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United States Court of Appeals Second Circuit, Seabrook v. City of New York

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Cover Page Footnote
17-1

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Seabrook v. City of New York[1]
(decided April 4, 2000)

Plaintiffs, Norman Seabrook, President of the Correction Officers' Benevolent Association, and six named female Corrections Officers, brought suit against the City of New York and the Department of Corrections (hereinafter "DOC"), seeking a preliminary injunction to enjoin the DOC from enforcing a new directive forbidding corrections officers from wearing skirts while on duty in contravention of their religious faith.[2] Plaintiffs alleged that the DOC's directive violated the Free Exercise Clause of the Federal[3] and New York State[4] Constitutions.[5] The United States District Court for the Southern District of New York denied plaintiffs' motion for a preliminary injunction on both plaintiffs' federal and New York State claims.[6] With regard to plaintiffs' federal claim, the court reasoned that since the directive only incidentally burdened plaintiffs' free exercise rights, it did not involve an actual violation their rights.[7] Additionally, the court analyzed plaintiffs' claims under the compelling interest test applicable under the New York State Constitution Article I, §3, and denied plaintiffs' motion for a preliminary injunction, holding that the "DOC had a compelling interest in the security and safety of its corrections officers and inmates and that . . . all Correction

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[1] 2000 U.S. App. LEXIS 6218 (2d Cir. 2000).

[2] *Id.* at *1.

[3] U.S. CONST. amend. I. The first amendment provides in pertinent part "Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof.*" *Id.* (emphasis added).

U.S. CONST. amend XIV, § 1. The fourteenth amendment provides in pertinent part: "No State shall make or enforce any law *which shall abridge the privileges* or immunities of citizens of the United States." *Id.* (emphasis added).

[4] N.Y. CONST. art. I, § 3. The New York Constitution provides in pertinent part: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent . . . on account of his opinions on matters of religious belief. . . ." *Id.*

[5] *Seabrook*, 2000 U.S. App. LEXIS 6218, at *2.

[6] *Id.*

[7] *Seabrook*, 2000 U.S. App. LEXIS 6218, at *4.

officers are subject to duties which implicate DOC's proffered security rationale for the directive."[8]

On appeal, plaintiffs challenged the judgment of the District Court, alleging that it abused its discretion in denying plaintiffs' motion for a preliminary injunction.[9] The plaintiffs alleged that the DOC directive violated the Free Exercise Clause of the First and Fourteenth Amendments to the Federal Constitution, and Article I, §3 of the New York State Constitution.[10] The United States Court of Appeals for the Second Circuit reviewed the District Court's denial of the injunction for an abuse of discretion.[11]

The court began its analysis by stating that "it is not a violation of the Free Exercise Clause to enforce a generally applicable rule, policy or statute that burdens a religious practice, provided the burden is not the object of the law, but merely the 'incidental effect' of an otherwise valid neutral provision."[12] Accordingly, the court refused to find a free exercise violation, reasoning that plaintiffs' failure to allege a discriminatory purpose for the directive was fatal to the federal claim.[13] In addition, the court scrutinized plaintiffs' free exercise claim under the compelling interest test of the New York State Constitution:[14]

> The compelling interest test asks (1) whether a sincerely held religious belief (not disputed here) is burdened by government action and, if so, (2) whether the State has demonstrated that the government conduct at issue 'serves a compelling state interest, pursued by the least restrictive means possible, and that such an interest would be adversely affected by granting an exemption thereto.'[15]

The court agreed with the lower courts findings, reasoning that the "DOC has a compelling interest in the security and safety of its corrections officers . . . and that . . . all corrections officers

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[8] *Id.* at *5.
[9] *Id.* at *2.
[10] *Id.*
[11] *Id.*
[12] *Id.* at *3.
[13] *Seabrook*, 2000 U.S. App. LEXIS 6218, at *4.
[14] *Seabrook*, 2000 U.S. App. LEXIS 6218, at *4.
[15] *Id.* at *5.

are subject to duties which implicate the DOC's proffered security rationale for the directive"[16]

The Free Exercise Clause of the First Amendment, which provides that Congress cannot make a law which hinders the free exercise of religion, has been made applicable to the states by incorporation into the Fourteenth Amendment.[17] "The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires."[18] Thus, the First Amendment clearly excludes all regulation by government of religious beliefs as such.[19] The "exercise of religion" often includes the performance of (or abstention from) physical acts, along with belief and worship.[20] The New York State Constitution similarly provides that the free exercise and enjoyment of religious profession and worship shall forever be allowed in the State without discrimination.[21]

