TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

IN THE

Supreme Court of the United States

October Term, 1962

No. 526

ADELL H. SHERBERT,

Appellant,

against

CHARLIE V. VERNER, *et al.*, as Members of the SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION and SPARTAN MILLS,

Respondents.

BRIEF OF AMERICAN JEWISH COMMITTEE, ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH and AMERICAN CIVIL LIBERTIES UNION *AMICI CURIAE*

Statement of the Case

The Appellant, a textile worker, was employed for approximately 35 years by Spartan Mills in Spartanburg, S. C. In 1957 she became a member of the Seventh Day Adventist Church, which has some 150 adherents in the town of Spartanburg. For almost two years after joining the Church, she continued to work at the mills without being required to work on Saturdays. Then her employer changed to a six-day week and announced that all employees would be required to work on Saturdays. Appellant refused to work on six successive Saturdays, and was thereafter dismissed. Her attempts to obtain employment with other mills in Spartanburg failed because all required work on Saturdays.

Appellant's claim filed with the South Carolina Employment Security Commission for unemployment compensation benefits was denied on the ground that she did not qualify under the statute. The statute conditions an applicant's eligibility to receive benefits on his being able to work and being available for work. Unemployment Compensation Law, S. C. Code (1952), Sec. 68-113 (3). The statute further provides that an applicant is ineligible for benefits if he fails "without good cause (a) either to apply for available suitable work, when so directed * * * [or] (b) to accept available suitable work when offered him by the employment office or the employer." *Id.*, Sec. 68-114 (3).

Appellant commenced an action against the members of the South Carolina Employment Commission and Spartan Mills seeking judicial review of the Commission's ruling. Her action was dismissed by the Court of Common Pleas for Spartanburg County, as was her subsequent appeal to the Supreme Court of South Carolina. The latter Court, in a four-to-one decision, reported in 125 SE 2d 737 (May 17, 1962), expressly rejected her claim that denial of unemployment benefits in her case violated the guarantee of freedom of religion under the First and Fourteenth Amendments to the Constitution of the United States and the corresponding provisions of the Constitution of South Carolina. The Court said in that respect that the South Carolina Unemployment Compensation Act

> * * * 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.

An appeal was taken to this Court which, on December 17, 1962, noted probable jurisdiction. *Sherbert* v. *Verner,* 83 S. Ct. 321 (3).

Interest of the *Amici*

The American Jewish Committee, founded in 1906, was incorporated by Act of the Legislature of the State of New York in 1911. Its Charter states:

> The objects of this corporation shall be, to prevent the infraction of the civil and religious rights of Jews, in any part of the world; to render all lawful assistance and to take appropriate remedial action in the event of threatened or actual invasion or restriction of such rights, or of unfavorable discrimination with respect thereto * * *

B'nai B'rith, founded in 1843, is the oldest civic service organization of American Jews. It represents a membership of more than 400,000 men and women and their families. The Anti-Defamation League was organized in 1913 as a section of the parent organization to advance goodwill and proper understanding between Americans and translate into greater effectiveness the ideals of American democracy. It is, therefore, dedicated to the protection of freedom of religion and combatting religious discrimination.

The American Civil Liberties Union, a national nonprofit organization established in 1920, is committed to the inseparable purposes of preserving the democratic principles for which our government was established and to maintaining our civil liberties. Together with all Americans who prize the blessings of United States citizenship

and the privileges of freedom which it brings, we seek to guard against the arbitrary deprivation of our birthrights.

The *amici curiae* are gravely concerned with the issues presented by this case. It is a tenet of the Jewish faith, as it is of the faiths of Seventh Day Adventists and Seventh Day Baptists, that the seventh day of the week —Saturday—is the Holy Sabbath. These religions do not accept the shift of the Holy Sabbath from the biblical seventh day of the week (Genesis, 2. 3; Exodus, 16. 23; 20. 8-11; Deut., 5. 12-15), to the first day of the week, Sunday. For a discussion of the shift of the Sabbath from Saturday to Sunday by the major Christian faiths, see CATHOLIC ENCYCLOPEDIA (1907 ed.) Vol. 3, p. 158; Achelis Elisabeth, OF TIME AND THE CALENDAR, Hermitage House, New York (1955) p. 56.

