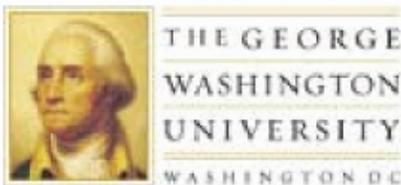


The Burger Court Opinion Writing Database

Thomas v. Review Board of Indiana Employment Security Division

450 U.S. 707 (1981)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: DEC 19 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-952

Eddie C. Thomas, Petitioner,
v.
Review Board of the Indiana
Employment Security
Division et al. } On Writ of Certiorari to the
Supreme Court of Indiana.

[January —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether the State's denial of unemployment compensation benefits to the petitioner, a Jehovah's Witness who terminated his job because his religious beliefs forbade participation in the production of armaments, constituted a violation of his First Amendment right to free exercise of religion. — U. S. — (1980).

I

Thomas terminated his employment in the Blaw-Knox Foundry and Machinery Company when he was transferred from the roll foundry to a department that produced turrets for military tanks. He claimed his religious beliefs prevented him from participating in the production of war materials. The respondent Review Board denied him unemployment compensation benefits by applying disqualifying provisions of the Indiana Employment Security Act.¹

¹ Indiana Code § 24-4-15-1 (Burns Code Ed. 1974, Supp. 1978) provides:

"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

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 31, 1980

Re: 79-952 - Thomas v. Review Board Ind. Empl. Sec.
Div.

Dear Bill:

The sentence on page 8 which you question is not an "imperative" one for me and it does no more than expand on what precedes it. I will give careful thought to your suggestion.

As to the sentences on page 10, I regard them as essential for they go to the core of the holding and say no more than the assumptions on which Sherbert rested. It might meet your problem if we add the following after "faith" on line 8, page 10:

"or where it denies such benefits because of conduct mandated by religious belief."

I surely would not apply the Sherbert concept to trivial benefits, but we need not go so far as to state that now.

Regards,



Justice Brennan

Copies to the Conference

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8, 10, 12

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

2nd DRAFT

Recirculated: JAN 7 1981

SUPREME COURT OF THE UNITED STATES

No. 79-952

Eddie C. Thomas, Petitioner,
v.
Review Board of the Indiana
Employment Security
Division et al.

On Writ of Certiorari to the
Supreme Court of Indiana.

[January —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether the State's denial of unemployment compensation benefits to the petitioner, a Jehovah's Witness who terminated his job because his religious beliefs forbade participation in the production of armaments, constituted a violation of his First Amendment right to free exercise of religion. — U. S. — (1980).

I

Thomas terminated his employment in the Blaw-Knox Foundry and Machinery Company when he was transferred from the roll foundry to a department that produced turrets for military tanks. He claimed his religious beliefs prevented him from participating in the production of war materials. The respondent Review Board denied him unemployment compensation benefits by applying disqualifying provisions of the Indiana Employment Security Act.¹

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 1, 1981

RE: #79-952, Thomas v Review Board

Dear Harry:

Bill's dissent is really directed at Sherbert, with conc I have long shared about it.

It would indeed be nice to clarify and give greater guidance to other courts, but to try to do so would, in my view, muddy an already difficult area and likely produce greater division here.

My frank effort was to stand on Sherbert. I agree, however, that our cases cannot be reconciled. The "aid" to religion cannot be squared with our bifurcating several kinds of "aids" to parochial schools, allowing some and denying others that cannot rationally be distinguished. See, e.g., Meek v Pittenger, 421 U.S. 349.

I will, however, be substituting the following for the final paragraph on page 12.

Unless we are prepared to overrule Sherbert, supra, Thomas cannot be denied the benefits due him on the basis of the findings of the referee, the Review Board and the Indiana Court of Appeals that he terminated his employment because of his religious convictions

Regards,



Justice Blackmun

Copies to the Conference

4, 7, 8, 10, 11, 12

TO: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: APR 2 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-952

Eddie C. Thomas, Petitioner,
v.
Review Board of the Indiana
Employment Security
Division et al.

On Writ of Certiorari to the
Supreme Court of Indiana.

[January —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether the State's denial of unemployment compensation benefits to the petitioner, a Jehovah's Witness who terminated his job because his religious beliefs forbade participation in the production of armaments, constituted a violation of his First Amendment right to free exercise of religion. — U. S. — (1980).

I

Thomas terminated his employment in the Blaw-Knox Foundry and Machinery Company when he was transferred from the roll foundry to a department that produced turrets for military tanks. He claimed his religious beliefs prevented him from participating in the production of war materials. The respondent Review Board denied him unemployment compensation benefits by applying disqualifying provisions of the Indiana Employment Security Act.¹

¹ Indiana Code § 24-4-15-1 (Burns Code Ed. 1974, Supp. 1978) provides:

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 30, 1980

RE: No. 79-952 Thomas v. Review Board Ind. Empl. Sec. Div.

Dear Chief:

I hope to be able to join your opinion but I have some problems I'd like to mention.

At page 8, would you not delete the sentences in the carryover paragraph starting "Adherents to a faith need not - and in reality do not - subscribe, like programmed robots, to rigidly prescribed dogma. There is a spectrum of interpretation in any faith within which followers must be permitted to have differing views without transgressing fundamental tenets."