In *Employment Division v. Smith,*[22] respondents were fired from their jobs with a private drug rehabilitation organization because they ingested, for sacramental purposes, a drug, the consumption of which the Oregon criminal law deemed to be illegal.[23] When respondents applied for unemployment compensation, they were determined to be ineligible because "they had been discharged for work-related 'misconduct.'"[24] In reversing that determination, the Oregon Court of Appeals held that "the denial of benefits violated the respondents' free exercise rights under the First Amendment."[25] On appeal to the Oregon Supreme Court, petitioner argued that because state law deemed consumption of peyote illegal, the denial of benefits was

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[16] *Id.*

[17] Employment Division v. Smith, 494 U.S. 872, 876-77 (1990).

[18] *Id.* at 877.

[19] *Id.* (citing Sherbert v. Verner, 374 U.S. 398, 402 (1963)).

[20] *Id.* at 877.

[21] N.Y. CONST. art. I, § 3.

[22] *Employment Div.*, 494 U.S. at 872.

[23] *Id.* at 874-75. The drug, peyote, is a hallucinogen listed as a Schedule I controlled substance by the State Board of Pharmacy. *Id.*

[24] *Id.* at 874.

[25] Black v. Employment Div., 75 Or. App. 735, 764 (1985), *aff'd* in part and *modified* in part, Smith v. Employment Div., 301 Or. 221 (1986), *cert. granted,* Employment Div. v. Smith, 489 U.S. 1077 (1989), *rev'd,* Employment Div. v. Smith, 494 U.S. 872 (1990).

permissible.[26] The Oregon Supreme Court concluded that the respondents were entitled to payment of unemployment benefits.[27] The Oregon Supreme Court reasoned that the unlawfulness of respondents' peyote consumption was irrelevant to resolution of their constitutional claim because the purpose of the "misconduct" provision under which respondents had been disqualified was inadequate to justify the burden placed on their religious observance.[28] On appeal to the United States Supreme Court, the petitioner continued to maintain the relevance of the illegality of respondents' peyote consumption to their constitutional claim. The United States Supreme Court agreed, reasoning that "if a State has prohibited through its criminal laws certain kinds of religious 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."[29] The United States Supreme Court vacated the judgment of the Oregon Supreme Court and remanded the case for further proceedings.[30] The Oregon Supreme Court considered whether the Oregon controlled substance law was valid under the Free Exercise Clause of the First Amendment and concluded that it was not. The United States Supreme Court later granted *certiorari* to the petitioners.

The United States Supreme Court then proceeded to consider whether the prohibition contained in the Oregon statute was permissible under the Free Exercise Clause. Respondents argued that their claim for a religious exemption must be evaluated under the *Sherbert v. Verner* balancing test.[31] Ultimately, the

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[26] Smith v. Employment Div., 301 Or. 209, 221 (1986), *cert. granted*, Employment Div. v. Smith, 489 U.S. 1077 (1989), *rev'd*, Employment Div. v. Smith, 494 U.S. 872 (1990).

[27] *Id.* at 217-19.

[28] *Id.* The purpose of the "misconduct" provision under which respondents had been disqualified was to preserve the financial integrity of the compensation fund, not to enforce the State's criminal laws. *Id.*

[29] *Employment Div.*, 494 U.S. at 875 (quoting Employment Div., Dept. of Human Resources of Oregon v. Smith, 485 U.S. 660, 670 (1988)).

[30] *Id.* at 876-77.

[31] Sherbert v. Verner, 374 U.S. 398, 402-03 (1963). Under the *Sherbert v. Verner* balancing test, a *compelling governmental interest* must exist in order to justify governmental actions that substantially burden a religious practice. *Id.* (emphasis added).