The constitutionally guaranteed right of the free exercise of religion is impaired when members of the groups mentioned, compelled by their religious conscience to refrain from work on their Holy Day, are deprived by the state of unemployment benefits which the law grants generally to other members of the community. Adherents of those groups are in fact penalized for following the precepts of their religion.

We believe that freedom of religion is a basic right of every American and that it must be defended against all attempts at abridgment. Consistent with our purposes, the *amici curiae* are opposed to all manifestations of religious discrimination or impairment of religious freedom, including those involved in this case.

For these reasons we join in filing this brief as *amici curiae* with the consent of the parties.

The Question Presented

This case presents the question whether a state law which denies unemployment insurance benefits to a person who refuses to work on Saturdays for religious reasons, violates the Free Exercise of Religion Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

ARGUMENT

POINT I

When a state refuses a person the benefits of an established social welfare program solely because of his religious beliefs and conduct, it denies him the freedom of religion guaranteed by the First Amendment.

The Free Exercise Clause of the First Amendment

The early history of our country is replete with examples of the struggle for religious freedom. During the decades preceding the adoption of our Constitution, a major source of conflict in the American colonies centered on freedom of conscience. For the founding fathers, the authors of the Constitution and the Bill of Rights, "religious freedom was the crux of the struggle for freedom in general." *Everson* v. *Board of Education,* 330 U. S. 1 (1947) (Mr. Justice Rutledge, dissenting, at 34). It was to make certain that religious freedom should remain forever immune from encroachment by the new federal government

that the First Amendment included the twin guarantee against any establishment of religion or any prohibition of the free exercise thereof.[1]

That prohibition originally directed against the federal government has been held equally applicable against the states or any of their political subdivisions. *Cantwell* v. *Connecticut,* 310 U. S. 296, 303 (1940); *Murdock* v. *Pennsylvania,* 319 U. S. 105, 108 (1943). Today, every one of the fifty states, including South Carolina, has a guarantee of religious freedom in its constitution. South Carolina Constitution, Article I, Sec. 4.; Senate Committee on the Judiciary, HEARINGS ON PRAYERS IN PUBLIC SCHOOLS AND OTHER MATTERS, 87th Cong., 2nd Sess. (July 26, Aug. 2, 1962), pp. 268-285.

The Free Exercise of Religion Clause of the First Amendment, like all constitutional guarantees of liberty, protects the individual, be he a member of a group which is a minority or majority in his community, against action by the government. For members of unorthodox groups the guarantee is particularly meaningful because they do not have available to them the apparatus of state government which, in a political democracy such as ours, is controlled by majority vote. "The protection of the First Amendment is not restricted to orthodox religious practices any more than it is to the expression of orthodox economic views." *Follett* v. *McCormick,* 321 U. S. 573, 577 (1944). Time and again this Court has affirmed the right of adherents of unorthodox religions to the protection of the Free Exercise Clause. *Murdock* v. *Pennsylvania, supra,* at 110, 116; *Niemetko* v. *Maryland,* 340 U. S. 268,

1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *

272 (1951); *Fowler* v. *Rhode Island,* 345 U. S. 67, 69 (1953); *Cantwell* v. *Connecticut, supra; West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, 642 (1943).

Reynolds* v. *United States

An early case in which religious freedom was in issue before this Court was *Reynolds* v. *United States,* 98 U. S. 145 (1878). In that famous case, a member of the Church of Jesus Christ of Latter-Day Saints (commonly referred to as the Mormon Church) had been prosecuted and convicted of violating the criminal law of the Territory of Utah by contracting a bigamous marriage. His defense rested upon the claim that his church taught and required its male members to practice polygamy, and that a conviction under the criminal statute would therefore violate his constitutional right to the free exercise of his religion. This Court upheld the conviction on the grounds that "polygamy has always been odious among the Northern and Western nations of Europe * * * and from the earliest history of England polygamy has been treated as an offense against society." This Court, in effect, held that the Free Exercise Clause of the First Amendment does not give a person a license to engage in conduct which has been condemned as "subversive of good order" throughout the entire history of western civilization. Human sacrifice was mentioned by the Court in its opinion as another example of such generally abhorrent conduct which could not be defended under the Free Exercise Clause. Mr. Justice Brennan recently characterized the decision in *Reynolds* as predicated upon conduct "deeply abhorred by society," *Braunfeld* v. *Brown,* 366 U. S. 599 (1961) (Dissenting Opinion, at 614), and this Court in another recent case

described the *Reynolds* decision as a "narrow exception" to the universal rule that the Free Exercise Clause protects the religious beliefs, practices and activities of unpopular as well as popular religious groups. *Fowler* v. *Rhode Island, supra,* at 69.

