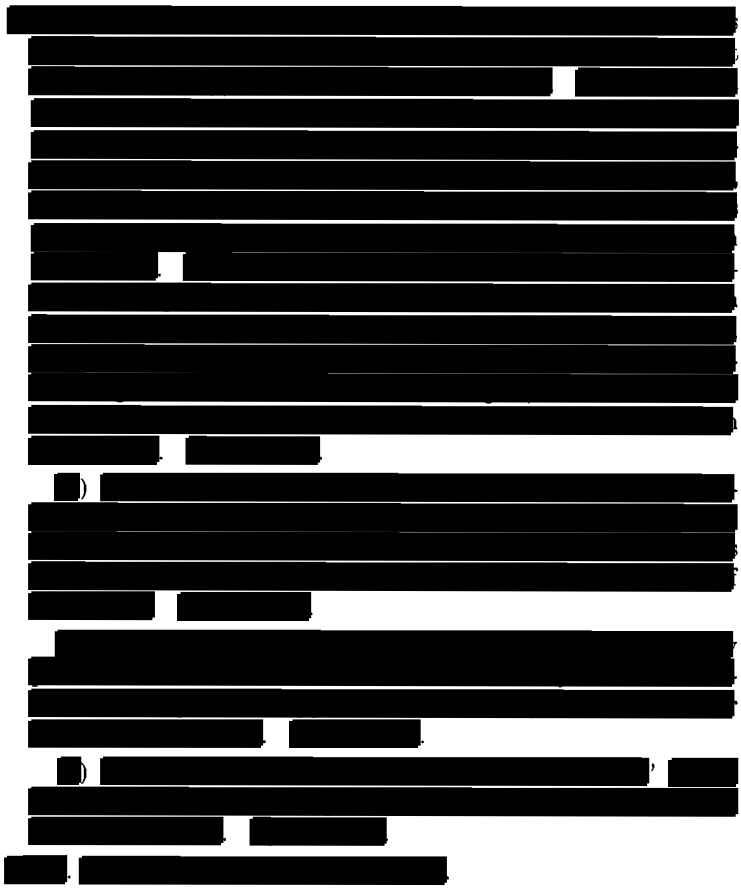
SHERBERT *v.* VERNER ET AL., MEMBERS OF SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION, ET AL.

APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA.

No. 526. Argued April 24, 1963.—Decided June 17, 1963.



William D. Donnelly argued the cause and filed briefs for appellant.

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

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

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellant, a member of the Seventh-day Adventist Church, was discharged by her South Carolina employer because she would not work on Saturday, the Sabbath Day of her faith.[1] When she was unable to obtain other employment because from conscientious scruples she would not take Saturday work,[2] she filed a claim for

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

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

unemployment compensation benefits under the South Carolina Unemployment Compensation Act.[3] That law provides that, to be eligible for benefits, a claimant must be "able to work and . . . available for work"; and, fur-

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

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

"(3) He is able to work and is available for work, but no claimant shall be considered available for work if engaged in self-employment of such nature as to return or promise remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over such period of time. . . .

"§ 68–114. Disqualification for benefits.—Any insured worker shall be ineligible for benefits: . . .

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

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

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

ther, that a claimant is ineligible for benefits "[i]f . . . he has failed, without good cause . . . to accept available suitable work when offered him by the employment office or the employer . . . ." The appellee Employment Security Commission, in administrative proceedings under the statute, found that appellant's restriction upon her availability for Saturday work brought her within the provision disqualifying for benefits insured workers who fail, without good cause, to accept "suitable work when offered . . . by the employment office or the employer . . . ." The Commission's finding was sustained by the Court of Common Pleas for Spartanburg County. That court's judgment was in turn affirmed by the South Carolina Supreme Court, which rejected appellant's contention that, as applied to her, the disqualifying provisions of the South Carolina statute abridged her right to the free exercise of her religion secured under the Free Exercise Clause of the First Amendment through the Fourteenth Amendment. The State Supreme Court held specifically that appellant's ineligibility infringed no constitutional liberties because such a construction of the statute "places no restriction upon the appellant's freedom of religion nor does it in any way prevent her in the exercise of her right and freedom to observe her religious beliefs in accordance with the dictates of her conscience." 240 S. C. 286, 303–304, 125 S. E. 2d 737, 746.[4] We noted probable

