirect, the infringement upon free exercise is nevertheless substantial.[74]

Significantly, although Mrs. Sherbert was practicing a recognized tenet of her faith in refusing to work on her Sabbath, Thomas' protected belief was not shared by other members of his religious alliance. This difference marks the departure point of *Thomas* from its predecessors. In *Thomas,* the Supreme Court greatly expanded the free exercise clause to protect beliefs which are not "acceptable, logical, consistent or comprehensible to others."[75]

The argument propounded by the State that the burden upon Thomas' free exercise of religion was only the indirect result of otherwise neutral welfare legislation, and was for that reason permissible, was rejected by the Court. It has been well established that legislation which applies uniformly to all and does not on its face discriminate against or among religions may still not satisfy the constitutional requirement of government equality where its effect is to unduly burden the free exercise of religion.[76]

A state may justify an otherwise impermissible infringement upon the free exercise of religion where it can show that the legislation employed is the least restrictive means of achieving some "compelling state interest."[77] In *Thomas*, the State argued that the disqualifying clause of the Indiana Unemployment Compensation Statute served two valid purposes: "(1) to avoid the widespread unemployment and the consequent burden on the fund resulting if people were permitted to leave jobs for 'personal' reasons; and (2) to avoid a detailed probing by employers into job applicants' religious beliefs."[78]

Although the Supreme Court agreed that the state's interests were important, it did not find them to be compelling.[79] The "compelling state interest" standard requires that the state demonstrate more than the mere possiblity that "widespread un-

---

the employment, once acceptable, became religiously objectionable because of changed conditions." *Id.* at 718.

74. *Id.* at 717-18.

75. *Id.* at 714.

76. *See generally* Wisconsin v. Yoder, 406 U.S. 205 (1972) (compulsory education); Walz v. Tax Comm'r, 397 U.S. 644 (1970) (property tax exemption); Sherbert v. Verner, 374 U.S. 398 (1963) (unemployment compensation benefits).

77. *See supra* note 24.

78. 450 U.S. at 718-19.

79. "[W]e must conclude that the interests advanced by the State do not justify the burden placed on the free exercise of religion." *Id.*

employment" will result if people are not forced to choose between upholding the tenets of their faith and receiving state unemployment compensation benefits. No such objection appears to have been made by the Review Board. In addition, the State introduced no evidence tending to show that undesired "detailed probing by employers into job applicants' religious beliefs"[80] will result or that it has occurred in states currently permitting exceptions to their disqualifying provision to accomodate religious differences. Concluding that the State failed to introduce interests sufficiently compelling to warrant the burden on Thomas' free exercise of religion, the Court concluded that Thomas would be entitled to receive benefits, unless the granting of such benefits would violate the establishment clause of the first amendment.

C. The Establishment Question

The final argument raised by the State in favor of denying Thomas benefits is that to force the State to pay Thomas benefits would involve the State in the establishment of religion, strictly prohibited by the first amendment.[81] In *Everson v. Board of Education,*[82] the Court upheld a New Jersey statute designating tax raised funds to reimburse parents of parochial school children for bus fares as part of a general program under which it pays the fares of all pupils attending public and other schools. The *Everson* decision required that "the state be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them."[83] Permitting an exception to Indiana's disqualifying provision for Thomas' religious beliefs neither handicaps nor favors Jehovah's Witnesses generally or Thomas individually; it merely puts Thomas on equal footing with other applicants. The Court concluded that the tension which necessarily exists between the two religion clauses was resolved through their decision in *Sherbert:*

> In holding as we do, plainly we are not fostering the 'establishment' of the Seventh Day Adventist religion in South Carolina, for the extension of

80. *Id.*

81. "Congress shall make no law respecting an establishment of religion. . . ." U.S. CONST. amend. I. The establishment clause has been made applicable to the states through the fourteenth amendment. *See* Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).

82. 330 U.S. 1 (1947).

83. *Id.* at 18.

> 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.[84]

Although such a resolution of the establishment issue seems at first perfunctory, a closer examination reveals that it was not.