Court reversed the Oregon Supreme Court's decision, holding the *Sherbert* balancing test inapplicable to free exercise challenges.[32] The Court reasoned that "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."[33] The Court ultimately concluded that the "compelling government interest" test is inapplicable to an across-the-board criminal prohibition on a particular form of conduct.[34]

The New York State courts, however, generally adhere to a balancing test which includes a "compelling governmental interest" component. In *Matter of Miller,*[35] petitioner, a member of the Amish faith, applied for a pistol permit.[36] The Allegany County Sheriff refused the application because petitioner did not submit a photograph as required by Penal Law §400.00(3).[37] Petitioner filed suit seeking an order directing the Sheriff to exempt him from the statutory photograph requirement on the ground that the photograph requirement violated his Federal and State Constitutional rights to the free exercise of his religious beliefs.[38] The Allegany County Court held that petitioner was entitled to an exemption on religious grounds.[39] The Appellate Division, Fourth Department, reversed the lower court's decision and dismissed the petitioner's claim.[40] The New York courts have adopted a traditional balancing test which involves a two-step analysis: "(1) whether the party claiming the free exercise right has established a sincerely held religious belief that is burdened by the statutory requirement; and (2) whether the State has demonstrated

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[32] *Employment Div.*, 494 U.S. at 885.
[33] *Id.* at 884.
[34] *Id.*
[35] 252 A.D.2d 156, 684 N.Y.S.2d 368, 172 Misc. 2d 105 (4th Dep't 1998).
[36] *Miller*, 252 A.D.2d at 157, 684 N.Y.S.2d at 369, 172 Misc. 2d at 106.
[37] N.Y. PENAL LAW § 400.00 (2000). §400.00(3) states in pertinent part: "Each individual signing an application *shall submit one photograph of himself* and a duplicate for each required copy of the application." *Id.* (emphasis added).
[38] *Miller*, 252 A.D.2d at 157, 684 N.Y.S.2d at 369, 172 Misc. 2d at 106. It is an Amish belief that submission to a photograph would violate the Second Commandment by creating a likeness of God's creation. *Id.*
[39] In re Miller, 656 N.Y.S.2d 846, 172 Misc. 2d 105 (N.Y. County Ct. 1997).
[40] *Miller*, 252 A.D.2d at 160, 684 N.Y.S.2d at 371, 172 Misc. 2d at 107.

that 'the requirement nonetheless serves a compelling governmental purpose, and that an exemption would substantially impede fulfillment of that goal.'"[41] In analyzing petitioner's claim, the court found that petitioner had other methods of hunting deer available to him so as to circumvent the photograph requirement and stated that "deer hunting does not implicate a tenet of the Amish faith, and the availability of other options reduces significantly the burden imposed upon petitioner's exercise of religious beliefs."[42] In applying the traditional balancing test, the court held that the photograph requirement did not substantially burden the free exercise of petitioner's religious belief.[43]

In sum, federal and New York State law are similar with respect to religious issues and treatment of Free Exercise violations. In analyzing whether a statutory requirement violates an individual's constitutional right to the free exercise of religion under the Federal Constitution, courts historically applied a balancing test to determine whether a requirement that substantially burdens a religious practice is justified by a compelling governmental interest.[44] Where the challenged statute is neutral and generally applicable, for example, a law that is not specifically directed at a religious practice and is otherwise valid, that balancing test is not applied by federal courts.

In *Miller*, the New York Court of Appeals specifically stated that "the Court of Appeals has not definitely stated whether the scope of Article I, §3 of the New York Constitution is coextensive with the Free Exercise Clause of the First Amendment of the U.S. Constitution."[45] However, the New York State courts generally adhere to a balancing test which includes a "compelling government interest" component. This "compelling governmental interest" component requires more of a case-by-case determination whether such a burden on specific individuals is constitutionally

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[41] *Id.* at 159-60, 684 N.Y.S.2d at 371, 172 Misc. 2d at 107.

[42] *Id.* at 159, 684 N.Y.S.2d at 371, 172 Misc. 2d at 107. Petitioner acknowledged that the sole reason he sought a pistol permit was to hunt deer and further acknowledged that *he could hunt deer by other means that would not require a license or the submission of a photograph*, although he preferred the use of a pistol or revolver for deer killing. *Id.* (emphasis added).

[43] *Id.* at 159, 684 N.Y.S.2d at 371, 172 Misc. 2d at 107.

[44] *Employment Div.*, 494 U.S. at 882-83; *see also Sherbert*, 374 U.S. at 402-03.

[45] *Miller*, 252 A.D.2d at 158-59, 684 N.Y.S.2d at 370, 172 Misc. 2d at 107.

significant and whether the particular interest asserted by the New York State government is compelling. It seems that the traditional balancing test provides greater protection to an individual's free exercise of religion than the facially neutral and generally applicable standard set forth by the United States Supreme Court in *Employment Division v. Smith*.

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