

A generally applicable state statute requires an autopsy by the county coroner in all cases of death that are not obviously of natural causes. The purpose of this law is to ensure the discovery and prosecution of all illegal activity resulting in death. In the 50 years since its enactment, the statute has been consistently enforced.

A married couple are sincere practicing members of a religion that maintains it is essential for a deceased person's body to be buried promptly and without any invasive procedures, including an autopsy. When the couple's son died of mysterious causes and an autopsy was scheduled, they filed an action in state court challenging the constitutionality of the state statute and seeking an injunction prohibiting the county coroner from performing an autopsy on their son's body. In this action, the couple claimed only that applying this statute in the circumstances of their son's death would violate their right to the free exercise of religion as guaranteed by the First and Fourteenth Amendments. Assume that no federal statutes are applicable.

Is the state's autopsy statute constitutional as applied to the couple?

- A. No, because it is not necessary to vindicate a compelling state interest.
- B. No, because it is not substantially related to an important state interest.
- C. Yes, because a dead individual is not a person protected by the due process clause of the Fourteenth Amendment.
- D. Yes, because it is a generally applicable statute and is rationally related to a legitimate state purpose.

Explanation:

The First Amendment, applicable to the states through the Fourteenth Amendment due process clause, protects an individual's **right to freely exercise** his/her **sincerely held religious beliefs**. Any government infringement on this right must satisfy the appropriate level of scrutiny, which depends on the **type of burden** imposed:

- **direct** (intentionally targets religion) – the burden is presumptively invalid and the state must prove that the burden is necessary to achieve a compelling state interest (ie, **strict scrutiny**)
- **incidental** (generally applies to all) – the burden is presumptively valid and the challenger must prove that the burden is not rationally related to any legitimate state interest (ie, **rational basis scrutiny**)

Here, the couple's sincere religious belief that bodies must be buried promptly and without any invasive procedures was burdened when the county coroner scheduled an autopsy of their son's body. But since a generally applicable state statute requires autopsies for *all* mysterious deaths like his, that burden is merely incidental. And since autopsies for suspicious deaths are rationally related to a legitimate state purpose—discovering and prosecuting illegal activity resulting in death—the statute is constitutional as applied to the couple.

(Choice A) Had the state *intentionally* targeted the couple's religion, the state would have needed to prove that the statute was necessary to vindicate a compelling state interest (ie, strict scrutiny).

(Choice B) Under the Fourteenth Amendment equal protection clause, laws that impact a [quasi-suspect class](#) must be substantially related to an important state interest (ie, intermediate scrutiny). But religion is not a quasi-suspect class, so this standard does not apply.

(Choice C) A dead individual is not protected by the Fourteenth Amendment due process clause. But the couple's challenge of the statute is based on their own constitutional rights—not those of their dead son.

Educational objective:

The First Amendment protects the right to freely exercise one's sincerely held religious beliefs. Direct burdens (which target religion) are almost always unconstitutional under strict scrutiny. But incidental burdens (which apply to all) are usually constitutional under rational basis scrutiny.

References

- *Emp't Div. v. Smith*, 494 U.S. 872, 885 (1990) (holding that a generally applicable regulation on conduct need not satisfy strict scrutiny to comply with the First Amendment free exercise clause).

Copyright © 2002 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Free exercise analysis