Establishment questions generally arise in situations where either a state or the federal government has *enacted legislation* which has in some way been viewed as favoring, or "establishing" a religion.[85] Traditionally the establishment clause has been held to mean at least this:

> Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.

---

84. 374 U.S. at 409.

85. Widmar v. Vincent, 454 U.S. 263 (1981) (holding that a university permitting students and others to use its property for secular purposes must also furnish facilities to religious groups for the purpose of religious worship); Committee for Pub. Educ. v. Nyquist, 413 U.S. 756 (1973) (held New York law providing financial assistance to non-public elementary and secondary school invalid as violative of the establishment clause because the "effect inevitably is to subsidize and advance the religious mission of sectarian schools."). *Id.* at 779-80; Tilton v. Richardson, 403 U.S. 672 (1971) (upheld federal grants of funds for the construction of facilities to be used for clearly secular purposes by public and non-public institutions of higher learning); Lemon v. Kurtzman, 403 U.S. 602 (1971) (held legislation providing salary supplement to teachers at non-public schools where average per pupil expenditure was below average for secular education to be the fostering of an "excessive entanglement" between government and religion in contradiction to the establishment clause); Walz v. Tax Comm'r, 397 U.S. 664 (1970) (upheld state tax exemptions for real property owned by religious organizations and used solely for religious worship); Board of Educ. v. Allen, 392 U.S. 236 (1968) (upheld New York law authorizing the provision of secular textbooks for all children in grades 7-12 attending public and non-public schools); School Dist. of Abington Township v. Schempp, 374 U.S. 203 (1963) (holding that the establishment clause prohibited a state from requiring that passages from the Bible be read or the Lord's Prayer be recited in public schools); Engel v. Vitale, 370 U.S. 421 (1962) (holding that the establishment clause prohibited state officials from composing an official state prayer and requiring its daily recitation in the public schools); McGowan v. Maryland, 366 U.S. 420 (1961) (Sunday closing law sustained despite fact that undeniable effect was to render it somewhat more likely that residents would respect religious institutions and even attend church); McCollum v. Board of Educ., 333 U.S. 203 (1948) (holding that the "release time" program in the public schools for religious instruction was a utilization of tax established and supported public school system to aid religious groups to spread their faith in contravention of the establishment clause); Everson v. Board of Educ., 330 U.S. 1 (1948) (upheld legislation designating tax raised funds to reimburse parents of parochial school children for cost of bus fares as part of general program under which it paid the fares of pupils attending public and other schools).

> Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organization or groups and *vice versa.* In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'[86]

In *Thomas,* the enacted legislation was not the subject of the establishment argument, but rather an exception to the legislation was. So long as the exception itself neither handicaps nor favors a religion, "establishment" is not an issue. An indirect and incidental effect beneficial to a religious institution has never been thought to be a sufficient defect to warrant the invalidation of a state law.[87] A rather lengthy dissent notwithstanding, the facts of *Thomas* pose no establishment issue.

V. The Dissent

In his dissent to *Thomas,* Justice Rehnquist attacks the majority decision on the ground that it "reads the Free Exercise Clause too broadly and it fails to squarely acknowledge that such a reading conflicts with many of . . . [the Court's] Establishment Clause cases."[88] The dissent begins with the following summary of the majority opinion: "The Court today holds that the State of Indiana is constitutionally required to provide direct financial assistance to a person solely on the basis of his religious beliefs."[89] If Justice Rehnquist truly believes that *Thomas* stands for the proposition that Indiana is "constitutionally required to provide direct financial assistance" to people solely on the basis of their religious beliefs, it is understandable why he would be dismayed at the decision. Only the most creative reading of the Court's holding would yield such an interpretation. On the contrary, the Court in *Thomas* held only that one is not to be punished for his religious beliefs. If Thomas refused to accept suitable employment when offered to him, he would be denied benefits just as anyone else would be. The decision of the Court merely established that, initially, all those seeking unemployment benefits from the State of Indiana should start out on the same footing.