Frankly, I think these sentences could get us into considerable trouble. There are certainly in my own faith strongly held positions that indeed there is no "spectrum" within which one is free to move. And I think that is even more true of some other faiths. I don't think the sentences are necessary to your conclusion and would hope you could omit them.

At page 10, would you not consider deletion of the two sentences following the Sherbert quote. I suggest this because I do not think this is a case "Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith," and what precedes that sentence states the applicable proposition on this record.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 5, 1981

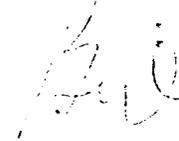
RE: No. 79-952 Thomas v. Review Board Ind. Empl. Sec.
Division

Dear Chief:

Thank you very much for your consideration of my suggestions in the above.

The addition of the suggested clause after "faith" in line 8, page 10 will meet my concerns in that respect. I do very much hope however that you will decide to delete the sentences at page 8. That will make it possible for me fully to join your opinion.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

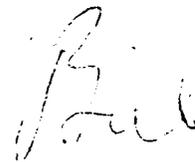
January 8, 1981

RE: No. 79-952 Thomas v. Review Board of the Indiana
Employment Security Division, et al.

Dear Chief:

Please join me in your recirculation of January 7.
Thank you for your consideration of my suggestions.

Sincerely,



The Chief Justice
cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 19, 1980

Re: 79-952 - Thomas v. Review Bd. Ind. Empl.
Sec. Div.

Dear Chief,

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
—

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

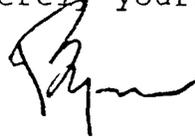
December 20, 1980

Re: 79-952 - Thomas v. Indiana

Dear Chief,

I shall await the dissent in this
case.

Sincerely yours,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 26, 1981

Re: 79-952 - Thomas v. Review Board of
the Indiana Employment
Security Division

Dear Chief,

Please join me in your January 7, 1981,
circulation.

Sincerely yours,



The Chief Justice

Copies to the Conference

cm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 5, 1981

Re: No. 79-952 - Thomas v. Review Board of the Indiana
Employment Security Division et al.

Dear Chief:

Please join me.

Sincerely,

T.M.

T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 1, 1981

Re: No. 79-952 - Thomas v. Review Board

Dear Chief:

I have delayed my response in this case pending receipt of Bill Rehnquist's dissent. That dissent hits deeply at the roots of my own concern with the majority opinion, namely, the very brief discussion, almost a simple ipse dixit, of the Establishment Clause. I would have preferred that the Establishment Clause holding be spelled out in greater detail, especially in light of the criticism that Sherbert v. Verner has received. There is force, I believe, in Bill's point that the opinion will afford little guidance to lower courts faced with similar problems.

You, however, are the author of the opinion, and a majority of the Court do not appear to share my concern.

In order to get the case down, will you therefore, at the end of your opinion, add the following:

"JUSTICE BLACKMUN joins parts I, II, and III of the Court's opinion. As to part IV thereof, he concurs in the result."

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 23, 1980

79-952 Thomas v. Review Board

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

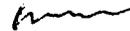
December 19, 1980

Re: No. 79-952 Thomas v. Review Board of the Indiana
Employment Security Division

Dear Chief:

In due course I shall circulate a dissent in this case.

Sincerely,



The Chief Justice

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: MAR 25 1981

Recirculated: _____

Re: No. 79-952 Thomas v. Review Board

JUSTICE REHNQUIST, dissenting.

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.

Because I believe that the decision today adds mud to the already muddied waters of First Amendment jurisprudence, I dissent.

I

The Court correctly acknowledges that there is a "tension" between the Free Exercise and Establishment Clauses of the First Amendment of the United States Constitution. Although the relationship of the two clauses has been the subject of much commentary, the "tension" is of fairly recent vintage, unknown at the time of the framing and adoption of the First Amendment. The

STYLISTIC CHANGES THROUGHOUT

P. 7

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

1st PRINTED DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Circulated: _____ MAR 27 1981

No. 79-952

Eddie C. Thomas, Petitioner, }
v. }
Review Board of the Indiana } On Writ of Certiorari to the
Employment Security } Supreme Court of Indiana.
Division et al. }

[April —, 1981]

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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. Because I believe that the decision today adds mud to the already muddied waters of First Amendment jurisprudence, I dissent.

I

The Court correctly acknowledges that there is a "tension" between the Free Exercise and Establishment Clauses of the First Amendment of the United States Constitution. Although the relationship of the two clauses has been the subject of much commentary, the "tension" is of fairly recent vintage, unknown at the time of the framing and adoption of the First Amendment. The causes of the tension, it seems to me, are three-fold. First, the growth of social welfare legislation during the latter part of the 20th century has greatly magnified the potential for conflict between the two clauses, since such legislation touches the individual at so many points in his life. Second, the decision by this Court that the First Amendment was "incorporated" into the Fourteenth Amendment and thereby made applicable against the States, *Stromberg v. California*, 283 U. S. 359 (1931); *Cantwell v. Connecticut*, 310 U. S. 296 (1940), similarly multi-

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 5, 1981

Re: 79-952 - Thomas v. Review Board

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference