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# Unemployment Benefits and the Religion Clauses: A Recurring Conflict

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# CASENOTES

## Unemployment Benefits and the Religion Clauses: A Recurring Conflict

*This Casenote examines* Thomas v. Review Board of the Indiana Employment Security Division, *in which the Supreme Court of the United States extended unemployment benefits to a claimant who had voluntarily terminated his employment for religious reasons. The author discusses the application of the first amendment religion clauses to cases of this nature, and suggests that the Supreme Court did not properly balance the claimant's right to the free exercise of his religion against the state's interest in maintaining its unemployment compensation system. The author concludes that the Court's decision increases the conflict between the establishment and free exercise clauses of the first amendment.*

After quitting his job, Eddie C. Thomas filed a claim for unemployment compensation with the Indiana Employment Security Division and his former employer, Blaw-Knox Foundry & Machinery, Inc. Thomas, a Jehovah's Witness, explained that his religious principles did not permit him to continue working for Blaw-Knox, a company primarily engaged in the manufacture of armaments. When Thomas was originally hired to work in the roll foundry, he was assigned to a part of the firm not directly involved in the production of weapons. Blaw-Knox closed the foundry nearly a year later and Thomas was transferred to an area that actually produced armaments. Although his church did not explicitly forbid this employment, Thomas felt compelled by his religious principles to refrain from directly engaging in the production of weapons. He sought to transfer to a different department, only to discover that all of the remaining departments at Blaw-Knox were directly involved in armaments production. After Thomas's employer denied his request for a layoff, he quit his job and applied for unemployment benefits.

The Employment Security Review Board, adopting a referee's findings, concluded that Thomas was not entitled to unemployment benefits under the Indiana Employment Security Act be-

cause his decision to quit was not based on a "good cause [arising] in connection with his work."[1] Sitting en banc, the Court of Appeals of Indiana reversed the decision of the Review Board and held that Thomas was entitled to benefits.[2] The Supreme Court of Indiana, in a three-to-two decision, vacated the intermediate appellate court's judgment and denied Thomas's claim.[3] On certiorari, the Supreme Court of the United States *held,* reversed: By denying Thomas's application for unemployment benefits, Indiana violated his first amendment right to the free exercise of his religion. *Thomas v. Review Board of the Indiana Employment Security Division,* 450 U.S. 707 (1981).

The first amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."[4] Inevitably, tension exists between the free exercise clause, which implies a limitation on otherwise permissible governmental actions that interfere with the free exercise of religion, and the establishment clause, which implies governmental neutrality so that government action does not favor any particular religion or religion in general. Tension arises because too great an emphasis on one clause may infringe on the rights protected by the other clause. This nation has attracted or produced an assortment of religious sects, many outside the mainstream of religious belief. The first amendment requires that all of these diverse religious convictions be accommodated, yet none awarded favored status.[5]

According to Thomas Jefferson, the purpose of the religion clauses is to erect "a wall of separation between church and State."[6] Maintaining this "wall" is easier in theory than in practice. Although certain governmental actions would obviously interfere impermissibly with religion, others not so obviously violative of the religion clauses may also have indirect, adverse effects on them.[7]

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1. Thomas v. Review Bd. of Indiana Employment Sec. Div., 381 N.E.2d 888, 890 (Ind. Ct. App. 1978) (en banc), *vacated,* 391 N.E.2d 1127 (Ind. 1979), *rev'd,* 450 U.S. 707 (1981); *see* IND. CODE § 22-4-15-1 (1976 & Supp. 1981).

2. 381 N.E.2d at 895.

3. 391 N.E.2d at 1134.

4. U.S. CONST. amend. I.

5. The Supreme Court has declared that its role in the inherent conflict is "to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other." Walz v. Commissioner, 397 U.S. 664, 668-69 (1970).

6. 16 THE WRITINGS OF THOMAS JEFFERSON 282 (A. Lipscomb ed. 1904).

