Supplementary Material

Chapter 10: The Reagan Era—Individual Rights/Religion/Free Exercise

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993)

The Church of Lukumi Babalu Aye is committed to the Santerian faith. Members believe they may develop a personal relationship with divine spirits by sacrificing and then eating certain animals. In April 1987, members of the church announced plans to move their community to Hialeah, Florida. In response, the Hialeah City Council passed a series of ordinances that declared, among other things, that "It shall be unlawful for any person, persons, corporations or associations to sacrifice any animal within the corporate limits of the City of Hialeah, Florida," where "sacrifice" was defined as "to unnecessarily kill, torment, torture, or mutilate an animal in a public or private ritual or ceremony not for the primary purpose of food consumption." The Church of the Babalu Aye filed a lawsuit in federal court, claiming this and related ordinances violated their right to the free exercise of religion protected by the First and Fourteenth Amendments. The federal district court rejected that plea, as did the Court of Appeals for the Eleventh Circuit. The Church appealed to the Supreme Court of the United States.

The constitutional politics of Lukumi Babalu Aye *pitted animal rights advocates against religious organizations. Numerous opponents of cruelty to animals filed amicus briefs urging the justices to sustain the Florida law. The brief for the American Humane Society declared,*

> *The public policy against animal cruelty and unnecessary killing is a hallmark of the progress of American civilization and a part of the basic legal and moral fabric of this society. . . . [C]ruelty and unnecessary killing of animals deadens conscience toward all forms of life, thereby promoting violence toward human beings. The state interest in protecting animals is therefore closely related to, and directly serves, the compelling state interest in human life, safety, and public order.*

Both liberal and conservative religious groups maintained that Hialeah had violated the constitutional rights of the Santerians. A brief signed by both the American Jewish Congress and the Christian Legal Society asserted,

> *after [*Employment Division v. Smith*] lower courts have often demonstrated indifference to the impact of government action against vulnerable religious minorities, even when it takes the form, as in this case, of invidious discrimination or overt hostility. As this Court considers the future course of constitutional doctrine in the area of religious freedom, amici wish the Court to be aware of the practical consequences of constitutional rules that turn a blind eye toward the realities of official treatment of unfamiliar and unpopular religious groups, particularly at the local level. In the view of the amici, the history and purpose of the Free Exercise Clause requires that it be construed to provide maximum freedom for religious practice consistent with the demand of public order.*[1]

The Supreme Court unanimously declared the Hialeah ordinances unconstitutional. Justice Kennedy's plurality opinion asserted that city officials had discriminated against members of a religious faith and that such discrimination was not justified by a compelling interest. The different justices gave

[1] The brief pointed out, "One can get Chicken McNuggets in Hialeah, but one may not partake of chicken roasted at a religious service of the Santeria faith."

different reasons for reaching the conclusion that the law was unconstitutional. What were those different reasons? Who had the best reasons? Justice Scalia insisted that courts should not consider expressed motivations for passing a law. Why does he make that claim? Is he correct?

JUSTICE KENNEDY delivered the opinion of the Court

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The principle that government may not enact laws that suppress religious belief or practice is so well understood that few violations are recorded in our opinions. . . .

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In addressing the constitutional protection for free exercise of religion, our cases establish the general proposition that a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. *Employment Div., Dept. of Human Resources of Ore. v. Smith* (1990). . . . A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.

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At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons. . . .

. . . There are . . . many ways of demonstrating that the object or purpose of a law is the suppression of religion or religious conduct. To determine the object of a law, we must begin with its text, for the minimum requirement of neutrality is that a law not discriminate on its face. A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context. Petitioners contend that three of the ordinances fail this test of facial neutrality because they use the words "sacrifice" and "ritual," words with strong religious connotations. We agree that these words are consistent with the claim of facial discrimination, but the argument is not conclusive. The words "sacrifice" and "ritual" have a religious origin, but current use admits also of secular meanings. . . .

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. . . [T]hough use of the words "sacrifice" and "ritual" does not compel a finding of improper targeting of the Santeria religion, the choice of these words is support for our conclusion. There are further respects in which the text of the city council's enactments discloses the improper attempt to target Santeria. Resolution 87–66 recited that "residents and citizens of the City of Hialeah have expressed their concern that certain religions may propose to engage in practices which are inconsistent with public morals, peace or safety," and "reiterate[d]" the city's commitment to prohibit "any and all [such] acts of any and all religious groups." No one suggests, and on this record it cannot be maintained, that city officials had in mind a religion other than Santeria.