Nowadays issues involving freedom of religion rarely take the form of an outright prohibition by the state of religious activities. The various religions represented in our culture do not require their adherents to engage in conduct "deeply abhorred" by the other members of our society. The free exercise cases which have been the concern of our courts in recent years have involved limitations and restraints which were sought to be imposed on specific religious groups and which had the effect of discriminating against such groups or placing them at a disadvantage.

Other Cases Involving the Interpretation of the Free Exercise Clause

In *Cantwell* v. *Connecticut, supra,* the local authorities sought to restrain members of the Jehovah's Witnesses from soliciting contributions and from house-to-house distribution of religious pamphlets. *Murdock* v. *Pennsylvania, supra* and *Jones* v. *Opelika,* 316 U. S. 584 (1942), reversed 319 U. S. 103 (1943), also concerned the distribution of religious literature by Jehovah's Witnesses. The question involved in *Niemetko* v. *Maryland, supra,* and in *Fowler* v. *Rhode Island, supra,* was the right of Jehovah's Witnesses to conduct religious meetings in public parks. In *West Virginia* v. *Barnette, supra,* the issue was the right of children of Jehovah's Witnesses to refuse to participate in flag-salute ceremonies in public schools. In *Kunz* v. *New York,* 340 U. S. 290 (1951), state authorities attempted to

prevent a Baptist minister from holding a meeting on a public street without a permit. In *Torcaso* v. *Watkins,* 364 U. S. 488 (1961) the state constitution required an applicant for public office to declare his belief in the existence of God—a requirement which had the effect of excluding from public office those who, for reasons of conscience, could not make such a declaration.

In all those cases, this Court, reversing decisions of the highest state courts, interpreted the restrictive action of the state authorities as violating the Free Exercise Clause of the First Amendment in that such action disadvantaged the appellants because of their religious beliefs or (as in *Torcaso*) disbeliefs. In several of those cases this Court characterized the state limitation as "discrimination." *Fowler* v. *Rhode Island, supra,* at 69; *Niemetko* v. *Maryland, supra,* at 272.

The Use of the Taxing Power to Restrict the Free Exercise of Religion

This Court has held repeatedly that the imposition of a tax as a condition for the exercise of one's religion is an unconstitutional restraint upon its free exercise. The same is true of a denial by the state of a financial benefit to a person solely because of his religious beliefs and conduct. In both instances the individual is placed at a disadvantage and suffers a monetary detriment which he would not experience were he not practicing his religion in accordance with his beliefs.

A method used by state authorities to regulate or restrict the exercise of religious activities has been to require the issuance of a license involving the payment of a fee. Such requirement has been held by this Court to be

the imposition of a tax for the exercise of religious activity. Hence, this Court has applied to that group of religious freedom cases the doctrine enunciated in *Grosjean* v. *American Press Co.,* 297 U. S. 233, 246, 250 (1936), that the taxing power of the state may not be used to restrain the exercise of a constitutional right. The specific right restrained in *Grosjean* was freedom of speech and press, also protected by the First Amendment. In *Speiser* v. *Randall,* 357 U. S. 513 (1958) this Court again noted the restrictive effect of taxation on speech and reaffirmed the *Grosjean* doctrine. 357 U. S. at 518.

Cases in which this Court struck down the use of the state's taxing power to limit or restrict freedom of religion are *Murdock* v. *Pennsylvania, supra; Jones* v. *Opelika,* 319 U. S. 103 (1943); and *Follett* v. *McCormick, supra.*

The issue in *Murdock* v. *Pennsylvania, supra,* was the constitutionality of a city ordinance which "as construed and applied" required religious colporteurs to pay a license tax as a condition to the pursuit of their activities (*id.,* at 110). This Court noted that the form of religious activities involved—visiting people in their homes and offering them religious material—"has the same claim to protection as the more orthodox and conventional exercises of religion." *Id.,* at 109. The power to tax the privilege of engaging in "this form of missionary evangelism" was characterized as "the power to control or suppress its enjoyment." *Id.,* at 112. Consequently, the tax as applied to the Jehovah's Witnesses was held to be a violation of the Free Exercise Clause of the First Amendment.

The facts and the issue in *Jones* v. *Opelika,* were the same as in *Murdock.* In the first *Jones* decision, 316 U. S.

584 (1942), this Court upheld the conviction of members of the Jehovah's Witnesses who violated city ordinances imposing a license tax upon the sale of religious literature. Upon reargument, however, the Court reversed itself and adopted the opinion in *Murdock,* which was handed down the same day as the second *Jones* decision. 319 U. S. 103 (1943). In the first *Jones* decision, Chief Justice Stone, in his dissent (adopted by the Court in the second *Jones* decision) said:

> The First Amendment is not confined to safeguarding freedom of speech and freedom of religion against discriminatory attempts to wipe them out. On the contrary the Constitution, by virtue of the First and the Fourteenth Amendments, has put those freedoms in a preferred position. Their commands are not restricted to cases where the protected privilege is sought out for attack. They extend at least to every form of taxation which, because it is a condition of the exercise of the privilege, is capable of being used to control or suppress it. *Jones* v. *Opelika,* 316 U. S. 584, 608.

In *Follett* v. *McCormick, supra,* a licensing ordinance of the town of McCormick, S. C., was held unconstitutional on the grounds set forth in *Murdock* and *Jones.* In setting aside the conviction of a member of the Jehovah's Witnesses for violating the ordinance, Mr. Justice Douglas, speaking for the Court, stated that "to say that [the Jehovah's Witnesses' preachers] like other citizens may be subject to general taxation does not mean that they can be required to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege." *Follett* v. *McCormick, supra,* at 578.

The Effect of the South Carolina Unemployment Compensation Law

In the case at bar, the Supreme Court of South Carolina construed the South Carolina Unemployment Compensation Law, Section 68-1, *et seq.*, 1952 Code of Laws of South Carolina, as excluding the Appellant from the unemployment compensation benefits of the statute because she refused to work on Saturdays in accordance with her religious beliefs.[2] That interpretation of the South Carolina statute must be read by this Court "as though the meaning as fixed by the court [below] had been expressed in the statute itself in specific words." *Guaranty Trust Co.* v. *Blodgett,* 287 U. S. 509, 513 (1933); *NAACP* v. *Button,* 83 S. Ct. 328, 337 (January 14, 1963); *Hebert* v. *Louisiana,* 272 U. S. 312, 317 (1926).

Appellant, because of her religious beliefs, was deprived of a statutory right and economic benefit, available generally to citizens of South Carolina.[3] That imposed an economic disadvantage upon her solely because of her religious convictions and her conduct in accordance with such convictions. Thus, as in the cases involving taxes on the exercise of religious beliefs, the individual is disadvantaged because he suffers a monetary loss imposed on him solely because of his religion. It is noteworthy that, as in those cases, the effect of the monetary detriment imposed by the state authority in the case at bar, the denial of unemployment insurance benefits, is felt by members of

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2. The fact that the Seventh Day Adventist Church, to which the Appellant belongs, teaches its adherents that the Holy Sabbath is the Biblical Sabbath which commences at sundown on Fridays and ends at sundown on Saturdays, is not questioned in this case. Nor is the *bona fides* of the Appellant's adherence to those teachings questioned.

3. The statute refers to the unemployment compensation available under the law as the "benefit rights" of individuals. Section 68-112.

a religious group which is small in numbers and not by members of the major religious groups in the community. That is discriminatory state action. (See Point II, *infra.*)

The coercive nature of the denial of unemployment insurance benefits to the Appellant becomes obvious when one speculates about its possible effects upon a claimant in dire financial straits. After all, the intended beneficiaries of an unemployment insurance program are those who, being dependent upon wages, are deprived of their source of income and hence look to the insurance benefits for their subsistence. Such persons, as a result, might seriously contemplate abandoning the conduct prescribed by their religion in order to avoid extreme hardship for themselves or their families.

Abridgment of Religious Freedom by Denial of a Benefit

It may be argued that unemployment insurance benefits are merely a "privilege" or a "bounty" and hence denying them to one otherwise eligible for them, because of that person's religion, does not deprive him of a constitutional right. This Court rejected a similar argument in *Speiser* v. *Randall, supra.*

In that case this Court was called upon to determine whether the First Amendment's guarantee of freedom of speech was violated by a statute of the State of California requiring applicants for tax exemption to declare, as a condition for receiving such exemption, that they did not engage in certain activities involving advocacy of political beliefs. The Court held that the applicants' freedom of speech had been violated and said:

> To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech. *Id.*, at 518.

The Court also said that

> The denial of a tax exemption for engaging in certain speech necessarily will have the effect of coercing the claimants to refrain from the proscribed speech. *Id.*, at 519.

Thus, this Court recognized that one form of unconstitutional interference with free speech is that which is achieved by the denial by the state of a benefit generally available to others. In his concurring opinion, Mr. Justice Douglas, expressed that view as follows:

> If the Government may not impose a tax upon the expression of ideas in order to discourage them, it may not achieve the same end by reducing the individual who expresses his views to second-class citizenship by withholding tax benefits granted others. When government denies a tax exemption because of the citizen's belief, it penalizes that belief. *Id.*, 536.

Just as the withholding by the state of the benefits of tax exemption was an unconstitutional limitation on free speech (*Speiser* v. *Randall*), so in the case at bar Appellant's right to the free exercise of her religion was unconstitutionally limited by the State's withholding the benefits of unemployment insurance.

The Clear and Present Danger Doctrine

We have discussed *supra Reynolds* v. *United States* in which this Court carved a "narrow exception" out of the universal rule that the free exercise of religion is guaranteed to all individuals by the First Amendment.[4]

Clearly when a religion seeks to require practices which have been found by the community, acting through its governmental apparatus, to be so inimical to the welfare of society as to require suppression for the protection of common welfare, the guarantee of freedom of religion must yield to the duty of the state to protect the common welfare. Freedom of religion cannot serve to protect those who would use it to justify crime or to destroy our constitutional system of government. Obviously, those who seek to practice human sacrifice or the mutilation of the human body in the name of religion cannot claim immunity from punishment or restraint under the First Amendment.

The First Amendment's guarantee of free exercise of religion cannot thus be extended as an absolute to protect activities which would threaten or destroy our society. It was such reasoning that led this Court in *Reynolds* v. *United States, supra,* to uphold a conviction for polygamy despite the claim that it constituted an exercise of religion.

But here we are faced with no threat to our societal structure if we permit the First Amendment's guarantee of free exercise of religion to be used to protect one whose religion requires observance of the Sabbath on Saturday from the imposition of a severe financial punishment, the denial of unemployment insurance benefits.

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4. *Supra* at pages 7-8.

Nor can it be seriously argued that the Appellant's refusal to work on her Sabbath, Saturday, constitutes a "clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order," which, according to a *dictum* in *Cantwell* v. *Connecticut, supra,* at 308, might justify state regulation affecting the exercise of religion. At least three state supreme courts have upheld the right of Seventh Day Adventists to receive employment insurance despite their unavailability for work on Saturdays. *Tary* v. *Board of Review, Bureau of Unemployment Compensation,* 161 Ohio St. 251 (1954); *Swenson* v. *Michigan Employment Security Commission,* 340 Mich. 430 (1954); *In re Miller,* 243 N. C. 509 (1959).

Moreover, the unemployment insurance agencies in the overwhelming majority of states have interpreted their state statutes as not requiring a forfeiture of benefits where an applicant, for religious reasons, refuses to work on Saturdays. Pfeffer, Leo, CHURCH, STATE AND FREEDOM, Beacon Press, Boston (1953) 598.

Denial of Benefits on Non-Religious Grounds

It may be argued that the statute does not single out for disqualification those who are unavailable for work on a special day because of religious convictions, but that it treats those Seventh Day Adventists, Seventh Day Baptists and Jews who refrain from work on Saturdays, like anybody else who, for whatever reason, is unavailable for work. This argument is based on the language of Section 68-113 (3) of the Unemployment Compensation Law which limits benefits to a person who "is able to work and is available for work * * *" This argument treats alike un-

availability for work on religious grounds and unavailability for other reasons. The first raises an issue involving the free exercise of religion while the second does not. The constitutional guarantee of religious freedom cannot be thwarted merely by restricting some other activities along with those activities which are of a religious nature. That fallacy was exposed by this Court in *Murdock* v. *Pennsylvania, supra,* where an effort was made to save the license tax by pointing out that it affected hucksters and peddlers along with religious preachers. The court said:

> The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position. *Id.,* at 115.