Justice Rehnquist next examined the increasing "tension" between the free exercise and establishment clauses of the first

86. 30 U.S. at 15-16.
87. Committee for Pub. Educ. v. Nyquist, 413 U.S. 756 (1973) *See supra* note 85.
88. 450 U.S. at 727. For a summary of such cases *see generally supra* note 85.
89. *Id.* at 720 (Rehnquist, J. dissenting).

amendment. Three factors were offered as those contributing to the current conflict between the two religious clauses: (1) An increase in social welfare legislation, (2) the Court's decision that the first amendment was made applicable to the states through the fourteenth amendment, and (3) an "overly expansive interpretation of both clauses" by the Court.[90] "By broadly construing both clauses, the Court has constantly narrowed the channel between the Scylla and Charybdis through which any state or federal action must pass in order to survive consitutional scrutiny."[91]

Rehnquist's argument that the Court reads the free exercise clause too broadly is premised on the Court's holding in *Braunfeld v. Brown.*[92] It is clear that *Braunfeld* interprets the reach of the free exercise clause more narrowly than does *Thomas.* So is the fact that they are applying different standards.[93] If Justice Rehnquist is lobbying for the application of the "rational basis" test, his reliance on *Braunfeld* is appropriate; if not, his reliance is misplaced. *Thomas* is clear; the proper standard to apply is the "compelling state interest."

Immediately following his criticism of the Court's decisions under the free exercise clause, those under the establishment clause came under attack. "The Court's treatment of the Establishment Clause issue is equally unsatisfying."[94] Rehnquist states that the decision in *Thomas* is inconsistent with prior establishment clause cases.[95] Although that statement itself is subject to debate,[96] more importantly, Rehnquist fails to appreciate that the facts in *Thomas,* resolved as they are under *Sherbert,* fail to present an establishment issue. As was discussed previously, an establishment problem is most often posed by the imposition of legislation tending to advance or favor a religion or religions.[97]

---

90. *Id.* at 721.

91. *Id.*

92. 366 U.S. 599 (1961). *See supra* notes 30-39 and accompanying text.

93. *See supra* notes 30-39 and accompanying text. *Braunfeld* applies the "rational basis" test, while *Thomas* applies the "compelling state interest" standard.

94. 450 U.S. at 724 (Rehnquist, J., dissenting).

95. For this proposition Rehnquist cites *Everson,* in which the Court concluded that 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 [or] all religions." 330 U.S. at 11, 15. Since *Everson* held that the establishment clause was *not* violated by the use of tax raised funds to reimburse parents of parochial school children for the cost of bus fares as part of the general program under which it paid the bus fares of pupils attending public and other schools, and is widely considered to be an example of the outer reaches of permissible state action, it is unimaginable why Rehnquist is citing the case in support of a more narrow interpretation of the establishment clause. *See also supra* note 85 and accompanying text.

96. *See supra* notes 85 and 95 and accompanying text.

97. *See supra* note 95 and accompanying text.

In *Thomas,* the Court merely excepts certain religiously motivated conduct from an otherwise neutral disqualifying provision of state welfare legislation. Contrary to Rehnquist's dissent, the decision does not require Indiana to alter the existing legislation.[98] It merely states that such legislation cannot be applied to Thomas so that he is forced "to choose between following the precepts of [his] religion and forfeiting benefits, on the one hand, and abandoning the precepts of [his] religion in order to accept work, on the other hand."[99]

Undoubtedly "tension" exists between the free exercise and establishment clauses of the first amendment, and perhaps for the reasons outlined by Justice Rehnquist in his dissent. *Thomas,* however, was not the proper forum for such a discussion. The facts of *Thomas* restrict its application to the free exercise clause alone, as dictated by *Sherbert.* Rehnquist's misstatements and overstatements of the Court's holding were largely unfounded and off target.[100]

VI. Impact of the Case

Prior to the *Thomas* decision, the question of whether interference with the free exercise of religion may be constitutionally tolerated when such interference resulted from the application of facially neutral welfare legislation was left unresolved. From its earliest decision in *Reynolds v. United States* to its more recent opinion in *Wisconsin v. Yoder,* the Court seemed unable to decide on the appropriate test to be applied. A variety of approaches had been tried over the years from a "balancing" test[101] through the "compelling state interest" standard of *Sherbert.*[102]