7. One commentator has suggested that although there is no comprehensive definition of the establishment clause, "it means at least that government may not prefer one religion

The Supreme Court has held that mandatory Bible reading in public schools is unconstitutional,[8] as is payment from public funds of the salaries of instructors who teach secular subjects at parochial schools.[9] On the other hand, subsidizing bus transportation for, and loaning textbooks to, students attending sectarian schools have been held constitutional.[10] Given the government's purportedly neutral role, this indirect public aid to parochial schools may appear to violate the establishment clause. Neutrality is maintained, however, because of the state's primarily secular purpose of providing all children with an adequate education, regardless of what type of school they attend.[11] The challenge is to balance desirable legislative goals against the danger of excessive governmental involvement in religious matters, which may occur when the state's interests interact with the religious sphere.[12]

Controversy over the free exercise of religious beliefs often surfaces when religion mandates unlawful behavior. An early example is *Reynolds v. United States*,[13] in which the Mormon defendant argued that a statute prohibiting bigamy was unconstitutional as applied to him because it conflicted with a Mormon law that permitted and even encouraged polygamy. The Supreme Court

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over another, or prefer religion over non-religion." Note, *The Constitutionality of an Employer's Duty to Accommodate Religious Beliefs and Practices*, 56 CHI.-KENT L. REV. 635, 649 (1980).

8. *See* School Dist. v. Schempp, 374 U.S. 203 (1963).

9. *See* Lemon v. Kurtzman, 403 U.S. 602 (1971).

10. In Everson v. Board of Educ., 330 U.S. 1 (1947), the Court justified the use of public funds to pay the bus fares of parochial school students by stressing the state's interest in the welfare of all children, whether they attend public or private institutions. *Id.* at 17-18.

In Board of Educ. v. Allen, 392 U.S. 236 (1958), the Court held that a New York statute requiring public school authorities to lend textbooks to all students, including those attending parochial schools, did not violate the free exercise and establishment clauses. The Court stressed that only secular books were loaned, and that the benefit of the statute accrued to the students, not to the parochial schools. *Id.* at 243-45.

11. The Supreme Court has developed a three-part test to determine whether laws that may aid religious institutions are permissible under the establishment clause: "First, the statute must have a secular legislative purpose. Second, it must have a 'primary effect' that neither advances nor inhibits religion. Third, the statute and its administration must avoid excessive government entanglement with religion." Meek v. Pittenger, 421 U.S. 349, 358 (1975) (citations omitted); *accord* Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756 (1973).

12. An interesting variation of the balancing test in the realm of education is found in Wisconsin v. Yoder, 406 U.S. 205 (1972), in which several Amish parents had been convicted for violating Wisconsin's mandatory school attendance law. The Supreme Court held that the state's interest in universal education did not override the Amish practice of declining to send their children to public school after completion of the eighth grade to ensure their continued religious and vocational training in the Amish community. *Id.* at 215-19.

13. 98 U.S. 145 (1878).

held that although the laws of the government "cannot interfere with mere religious belief and opinions, they may with practices."[14]

Almost a century later, in *Braunfeld v. Brown*,[15] Orthodox Jewish merchants challenged a Pennsylvania criminal statute that proscribed the sale of certain goods on Sundays. The merchants contended that because their faith required the closing of their shops on Saturdays, the statute seriously impaired their ability to earn a livelihood.[16] The Court held that the strong state interest in establishing a universal day of rest should not be hampered by a constitutional prohibition of conduct regulation simply because that regulation may result in economic disadvantage to some religious groups and not to others.[17] These inequities would be tolerated if the burden on the affected groups was indirect.[18]

Although the Court has not overruled *Braunfeld*, its thinking about the free exercise of religion underwent a metamorphosis characterized by the landmark case of *Sherbert v. Verner*.[19] Sherbert's employer discharged her because she refused to work on Saturday, which according to her religion was a day of rest.[20] The Employment Security Commission of South Carolina rejected Sherbert's claim for unemployment compensation benefits, finding that her unavailability for Saturday work brought her within the disqualifying provisions of the South Carolina unemployment compensation statute. Sherbert contended that the disqualifying provisions of the statute abridged her right to the free exercise of her religious beliefs. The Court agreed: "[T]o 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."[21]

Conscientious objection to military service is another area in

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14. *Id.* at 166.

