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Robert Wheeler

son for refusing to require a relationship between them.[14] This is an attempt to prevent a wrongdoer from having actual immunity merely because the injured party is unable to show that there was a measurable injury [15]

Under the view of North Dakota, and the great weight of authority, it is possible for the defendant to escape liability when the plaintiff cannot prove an actual monetary loss. It is submitted that this is not the better rule to follow

DALE W MOENCH

ARMED SERVICES—DEFERMENTS AND EXEMPTIONS—CONSCIENTIOUS OBJECTORS—CONSTITUTIONALITY OF "SUPREME BEING" REQUIREMENT—Convicted of failing to submit to induction in the armed forces,[1] the defendant appealed, asserting he was improperly denied exemption as a conscientious objector because his objections were not dependent upon a belief in relation to a "Supreme Being", as required by statute.[2] The defendant had declined to assert a belief in a deity, but convinced authorities he held a sincere religious faith in a purely ethical creed that prohibited him from participating in any form of war Reversing the trial court, the United States Court of Appeals, 2 Cir., *held,* that in the light of recent decisions by the Supreme Court, a line such as is drawn by the "Supreme Being" requirement between different forms of religious expression can-

14. See cases cited in note 8 *supra.*

15. See Reynolds v. Pegler, *supra* note 8, at 38, in which the Court said. "Punitive or exemplary damages are intended to act as a deterrent upon the libeler so that he will not repeat the offense, and to serve as a warning to others. Punitive damages are allowed on the ground of public policy and not because the plaintiff has suffered any monetary damages for which he is entitled to reimbursement; the award goes to him simply because it is assessed in his particular suit. The damages may be considered expressive of the community attitude towards one who willfully and wantonly causes hurt or injury to another."

1. United States v. Seeger, 216 F Supp. 516 (S.D.N.Y. 1963).

2. Universal Military Training and Service Act, 62 STAT. 604 (1948), 50 U.S.C. App. § 456(j) (1958). The act provides: "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. "

not be permitted to stand consistently with the First Amendment or the Due Process Clause of the Fifth Amendment. *United States v Seeger*, 326 F.2d 846 (2d Cir 1964), *cert. granted*, 84 Sup. Ct. 1222 (1964) (No. 936)

In drafting the Selective Training and Service Act of 1940,[3] Congress liberalized the Selective Service Act of 1917, which granted exemption only to members of a well organized religious sect or organization with an established history of pacifism.[4] The 1940 act read: "Nothing contained in this act shall be construed to require any person to be subject to combatant training who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. "[5]

Based on dictum from a prior decision,[6] the clause was interpreted to mean that opposition to war on humanitarian and philosophical grounds was a "religious" belief.[7] This interpretation was rejected in 1946,[8] leaving a conflict which Congress resolved in the Universal Military Training and Service Act of 1948 by again basing exemption for conscientious objectors on religious training and belief, but making it dependent upon an individual's belief in relation to a "Supreme Being" [9] The "Supreme Being" requirement was upheld against constitutional challenges on several occasions.[10]

The Court in the instant case was provided with a foundation for its broadened definition of the word "religion" by a 1961 ruling of the Supreme Court, in which the court *held*, that a provision in the Maryland Constitution requiring a declaration of belief in the existence of God in order for an individual to qualify for the office of notary public in-

3. Ch. 720, § 5(g), 54 STAT. 889 (1940).

4. Ch. 15, § 4, 40 STAT. 78 (1917).

5. *Supra* note 3.

6. United States v. Kauten, 133 F.2d 703, 708 (2d Cir. 1943).

7. United States *ex rel.* Phillips v. Downer, 135 F.2d 521 (2d Cir. 1943), United States *ex rel.* Reel v. Badt, 141 F.2d 845 (2d Cir. 1944).

8. Berman v. United States, 156 F.2d 377 (9th Cir. 1946), *cert. denied*, 329 U.S. 795 (1946).

9. *Supra* note 2.

10. Clark v. United States, 236 F.2d 13 (9th Cir. 1956), *cert. denied*, 352 U.S. 882 (1956), United States v. Bendick, 220 F.2d 249 (2d Cir. 1955), George v. United States, 196 F.2d 445 (9th Cir. 1952), *cert. denied*, 344 U.S. 843 (1952).

vaded the defendant's freedom of belief and religion.[11] In effect, the Supreme Court ruled that any governmental attempt to define the word "religion", as that word was used in the First Amendment, would be unconstitutional if the definition excluded any philosophical, sociological, political or humanitarian belief which even the smallest minority could call a "religious" belief.[12] Also, in deciding tax cases, at least two courts have construed statutes providing tax exemptions for "religious" organizations to include groups possessing no theistic beliefs.[13]

Viewing the problem from a different vantage point, it would seem that it is more difficult to exclude activities, normally considered to be religious, from the meaning of that term, than it is to include beliefs not normally considered to be religious in nature.[14]

The instant case extends the position the Court took in *United States v Jakobson*,[15] which is factually similar and which is also before the Supreme Court for review While Jakobson recognized an ultimate creator of all existence, which he termed "Godness," his concept of religion did not fit within that of examining Selective Service officials or the trial court. The appellate court dismissed the indictment, noting that if the defendant were sincere "we rule it an erroneous construction of the statute to conclude Jakobson's beliefs fell outside its definition of religion."[16]

The Court is unwilling to draw a distinction between

11. Torcaso v. Watkins, 367 U.S. 488 (1961). The Court stated "Neither [state nor federal government] can constitutionally pass laws or impose requirements which aid all religions as against nonbelivers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."

12. Conklin, *Conscientious Objector Provisions A View in the Light of Torcaso v. Watkins*, 51 GEO. L.J. 252, 253 (1962-63).

13. Washington Ethical Soc'y v. District of Columbia, 249 F.2d 127 (D.C. Cir. 1957) Fellowship of Humanity v. County of Alemeda, 315 P.2d 394 (1957). The Court in the latter case, at p. 406, stated "Thus the only inquiry in such a case is the objective one of whether or not the belief occupies the same place in the lives of its holders that the orthodox beliefs occupy in the lives of believing majorities, and whether a given group that claims the exemption conducts itself the way groups conceded to be religious conduct themselves. The content of the belief, under such test, is not a matter of governmental concern."

14. See Abington School Dist. v. Schempp, 374 U.S. 203 (1963).

15. United States v. Jakobson, 325 F.2d 409 (2d Cir. 1963), *cert. granted*, 84 Sup. Ct. 1222 (1964) (No. 937).

16. *Id.* at 412.

Jakobson's devotion to a mystical force of "Godness" and defendant Seeger's compulsion to follow the paths of "goodness."[17] Whereas, in the *Jakobson* case the Court broadened its definition of "religion" so as to bring the defendant's views within the meaning of the statute, in the latest case the Court extended its definition so as to make belief in a Supreme Being inapplicable as a test for conscientious objectors.

One can envision a very real dilemma as a result of the Court's decision. A virtual Pandora's Box may be open to conscientious objectors—real or pseudo—whose "religious" beliefs will exempt them from performance of duty to their country If the Court's decision stands, where can Congress draw the line? The "Supreme Being" test, though objectionable, did provide a comparatively simple basis for defining "religion." In view of the seemingly insoluble question now posed, Congress may eventually have no choice but to abolish the conscientious objector provision altogether

ROBERT WHEELER

17. United States v. Seeger, 326 F.2d 846, 853 (2d Cir. 1964).