The Court's decision in *Thomas* is significant in two respects. Most obviously, it breathed life into the *Sherbert* decision, confirming that the compelling state interest test is the appropriate standard to apply in free exercise cases. Second, the decision served to broaden the range of religious beliefs afforded protec-

98. "If Indiana were to legislate what the Court today requires — an unemployment compensation law which permitted benefits to be granted to those persons who quit their jobs for religious reasons — the statute would 'plainly' violate the Establishment Clause as interpreted in such cases as *Lemon* and *Nyquist.*" 450 U.S. at 726.

99. Sherbert v. Verner, 374 U.S. at 404.

100. *See supra* notes 88-98 and accompanying text.

101. *See supra* notes 15-21 and accompanying text.

102. *See supra* note 65 and accompanying text.

tion under the first amendment to those which, although honestly and in good faith believed, are not well defined or clearly articulated, or shared by all members of the religious group.

The impact of the broadened range of religious beliefs will not be immediately known. Perhaps as a cautionary measure Chief Justice Burger included the caveat that to be protected, beliefs cannot be too "bizarre" or insincerely motivated: "One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause."[103]

VII. CONCLUSION

Since the United States Supreme Court's decision in *Cantwell v. Connecticut*,[104] until its decision in *Thomas*[105] the issue of the appropriate level of review to be applied in cases which examine the first amendment right to free exercise of religion had been unclear. Without a clearly defined test to apply, courts faced an impossible task in rendering opinions on the issue, and litigants were equally insecure in what arguments to make or which case law to recite. While *Braunfeld v. Brown*[106] applied a "rational basis" level of review to a Jewish merchant seeking an exception to the Sunday closing laws which imposed a financial burden on his free exercise of religion, only two years later that same Court in *Sherbert v. Verner*[107] required South Carolina to justify its denial of unemployment benefits (again imposing a financial burden on the free exercise of religion) to a Seventh Day Adventist by a "compelling state interest." No longer is the question of the appropriate standard to be applied in free exercise cases left unresolved; in affirming *Sherbert,* the *Thomas* Court has clearly established the "compelling state interest" test as the appropriate standard to be used.[108]

---

103. 450 U.S. at 715.
104. *See supra* note 15.
105. 450 U.S. 707 (1981).
106. 366 U.S. 599 (1961).
107. 374 U.S. 398 (1963).
108. The *Thomas* "compelling state interest" standard has been repeatedly cited by other courts. *See* Menora v. Illinois High School Ass'n, 683 F.2d 1030 (7th Cir. 1982) (high school association's rule forbidding basketball players to wear hats or other headwear, with sole exception of headbands no wider than two inches while playing, as applied to proscription of pinning yarmulkes with bobby pins held not to violate free exercise clause of first amendment since yarmulkes may be secured by other means); Weaver v. Jago, 675 F.2d 116 (6th Cir. 1982) (requiring inmate to have his hair cut in conformity with prison regulations where inmate subscribed to Cherokee religious belief that cutting of hair indicated disgrace, humiliation or death in family violated first amendment right to freedom of religious expression); Callahan v. Woods, 658 F.2d 979 (9th Cir. 1981) (requirement

Where earlier cases had provided protection to the free exercise of accepted tenets of a recognized religious faith, the decision in *Thomas* greatly expands the first amendment protection accorded to beliefs which are not shared by other members of a religious group and which are instead the unique interpretation of an individual member and not "acceptable, logical, consistent or comprehensible to others."[109] Where a religious belief is honestly and in good faith held, and is not so bizarre or clearly non-religious in motivation as to be excluded from first amendment protection, under *Thomas* it will not be subjected to further scrutiny.

LYNN MCCUTCHEN GARDNER

---

of obtaining a social security number for a child prior to qualifying for Aid to Families with Dependent Children in contravention of father's religious belief that Social Security numbers were the sign of the Antichrist, held to be in violation of first amendment freedom of religion).

109. *See supra* note 3.