The same conclusion was reached by Chief Justice Stone in his dissent in the first *Jones* decision (adopted as the Court's opinion upon reargument, *Jones* v. *Opelika,* 319 U. S. 103).

> The constitutional protection of the Bill of Rights is not to be evaded by classifying with business callings an activity whose sole purpose is the dissemination of ideas, and taxing it as business callings are taxed. The immunity which press and religion enjoy may sometimes be lost when they are united with other activities not immune. *Jones* v. *Opelika,* 316 U. S. at 608.

The Sunday Closing Law Cases

The 1961 decisions of this Court in the series of Sunday Closing Law cases do not affect the conclusions suggested by this brief. *McGowan* v. *Maryland,* 366 U. S. 420; *Two Guys from Harrison-Allentown* v. *McGinley,* 366 U. S. 582; *Braunfeld* v. *Brown, supra; Gallagher* v. *Crown Kosher Super Market of Massachusetts,* 366 U. S. 617. In those decisions state legislation requiring cessation of business and labor on Sundays was upheld as a constitutional exercise of the police power for the protection of the public health, safety, recreation and general well-being of the citizens. This Court said that the current purpose and effect of Sunday Closing Laws are "to provide a uniform day of rest for all citizens." *McGowan* v. *Maryland, supra,* at 445. That view was further elaborated in *McGowan* v. *Maryland, supra,* at 450 and in *Braunfeld* v. *Brown* where this Court said:

> * * * we cannot find a State without power to provide a weekly respite from all labor and, at the same time, to set one day of the week apart from the others as a day of rest, repose, recreation and tranquility—a day when the hectic tempo of everyday existence ceases and a more pleasant atmosphere is created, a day which all members of the family and community have the opportunity to spend and enjoy together, a day on which people may visit friends and relatives who are not available during working days, a day when the weekly laborer may best regenerate himself. This is particularly true in this day and age of increasing state concern with public welfare legislation. *Id.,* at 607.

The reasons which this Court advanced above to support the community need for Sunday closing laws have no relevance to the question before the Court in the case at bar. The receipt by the Appellant of unemployment insurance benefits would have no bearing whatever on how the community observed Sundays. The issue here is not whether the Appellant should or should not work on Sunday; but whether when for religious reasons she was unable to work on her Sabbath, she thereby forfeited her unemployment insurance benefits.

There is another essential distinction between Sunday closing laws and the South Carolina Unemployment Compensation Law in terms of the effect those laws have on the free exercise of religion. The thrust of Sunday closing laws is directed against activities on Sundays; they do not prevent a person whose creed requires him to refrain from work on Saturdays from so refraining. The adverse effect of Sunday closing laws on such a person is that he is forced to keep his business closed or is prevented from laboring on Sundays. The fact that such a person is also forced to keep his business closed or is prevented from laboring on Saturdays because of his religious convictions has been characterized by this Court as an "economic disadvantage" which is "solely an indirect burden on the observance of religion." *Braunfeld* v. *Brown, supra,* at 607.

On the other hand, the South Carolina Unemployment Compensation Law declares Appellant disqualified from receiving statutory unemployment benefits as a direct result of her inability to work on Saturdays because of the requirements of her religion. This is more than an "indirect burden on the observance of her religion"; it constitutes a direct interference with the free exercise of her religion.

POINT II

When a state refuses a person the benefits of a generally available social welfare program solely because of his religious beliefs and conduct, it denies him the equal protection of the laws guaranteed by the Fourteenth Amendment.

Our argument under Point I has shown that the withholding of Unemployment Insurance benefits from the Appellant because of her adherence to the precepts of Seventh Day Adventists, constitutes discriminatory state action. The interrelationship of the Equal Protection[5] and Free Exercise Clauses is apparent from several of the decisions discussed above. In *Niemetko* v. *Maryland, supra,* and in *Fowler* v. *Rhode Island, supra,* this Court based its decisions on the Free Exercise Clause but noted the discriminatory aspect of the objectionable state action. See Mr. Justice Frankfurter's concurring opinion in *Fowler* v. *Rhode Island, supra,* at 70.

As in those cases, the state action which interfered with the Appellant's free exercise of her religion also denied her the equal protection of the laws because it discriminated against her solely on the basis of her religion.

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5. No state shall * * * deny to any person within its jurisdiction the equal protection of the laws.

Conclusion

The decision of the Supreme Court of South Carolina should be reversed.

Respectfully submitted,

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