15. 366 U.S. 599 (1961).

16. *Id.* at 601.

17. *Id.* at 606.

18. *See id.*

19. 374 U.S. 398 (1963). The *Sherbert* Court avoided overruling *Braunfeld* by reasoning that a state had a stronger interest in maintaining a universal day of rest than in denying unemployment benefits to Sabbatarians. *Id.* at 408-09. And in *Sherbert*, the state failed to prove that the statute was necessary to maintain the integrity of its unemployment system by preventing false claims. *Id.* at 406-07.

20. Sherbert, a Seventh-Day Adventist, had worked for her ex-employer for two years without being required to work on Saturdays. After she was fired, other prospective employers declined to hire her because of her unwillingness to work on her sabbath. *Id.* at 399 nn.1 & 2.

21. *Id.* at 406.

which the Court has closely scrutinized the free exercise and establishment clauses. Although not constitutionally compelled to exempt concientious objectors from military service,[22] Congress has provided in section 6(j) of the Military Selective Service Act that any person who "by reason of religious training and belief, is conscientiously opposed to participation in war in any form," shall be exempt from military conscription.[23] The conscientious objector cases involve two distinct issues: (1) whether the person objected to war in any form, and (2) whether the objection was based on religious training and belief. These issues have created distinct problems for the Court and should be discussed separately.

The Court has clearly established the meaning of opposition to "war in any form." *Gillette v. United States*[24] involved conscientious objectors who did not oppose all wars, but objected to participation in the Vietnam conflict because they viewed it as an unjust war. Gillette believed in a "humanist approach to religion,"[25] and Negre, the other petitioner in a consolidated appeal, was a Roman Catholic.[26] They contended that the religion clauses forbade construing the statute to deny them an exemption from military duty if they opposed only one particular war while adherents of faiths traditionally opposed to all wars were exempted.[27] The Supreme Court held that this construction of section 6(j) did not violate the free exercise and establishment clauses of the first amendment.[28] The Court cited "valid neutral reasons" for limiting the exemption, which focuses on individual conscientious beliefs and not on sectarian affiliations, to persons conscientiously opposed to war in any form.[29]

The Court considered the scope of section 6(j)'s "religious

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22. *See* Hamilton v. Regents of the Univ. of Cal., 293 U.S. 245, 266-67 (1934); United States v. MacIntosh, 283 U.S. 605, 623-24 (1931).

23. Military Selective Service Act § 6(j), 50 U.S.C. app. § 456(j) (1976). Section 6(j) also provides in part,

> Nothing contained in this title . . . shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. As used in this subsection, the term "religious training and belief" does not include essentially political, sociological, or philosophical views, or a merely personal moral code.

24. 401 U.S. 437 (1971).

25. *Id.* at 439.

26. *Id.* at 440-41.

27. *Id.* at 448.

28. *Id.* at 450-54, 461-62.

29. *See id.* at 452-55.

training and belief" language in *United States v. Seeger*[30] and *Welsh v. United States*.[31] In *Seeger* the Court reversed the convictions of three men who refused induction into the military.[32] Seeger, one of the defendants, claimed an exemption as a conscientious objector based on his religious beliefs, even though he left open the question whether he believed in a Supreme Being as the statute then required.[33] The Court held that the test of a "belief in a relation to a Supreme Being" under the former version of section 6(j) was whether it was a "sincere and meaningful" belief occupying in the life of its possessor a place analogous to that filled by the God of those admittedly qualified for the exemption.[34] To fall within the exemption, the belief need not be mandated by any organized religion. Instead, a court should determine whether the registrant sincerely holds his beliefs and "whether they are, in his own scheme of things, religious."[35] The Court construed section 6(j) to include "all sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent."[36] While giving the phrase "religious training and belief" an expansive interpretation, the Court adhered to the statutory language excluding from the exemption beliefs that are based on a "merely personal moral code."[37]