[4] It has been suggested that appellant is not within the class entitled to benefits under the South Carolina statute because her unemployment did not result from discharge or layoff due to lack of work. It is true that unavailability for work for some personal reasons not having to do with matters of conscience or religion has been held to be a basis of disqualification for benefits. See, *e. g.*, *Judson Mills* v. *South Carolina Unemployment Compensation Comm'n*, 204 S. C. 37, 28 S. E. 2d 535; *Stone Mfg. Co.* v. *South Carolina Employment Security Comm'n*, 219 S. C. 239, 64 S. E. 2d 644. But appellant claims that the Free Exercise Clause prevents the State from basing the denial of benefits upon the "personal reason" she gives for not working on

jurisdiction of appellant's appeal. 371 U. S. 938. We reverse the judgment of the South Carolina Supreme Court and remand for further proceedings not inconsistent with this opinion.

I.

The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious *beliefs* as such, *Cantwell* v. *Connecticut,* 310 U. S. 296, 303. Government may neither compel affirmation of a repugnant belief, *Torcaso* v. *Watkins,* 367 U. S. 488; nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, *Fowler* v. *Rhode Island,* 345 U. S. 67; nor employ the taxing power to inhibit the dissemination of particular religious views, *Murdock* v. *Pennsylvania,* 319 U. S. 105; *Follett* v. *McCormick,* 321 U. S. 573; cf. *Grosjean* v. *American Press Co.,* 297 U. S. 233. On the other hand,

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Saturday. Where the consequence of disqualification so directly affects First Amendment rights, surely we should not conclude that every "personal reason" is a basis for disqualification in the absence of explicit language to that effect in the statute or decisions of the South Carolina Supreme Court. Nothing we have found in the statute or in the cited decisions, cf. *Lee* v. *Spartan Mills,* 7 CCH Unemployment Ins. Rep. S. C. ¶ 8156 (C. P. 1944), and certainly nothing in the South Carolina Court's opinion in this case so construes the statute. Indeed, the contrary seems to have been that court's basic assumption, for if the eligibility provisions were thus limited, it would have been unnecessary for the court to have decided appellant's constitutional challenge to the application of the statute under the Free Exercise Clause.

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

the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for "even when the action is in accord with one's religious convictions, [it] is not totally free from legislative restrictions." *Braunfeld* v. *Brown,* 366 U. S. 599, 603. The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order. See, *e. g., Reynolds* v. *United States,* 98 U. S. 145; *Jacobson* v. *Massachusetts,* 197 U. S. 11; *Prince* v. *Massachusetts,* 321 U. S. 158; *Cleveland* v. *United States,* 329 U. S. 14.

Plainly enough, appellant's conscientious objection to Saturday work constitutes no conduct prompted by religious principles of a kind within the reach of state legislation. If, therefore, the decision of the South Carolina Supreme Court is to withstand appellant's constitutional challenge, it must be either because her disqualification as a beneficiary represents no infringement by the State of her constitutional rights of free exercise, or because any incidental burden on the free exercise of appellant's religion may be justified by a "compelling state interest in the regulation of a subject within the State's constitutional power to regulate . . . ." *NAACP* v. *Button,* 371 U. S. 415, 438.

II.

We turn first to the question whether the disqualification for benefits imposes any burden on the free exercise of appellant's religion. We think it is clear that it does. In a sense the consequences of such a disqualification to religious principles and practices may be only an indirect result of welfare legislation within the State's general competence to enact; it is true that no criminal sanctions directly compel appellant to work a six-day week. But this is only the beginning, not the end, of our

inquiry.[5] For "[i]f the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect." *Braunfeld* v. *Brown, supra,* at 607. Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.

Nor may the South Carolina court's construction of the statute be saved from constitutional infirmity on the ground that unemployment compensation benefits are not appellant's "right" but merely a "privilege." It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.[6] *American*

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

[6] See for examples of conditions and qualifications upon governmental privileges and benefits which have been invalidated because of their tendency to inhibit constitutionally protected activity, *Steinberg* v. *United States,* 143 Ct. Cl. 1, 163 F. Supp. 590; *Syrek* v. *Cali-*