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[A]lmost the only conduct subject to Ordinances 87–40, 87–52, and 87–71 is the religious exercise of Santeria church members. The texts show that they were drafted in tandem to achieve this result. We begin with Ordinance 87–71. It prohibits the sacrifice of animals, but defines sacrifice as "to unnecessarily kill . . . an animal in a public or private ritual or ceremony not for the primary purpose of food consumption." The definition excludes almost all killings of animals except for religious sacrifice, and the primary purpose requirement narrows the proscribed category even further, in particular by exempting kosher slaughter. . . . The net result of the gerrymander is that few if any killings of animals are prohibited other than Santeria sacrifice, which is proscribed because it occurs during a ritual or ceremony and its primary purpose is to make an offering to the orishas, not food consumption. . . .

Operating in similar fashion is Ordinance 87–52, which prohibits the "possess [ion], sacrifice, or slaughter" of an animal with the "inten[t] to use such animal for food purposes." This prohibition, extending to the keeping of an animal as well as the killing itself, applies if the animal is killed in "any type of ritual" and there is an intent to use the animal for food, whether or not it is in fact consumed for

food. The ordinance exempts, however, "any licensed [food] establishment" with regard to "any animals which are specifically raised for food purposes," if the activity is permitted by zoning and other laws. This exception, too, seems intended to cover kosher slaughter. Again, the burden of the ordinance, in practical terms, falls on Santeria adherents but almost no others: If the killing is—unlike most Santeria sacrifices—unaccompanied by the intent to use the animal for food, then it is not prohibited by Ordinance 87–52; if the killing is specifically for food but does not occur during the course of "any type of ritual," it again falls outside the prohibition; and if the killing is for food and occurs during the course of a ritual, it is still exempted if it occurs in a properly zoned and licensed establishment and involves animals "specifically raised for food purposes." A pattern of exemptions parallels the pattern of narrow prohibitions. Each contributes to the gerrymander.

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The legitimate governmental interests in protecting the public health and preventing cruelty to animals could be addressed by restrictions stopping far short of a flat prohibition of all Santeria sacrificial practice. If improper disposal, not the sacrifice itself, is the harm to be prevented, the city could have imposed a general regulation on the disposal of organic garbage. It did not do so. . . .

Under similar analysis, narrower regulation would achieve the city's interest in preventing cruelty to animals. With regard to the city's interest in ensuring the adequate care of animals, regulation of conditions and treatment, regardless of why an animal is kept, is the logical response to the city's concern, not a prohibition on possession for the purpose of sacrifice. . . . If the city has a real concern that other methods are less humane, however, the subject of the regulation should be the method of slaughter itself, not a religious classification that is said to bear some general relation to it.

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That the ordinances were enacted "'because of,' not merely 'in spite of,'" their suppression of Santeria religious practice is revealed by the events preceding their enactment. . . . The minutes and taped excerpts of the June 9 [city council] session, both of which are in the record, evidence significant hostility exhibited by residents, members of the city council, and other city officials toward the Santeria religion and its practice of animal sacrifice. . . .

. . . Councilman Martinez, after noting his belief that Santeria was outlawed in Cuba, questioned: "[I]f we could not practice this [religion] in our homeland [Cuba], why bring it to this country?" Councilman Cardoso said that Santeria devotees at the Church "are in violation of everything this country stands for." Councilman Mejides indicated that he was "totally against the sacrificing of animals" and distinguished kosher slaughter because it had a "real purpose." The "Bible says we are allowed to sacrifice an animal for consumption," he continued, "but for any other purposes, I don't believe that the Bible allows that." The president of the city council, Councilman Echevarria, asked: "What can we do to prevent the Church from opening?"

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In sum, the neutrality inquiry leads to one conclusion: The ordinances had as their object the suppression of religion. The pattern we have recited discloses animosity to Santeria adherents and their religious practices; the ordinances by their own terms target this religious exercise; the texts of the ordinances were gerrymandered with care to proscribe religious killings of animals but to exclude almost all secular killings; and the ordinances suppress much more religious conduct than is necessary in order to achieve the legitimate ends asserted in their defense. These ordinances are not neutral, and the court below committed clear error in failing to reach this conclusion.

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The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause. . . . In this case we need not define with precision the standard used to evaluate whether a prohibition is of general application, for these ordinances fall well below the minimum standard necessary to protect First Amendment rights.

Respondent claims that Ordinances 87–40, 87–52, and 87–71 advance two interests: protecting the public health and preventing cruelty to animals. The ordinances are underinclusive for those ends. They fail to prohibit nonreligious conduct that endangers these interests in a similar or greater degree than

Santeria sacrifice does. The underinclusion is substantial, not inconsequential. Despite the city's proffered interest in preventing cruelty to animals, the ordinances are drafted with care to forbid few killings but those occasioned by religious sacrifice. Many types of animal deaths or kills for nonreligious reasons are either not prohibited or approved by express provision. For example, fishing—which occurs in Hialeah,—is legal. Extermination of mice and rats within a home is also permitted. . . .