In *Welsh* the Court confronted a similar issue. Despite his claim to a section 6(j) exemption, Welsh was convicted for refusing induction into the military. Welsh stated that his opposition to war

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30. 380 U.S. 163 (1965).

31. 398 U.S. 333 (1970).

32. *Seeger*, 380 U.S. at 187-88.

33. *Id.* at 166. When Seeger was convicted, § 6(j) provided in part,

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views, or a merely personal moral code.

Selective Service Act of 1948, ch. 625, § 6(j), 62 Stat. 604, 612-13 (current version at 50 U.S.C. app. § 456(j) (1976)). The exemption no longer requires belief in a Supreme Being. *Cf. supra* note 23.

34. 380 U.S. at 166.

35. *Id.* at 185.

36. *Id.* at 176.

37. *See id.* at 186. The Court, however, stated that exceptions to § 6(j) must be narrowly construed. To fall within the exception, a personal moral code must be the *sole* basis for the registrant's belief. *Id.*

was not derived from a religious belief, but arose from his reading of history and sociology.[38] Nevertheless, the Court reversed his conviction, reasoning that *Seeger* was controlling.[39] Welsh's own assessment that his views were not religious was not determinative, the Court explained, because few registrants were likely to be aware of the Court's broad construction of the word "religious."[40] The Court held that section 6(j) exempted from military service "all those whose consciences, spurred by deeply held moral, ethical, or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument of war."[41]

Although *Seeger* and *Welsh* involved construction of a statute rather than interpretation of the Constitution, the Court apparently intended to avoid a conflict with the establishment clause by its expansive (and perhaps erroneous) interpretation of section 6(j).[42] Concurring in *Welsh,* Justice Harlan reasoned that section 6(j) violated that clause by permitting exemptions only for religious beliefs, in the ordinary theistic sense of the term.[43]

*Thomas v. Review Board of the Indiana Employment Security Division* exemplifies the classic tension between the free exercise clause and the establishment clause in a context that combines the pivotal issues of the cases discussed above. The crux of *Thomas* was whether denying unemployment compensation abridged the claimant's right of free exercise of religion, or whether granting those benefits violated the establishment clause. On the one hand, the Court must avoid the "excessive governmental entanglement" produced by favoring one or all religions.[44] But *Sherbert* held that a state may not compel someone to choose between a fundamental precept of his religion and his job.[45] Thomas, however, did not claim a Sabbatarian exemption; he claimed a conscientious objection to the nature of his employment, similar to conscientious objection to war.[46]

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38. 398 U.S. at 341.

39. *See id.* at 340-43.

40. *Id.* at 341.

41. *Id.* at 344. The Court explained that registrants are not entitled to the exemption when their beliefs are not deeply held or when their "objection to war does not rest at all upon moral, ethical, or religious principle but instead rests solely upon considerations of policy, pragmatism, or expediency." *Id.* at 342-43.

42. *See id.* at 344-45, 350-51, 354 (Harlan, J., concurring).

43. *See id.* at 356-57. Because the exemption created a religious benefit, the establishment clause required the reversal of Welsh's conviction. *See id.* at 362.

44. *See supra* note 11.

45. *See supra* text accompanying note 21.

46. *See* 450 U.S. at 707.

Moreover, Thomas's objection to his employment was based on neither a cardinal religious tenet nor even a uniform belief among Jehovah's Witnesses.[47] The question thus arose whether Thomas was merely asserting a personal or philosophical belief, which is not entitled to first amendment protection. The Supreme Court of Indiana focused on this issue,[48] and a brief review of the state court opinion will help elucidate its complexity.