Communications Assn. v. *Douds,* 339 U. S. 382, 390; *Wieman* v. *Updegraff,* 344 U. S. 183, 191–192; *Hannegan* v. *Esquire, Inc.,* 327 U. S. 146, 155–156. For example, in *Flemming* v. *Nestor,* 363 U. S. 603, 611, the Court recognized with respect to Federal Social Security benefits that "[t]he interest of a covered employee under the Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause." In *Speiser* v. *Randall,* 357 U. S. 513, we emphasized that conditions upon public benefits cannot be sustained if they so operate, whatever their purpose, as to inhibit or deter the exercise of First Amendment freedoms. We there struck down a condition which limited the availability of a tax exemption to those members of the exempted class who affirmed their loyalty to the state government granting the exemption. While the State was surely under no obligation to afford such an exemption, we held that the imposition of such a condition upon even a gratuitous benefit inevitably deterred or discouraged the exercise of First Amendment rights of expression and thereby threatened to "produce a result which the State could not command directly." 357 U. S.,

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fornia Unemployment Ins. Board, 54 Cal. 2d 519, 354 P. 2d 625; *Fino* v. *Maryland Employment Security Board,* 218 Md. 504, 147 A. 2d 738; *Chicago Housing Authority* v. *Blackman,* 4 Ill. 2d 319, 122 N. E. 2d 522; *Housing Authority of Los Angeles* v. *Cordova,* 130 Cal. App. 2d 883, 279 P. 2d 215; *Lawson* v. *Housing Authority of Milwaukee,* 270 Wis. 269, 70 N. W. 2d 605; *Danskin* v. *San Diego Unified School District,* 28 Cal. 2d 536, 171 P. 2d 885; *American Civil Liberties Union* v. *Board of Education,* 55 Cal. 2d 167, 359 P. 2d 45; cf. *City of Baltimore* v. *A. S. Abell Co.,* 218 Md. 273, 145 A. 2d 111. See also Willcox, Invasions of the First Amendment Through Conditioned Public Spending, 41 Cornell L. Q. 12 (1955); Emerson, Toward a General Theory of the First Amendment, 72 Yale L. J. 877, 942–943 (1963); 36 N. Y. U. L. Rev. 1052 (1961); 9 Kan. L. Rev. 346 (1961); Note, Unconstitutional Conditions, 73 Harv. L. Rev. 1595, 1599–1602 (1960).

at 526. "To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech." *Id.*, at 518. Likewise, to condition the availability of benefits upon this appellant's willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties.

Significantly South Carolina expressly saves the Sunday worshipper from having to make the kind of choice which we here hold infringes the Sabbatarian's religious liberty. When in times of "national emergency" the textile plants are authorized by the State Commissioner of Labor to operate on Sunday, "no employee shall be required to work on Sunday . . . who is conscientiously opposed to Sunday work; and if any employee should refuse to work on Sunday on account of conscientious . . . objections he or she shall not jeopardize his or her seniority by such refusal or be discriminated against in any other manner." S. C. Code, § 64–4. No question of the disqualification of a Sunday worshipper for benefits is likely to arise, since we cannot suppose that an employer will discharge him in violation of this statute. The unconstitutionality of the disqualification of the Sabbatarian is thus compounded by the religious discrimination which South Carolina's general statutory scheme necessarily effects.

III.

We must next consider whether some compelling state interest enforced in the eligibility provisions of the South Carolina statute justifies the substantial infringement of appellant's First Amendment right. It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation," *Thomas* v. *Collins*, 323 U. S. 516, 530.

No such abuse or danger has been advanced in the present case. The appellees suggest no more than a possibility that the filing of fraudulent claims by unscrupulous claimants feigning religious objections to Saturday work might not only dilute the unemployment compensation fund but also hinder the scheduling by employers of necessary Saturday work. But that possibility is not apposite here because no such objection appears to have been made before the South Carolina Supreme Court, and we are unwilling to assess the importance of an asserted state interest without the views of the state court. Nor, if the contention had been made below, would the record appear to sustain it; there is no proof whatever to warrant such fears of malingering or deceit as those which the respondents now advance. Even if consideration of such evidence is not foreclosed by the prohibition against judicial inquiry into the truth or falsity of religious beliefs, *United States* v. *Ballard,* 322 U. S. 78—a question as to which we intimate no view since it is not before us—it is highly doubtful whether such evidence would be sufficient to warrant a substantial infringement of religious liberties. For even if the possibility of spurious claims did threaten to dilute the fund and disrupt the scheduling of work, it would plainly be incumbent upon the appellees to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights.[7] Cf. *Shelton* v. *Tucker,* 364 U. S.