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The ordinances are also underinclusive with regard to the city's interest in public health, which is threatened by the disposal of animal carcasses in open public places and the consumption of uninspected meat. Neither interest is pursued by respondent with regard to conduct that is not motivated by religious conviction. The health risks posed by the improper disposal of animal carcasses are the same whether Santeria sacrifice or some nonreligious killing preceded it. The city does not, however, prohibit hunters from bringing their kill to their houses, nor does it regulate disposal after their activity. Despite substantial testimony at trial that the same public health hazards result from improper disposal of garbage by restaurants, restaurants are outside the scope of the ordinances. . . .

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A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny. To satisfy the commands of the First Amendment, a law restrictive of religious practice must advance "'interests of the highest order'" and must be narrowly tailored in pursuit of those interests. . . .

[E]ven were the governmental interests compelling, the ordinances are not drawn in narrow terms to accomplish those interests. As we have discussed, all four ordinances are overbroad or underinclusive in substantial respects. The proffered objectives are not pursued with respect to analogous non-religious conduct, and those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree. . . .

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JUSTICE SCALIA, with whom THE CHIEF JUSTICE joins, concurring in part and concurring in the judgment.

. . . Because I agree with most of the invalidating factors set forth in . . . the Court's opinion, . . . I join the judgment of the Court and all of its opinion except [for the discussion of legislative motivation].

I do not join that section because it departs from the opinion's general focus on the object of the laws at issue to consider the subjective motivation of the lawmakers, i.e., whether the Hialeah City Council actually intended to disfavor the religion of Santeria. [I]t is virtually impossible to determine the singular "motive" of a collective legislative body, and this Court has a long tradition of refraining from such inquiries. . . .

. . . Had the ordinances here been passed with no motive on the part of any councilman except the ardent desire to prevent cruelty to animals (as might in fact have been the case), they would nonetheless be invalid.

JUSTICE SOUTER, concurring in part and concurring in the judgment.

[Justice Souter's concurrence urged the justices to rethink the rule of Employment Division v. Smith *and restore the compelling interest test whenever states burdened religious practice.]*

JUSTICE BLACKMUN, with whom JUSTICE O'CONNOR joins, concurring in the judgment.

The Court holds today that the city of Hialeah violated the First and Fourteenth Amendments when it passed a set of restrictive ordinances explicitly directed at petitioners' religious practice. With this holding I agree. I write separately to emphasize that the First Amendment's protection of religion extends beyond those rare occasions on which the government explicitly targets religion (or a particular religion) for disfavored treatment, as is done in this case. In my view, a statute that burdens the free exercise of

religion "may stand only if the law in general, and the State's refusal to allow a religious exemption in particular, are justified by a compelling interest that cannot be served by less restrictive means." . . . The Court, however, applies a different test. It applies the test announced in *Employment Division v. Smith* (1990), under which "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." I continue to believe that Smith was wrongly decided, because it ignored the value of religious freedom as an affirmative individual liberty and treated the Free Exercise Clause as no more than an antidiscrimination principle. Thus, while I agree with the result the Court reaches in this case, I arrive at that result by a different route.

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In this case, the ordinances at issue are both overinclusive and underinclusive in relation to the state interests they purportedly serve. They are overinclusive, as the majority correctly explains, because the "legitimate govern mental interests in protecting the public health and preventing cruelty to animals could be addressed by restrictions stopping far short of a flat prohibition of all Santeria sacrificial practice." They are underinclusive as well, because "[d]espite the city's proffered interest in preventing cruelty to animals, the ordinances are drafted with care to forbid few killings but those occasioned by religious sacrifice." Moreover, the "ordinances are also underinclusive with regard to the city's interest in public health. . . ."

When a law discriminates against religion as such, as do the ordinances in this case, it automatically will fail strict scrutiny. . . . This is true because a law that targets religious practice for disfavored treatment both burdens the free exercise of religion and, by definition, is not precisely tailored to a compelling governmental interest.

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It is only in the rare case that a state or local legislature will enact a law directly burdening religious practice as such. Because respondent here does single out religion in this way, the present case is an easy one to decide.

A harder case would be presented if petitioners were requesting an exemption from a generally applicable anticruelty law. The result in the case before the Court today, and the fact that every Member of the Court concurs in that result, does not necessarily reflect this Court's views of the strength of a State's interest in prohibiting cruelty to animals. This case does not present, and I therefore decline to reach, the question whether the Free Exercise Clause would require a religious exemption from a law that sincerely pursued the goal of protecting animals from cruel treatment. . . .