That the Supreme Court of Indiana decided *Thomas* by a 3-2 margin evidences the unsettled nature of the issues involved. The majority opined that since Thomas's congregation did not require that he leave his job and the basis of his religious belief was unclear, his dilemma did not violate the kind of cardinal religious tenet at stake in *Sherbert*. Consequently, Thomas's decision did not require first amendment protection.[49] A majority of the court also noted that Thomas was willing to return to a position in the roll foundry even though he was fully aware that all Blaw-Knox operations involved the production of armaments.[50]

Justice Hunter, in dissent, rejected the notion that a reviewing court should say when and in what job a religious adherent compromised his religious beliefs.[51] He found persuasive the decision of the Indiana Employment Security Review Board that Thomas did indeed quit his job because of his religious convictions. On the basis of that finding, he considered it improper for the reviewing court to reconsider whether Thomas's convictions were religious.[52]

In denying Thomas unemployment benefits, the Indiana Supreme Court's concern about whether Thomas's beliefs were religious or philosophical was misplaced. That Thomas's congregation did not require him to quit does not automatically make his choice philosophical rather than religious. The draft exemption cases have liberally interpreted section 6(j) of the Military Selective Service Act to extend the statute's exemption to persons whose sincerely held moral beliefs precluded their participation in war.[53] One commentator has suggested that in *Seeger* and *Welsh* the Court "was telling Congress that an exemption limited to religious objectors would probably violate the establishment clause."[54]

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47. *See id.* at 715.
48. *See* 391 N.E.2d at 1131-34.
49. *Id.* at 1133.
50. *Id.* at 1131.
51. *Id.* at 1135 (Hunter, J., dissenting).
52. *Id.*
53. *See supra* text accompanying notes 24-41.
54. Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 YALE

Whether or not Thomas's church mandated his behavior should be irrelevant if his personal beliefs compelled his actions.[55]

The Supreme Court of the United States found it unnecessary to consider the validity of Thomas's beliefs and focused instead on the constitutional issues.[56] The Court resolved the tension between the two religion clauses by holding that (a) the state's denial of unemployment benefits violated Thomas's first amendment right to free exercise of his religious beliefs, and (b) payment of those benefits would not violate the establishment clause.[57] Writing for the majority, Chief Justice Burger explained the Court's unwillingness to pass judgment on Thomas's beliefs: "Thomas drew a line, and it is not for us to say that the line he drew was an unreasonable one. Courts should not undertake to dissect religious beliefs because . . . [the] beliefs are not articulated with the clarity and precision that a more sophisticated person might employ."[58]

The majority's reference to Thomas's difficulty in articulating his beliefs is significant. An examination of the portions of Thomas's testimony included in the *Thomas* opinion suggests that one may attribute Thomas's difficulties, in part, to his communicative inadequacies.[59] Commentators have suggested that the linguistic skills of the conscientious objector bear a direct relationship to the credence given his beliefs.[60] This may well have been the case in *Thomas*, for the excerpts reveal that the petitioner was far from articulate.[61] In awarding Thomas benefits, however, the Court stressed that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."[62]

The majority held that a reviewing court's role in cases like *Thomas* is merely "to determine whether there was an appropriate finding that petitioner terminated his work because of an honest

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L.J. 1205, 1320 (1970).

55. In *Seeger* Justice Clark emphasized that "[l]ocal boards and courts are not free to reject beliefs because they consider them 'incomprehensible.' Their task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, in his own scheme of things, religious." 380 U.S. at 184-85.

56. 450 U.S. at 716.

57. *Id.* at 717.

58. *Id.* at 715.

59. For excerpts of the transcripts, see *id.* at 714-15.

60. *See* Comment, *The History and Utility of the Supreme Court's Present Definition of Religion*, 26 LOY. L. REV. 87, 104 (1980); Comment, *The Legal Relationship of Conscience to Religion: Refusals to Bear Arms*, 38 U. CHI. L. REV. 583, 610 (1971).