[7] We note that before the instant decision, state supreme courts had, without exception, granted benefits to persons who were physically available for work but unable to find suitable employment solely because of a religious prohibition against Saturday work. *E. g., In re Miller,* 243 N. C. 509, 91 S. E. 2d 241; *Swenson* v. *Michigan Employment Security Comm'n,* 340 Mich. 430, 65 N. W. 2d 709; *Tary* v. *Board of Review,* 161 Ohio St. 251, 119 N. E. 2d 56. Cf. *Kut* v. *Albers Super Markets, Inc.,* 146 Ohio St. 522, 66 N. E. 2d 643, appeal dismissed *sub nom. Kut* v. *Bureau of Unemployment Compensation,* 329 U. S. 669. One author has observed, "the law was settled that

479, 487–490; *Talley* v. *California*, 362 U. S. 60, 64; *Schneider* v. *State*, 308 U. S. 147, 161; *Martin* v. *Struthers*, 319 U. S. 141, 144–149.

In these respects, then, the state interest asserted in the present case is wholly dissimilar to the interests which were found to justify the less direct burden upon religious practices in *Braunfeld* v. *Brown, supra*. The Court recognized that the Sunday closing law which that decision sustained undoubtedly served "to make the practice of [the Orthodox Jewish merchants'] . . . religious beliefs more expensive," 366 U. S., at 605. But the statute was nevertheless saved by a countervailing factor which finds no equivalent in the instant case—a strong state interest in providing one uniform day of rest for all workers. That secular objective could be achieved, the Court found, only by declaring Sunday to be that day of rest. Requiring exemptions for Sabbatarians, while theoretically possible, appeared to present an administrative

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conscientious objections to work on the Sabbath made such work unsuitable and that such objectors were nevertheless available for work. . . . A contrary opinion would make the unemployment compensation law unconstitutional, as a violation of freedom of religion. Religious convictions, strongly held, are so impelling as to constitute good cause for refusal. Since availability refers to suitable work, religious observers were not unavailable because they excluded Sabbath work." Altman, Availability for Work: A Study in Unemployment Compensation (1950), 187. See also Sanders, Disqualification for Unemployment Insurance, 8 Vand. L. Rev. 307, 327–328 (1955); 34 N. C. L. Rev. 591 (1956); cf. Freeman, Able To Work and Available for Work, 55 Yale L. J. 123, 131 (1945). Of the 47 States which have eligibility provisions similar to those of the South Carolina statute, only 28 appear to have given administrative rulings concerning the eligibility of persons whose religious convictions prevented them from accepting available work. Twenty-two of those States have held such persons entitled to benefits, although apparently only one such decision rests exclusively upon the federal constitutional ground which constitutes the basis of our decision. See 111 U. of Pa. L. Rev. 253, and n. 3 (1962); 34 N. C. L. Rev. 591, 602, n. 60 (1956).

problem of such magnitude, or to afford the exempted class so great a competitive advantage, that such a requirement would have rendered the entire statutory scheme unworkable.[8] In the present case no such justifications underlie the determination of the state court that appellant's religion makes her ineligible to receive benefits.[9]

IV.

In holding as we do, plainly we are not fostering the "establishment" of the Seventh-day Adventist religion in South Carolina, for the extension of unemployment benefits to Sabbatarians in common with Sunday worshippers reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall. See *School District of Abington Township* v. *Schempp, ante,* p. 203. Nor does the recognition of the appellant's right to unemployment benefits under the state statute serve to abridge any other person's religious liberties. Nor do we, by our decision today, declare the existence of a constitutional right to unemployment benefits on the part

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

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

of all persons whose religious convictions are the cause of their unemployment. This is not a case in which an employee's religious convictions serve to make him a nonproductive member of society. See note 2, *supra.* Finally, nothing we say today constrains the States to adopt any particular form or scheme of unemployment compensation. Our holding today is only that South Carolina may not constitutionally apply the eligibility provisions so as to constrain a worker to abandon his religious convictions respecting the day of rest. This holding but reaffirms a principle that we announced a decade and a half ago, namely that no State may "exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, *because of their faith, or lack of it,* from receiving the benefits of public welfare legislation." *Everson* v. *Board of Education,* 330 U. S. 1, 16.

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

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

It is so ordered.

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