61. *See* 450 U.S. at 714-15.

62. *Id.* at 714.

conviction that such work was forbidden by his religion."[63] Since the record clearly indicated that Thomas had "terminated his employment for religious reasons," the Court found *Sherbert v. Verner* controlling.[64] Accordingly, the Court concluded that Indiana must award Thomas unemployment benefits to avoid compelling him "to choose between the exercise of a First Amendment right and participation in an otherwise available public program."[65]

The Court acknowledged that state legislation that impinges on religious liberty may be permissible if "it is the least restrictive means of achieving some compelling state interest."[66] Indiana claimed two interests to justify the denial of unemployment benefits: (1) compensating people who quit their jobs for personal reasons would place a severe financial burden on the unemployment compensation fund, and (2) denying benefits in these cases would avoid the need for employers to conduct a detailed inquiry into their applicants' religious beliefs.[67] The majority concluded, however, that these state interests did not outweigh the adverse effect that denying benefits would place on the free exercise of religion.[68]

The *Thomas* majority summarily dismissed the argument that granting Thomas benefits would violate the establishment clause.[69] While admitting that Thomas would be deriving a benefit from his religious beliefs, "in a sense," Chief Justice Burger reasoned that no other choice was available in light of *Sherbert*: "Unless we are prepared to overrule *Sherbert*, . . . Thomas cannot be denied the benefits due him on the basis of the findings of the referee . . . that he terminated his employment because of his religious convictions."[70] Obviously, the Court is not prepared to overrule *Sherbert*.

Justice Rehnquist, dissenting, castigated the majority for what he viewed as its holding that "Indiana is constitutionally required to provide direct financial assistance to a person solely on the basis of his religious beliefs" and thereby "add mud to the already muddied waters of First Amendment jurisprudence."[71] While agreeing

63. *Id.* at 716.

64. *Id.* at 713, 716-20; *see supra* notes 19-21 and accompanying text.

65. 450 U.S. at 716.

66. *Id.* at 718.

67. *Id.* at 718-19.

68. *Id.* at 719. The Court found no evidence in the record indicating the likelihood of many similar claims being filed, sufficient either to burden Indiana's unemployment compensation system or to cause employers to make searching inquiries about the religious beliefs of their applicants. *Id.*

69. *See id.* at 719-20.

70. *Id.* at 720.

71. *Id.* at 720 (Rehnquist, J., dissenting).

with the majority that there is a tension between the free exercise and the establishment clauses, Justice Rehnquist observed that the tension was of recent origin and largely the result of the Court's previous decisions.[72] He identified three reasons for the tension between the clauses. First, the growth in social legislation has increased governmental involvement in the private lives of individual members of society. Second, by making the religious clauses applicable to the states through the fourteenth amendment, the Court has increased the potential for tension between the clauses. Finally, and to Justice Rehnquist most importantly, the Court has exacerbated the problem by giving each clause an overly expansive interpretation.[73]

Justice Rehnquist argued that the *Thomas* majority opinion exemplified the Court's tendency to interpret the free exercise clause too broadly.[74] He would have adopted the interpretation of the free exercise clause in *Braunfeld v. Brown*.[75] According to Justice Rehnquist, *Braunfeld* held that when "a State has enacted a general statute, the purpose and effect of which is to advance the State's secular goals, the Free Exercise Clause does not . . . require the State to conform that statute to the dictates of religious conscience of any group."[76] Justice Rehnquist reasoned that the *Thomas* Court's broad reading of the free exercise clause logically could be extended to prevent states from denying reimbursement to students who chose to attend parochial schools for religious reasons,[77] which would certainly violate the establishment clause as the Court has interpreted it in previous decisions.[78]

Justice Rehnquist also chastised the majority for dismissing the conflict with the establishment clause by simply asserting that the decision " 'plainly' does not foster the 'establishment' of religion."[79] If Indiana had enacted a statute specifically providing benefits for those who quit their jobs for religious reasons, Justice Rehnquist believed that the statute would violate the establishment clause as the Court has interpreted it.[80] Yet, the majority

72. *Id.* at 721.
73. *Id.*
74. *Id.* at 722-23.
75. 366 U.S. 599 (1961).
76. 450 U.S. at 723.
77. *Id.* at 724 n.2.
78. *Id.* at 724-25.
79. *Id.* at 724.
80. *Id.* at 725.

opinion requires Indiana to provide these benefits.[81] Justice Rehnquist interpreted the establishment clause only to prohibit government action that aids the proselytizing activities of religious groups, while permitting actions that accommodate individual choices.[82] Under his interpretation, a state could voluntarily award unemployment benefits to people who sever their employment for religious reasons without violating the establishment clause.[83]

Justice Rehnquist recognized some of the major deficiencies of the majority opinion. The opinion does not provide a framework for ascertaining when, in future similar situations, states must award unemployment benefits to employees who voluntarily terminate their employment.[84] Leaving the issue to case-by-case determination is impracticable and ill-advised. Because courts are precluded from inquiring into the validity of religious beliefs,[85] the potential for abuse is disconcerting. Any person may now quit his job, assert a religious (or even purely personal) basis for doing so, and receive unemployment compensation.[86] If a state refuses to award benefits in such a case, a court may not inquire into the objective validity of the individual's beliefs—his actual personal religious beliefs control. Once a person demonstrates, to some unspecified degree, that he quit his job because of those beliefs, he will be eligible for unemployment compensation unless the state can successfully establish a superior state interest.

The majority briefly considered the possibility of "an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause," but dismissed this possibility by noting that such was "not the case here."[87] Yet Chief Justice Burger reiterated that "[c]ourts are not arbiters of scriptural interpretation."[88] How, then, are the courts to determine, on a case-by-case basis, what beliefs are clearly nonreligious, without delving into these purportedly religious beliefs? The answer unfortunately appears to be that administrative panels and courts are left with no effective method of ascertaining the validity of these claims. A claimant would have a prima facie case if he merely asserted that his religion compelled him to quit his job. Of

81. *See id.* at 726.
82. *See id.* at 726-27.
83. *See id.*
84. *See id.* at 722.
85. 450 U.S. at 715-16.
86. *See id.* at 723 n.1 (Rehnquist, J., dissenting).
87. 450 U.S. at 715.
88. *Id.* at 716.

course, courts may inquire into the sincerity of beliefs, but this is a difficult undertaking. The distinction between inquiring into a person's sincerity and examining the validity of his beliefs is often ephemeral.

The personal/religious beliefs dichotomy underscores another weakness of the *Thomas* decision. The example of the draft exemption cases could be extended to imply that one need not even claim a religious affiliation to qualify for unemployment benefits under the *Thomas* rationale.[89] Since discrimination among religions or action in favor of religion in general violates the religion clauses,[90] a sincerely held moral belief could receive the same treatment as a religiously related belief. Of course, awarding benefits on the basis of nonreligious beliefs may result in even more abuse of state unemployment compensation systems by persons who wish merely to sever employment and collect benefits but do not have a sincere belief that precludes their employment.

The *Thomas* Court avoided resolution of the continuing tension between the religion clauses by authorizing a case-by-case determination of unemployment compensation claims by persons purportedly terminating their employment for religious reasons. The Court has simultaneously expanded the free exercise clause and obscured the establishment clause by providing a basis for claims not only by persons whose beliefs are religious, but also by those whose beliefs may be neither religious nor sincere. In future cases, courts will have no guidance in determining which claims to honor and which to reject.

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89. *See supra* notes 30-43 and accompanying text.
90. *See supra* note 5 and accompanying text.