COPE

Citizens for Objectivity in Public Education

CHRONOLOGICAL LISTING OF IMPORTANT CASES REGARDING THE DEFINITION OF RELIGION

"[Government] shall make no law [or policy] respecting an establishment of religion, or prohibiting the free exercise thereof." (Religion clauses of First Amendment after *Cantwell v. Connecticut,* 1940)

Certain words and phrases within quotations have been italicized for emphasis.

1890 Early dicta imply religion is theistic. "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will." *Davis v. Beason*, 133 US 333 (1890)

1933 Humanist Manifesto published. It declares a new religion to replace traditional religion. Designed to be taught in public schools, it denies the supernatural, affirms that the universe is self-existing, and claims that life arises from unguided evolutionary change. It asserts that the purpose of life should be guided by reason and science per the scientific method.

1940/1948 Religion clauses apply to states. The religion clauses of the First Amendment apply to states (as well as to the federal government). *Cantwell v. Connecticut*, 310 U.S. 296 (1940) and *McCollum v. Board of Education*, 333 U.S. 203 (1948)

1944 A state may not take a position on the validity of a religious belief. The writers of the Constitution "fashioned a charter of government which envisaged the widest possible toleration of conflicting views." *United States v. Ballard*, 322 U.S. 78 (1944)

1947 Separation is to be achieved by *neutrality*, not *exclusion*. State subsidy of transportation to parochial schools is upheld using the dictum of "separation of church and state." The Court explained that separation "requires the state to be neutral in its relations with groups of religious believers and non-believers." Government "cannot exclude individual Catholics ... Mohammedans, … non-believers, ... *or the members of any other faith*, because of their faith, *or lack of it*." *Everson v. Board of Education*, 330 U.S. 1 (1947)

1957 "Secular" Humanism, an atheistic belief system, is a religion. Fourteen "Secular" Humanist churches receive tax exemptions permitted only for property used exclusively for "religious worship." California Court of Appeal adopts a functional definition of religion. The test is "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." "Religion simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets of the belief." *Fellowship of Humanity v. County of Alameda*, 153 Cal. App. 2d 673 (1957)

The decision of the California state court in *Fellowship of Humanity* was followed a month later by the U.S. Circuit Court of Appeals in *Washington Ethical Society v. District of Columbia* , 249 F.2d 127 (D.C. Cir. 1957)

1961 The Supreme Court embraces a "comprehensive" definition of religion. "By its nature, religion – in the comprehensive sense in which the Constitution uses that word – is an aspect of human thought and action which profoundly relates the life of man to the world in which he lives. Religious beliefs pervade ... virtually all human activity." The Court held that Sunday closing laws do not invoke religious subject matter as they provide a day of rest for all persons, including disbelievers. "The Establishment Clause withdrew from the sphere of legitimate legislative concern and competence a specific, but comprehensive, area of human conduct: man's belief or *disbelief* in the verity of *some transcendental idea* and man's expression in action of that belief or *disbelief." McGowan v. Maryland*, 366 U.S. 420 (1961)

1961 The Supreme Court holds that Atheism is a religion under the Free Exercise Clause. The Court finds that a required theistic oath abridged the Free Exercise rights of an Atheist. The Court lists (in note 11) examples of nontheistic religions: "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others. See *Washington Ethical Society v. District of Columbia,* 101 U.S. App. D.C. 371, 249 F.2d 127." *Torcaso v. Watkins*, 367 U.S. 488 (1961)

1965 The Supreme Court adopts the Fellowship of Humanity "parallel position" test. The Court holds that conscientious objectors may qualify for a religious exemption from combat even though they do not believe in a "Supreme Being." Following the holding in *Fellowship of Humanity* (1957), the Court held that a "belief which occupies in the life of its possessor a place *parallel* to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition." The Court explained that "[w]ithin [the phrase 'religious training and belief'] would come all sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent." "Over 250 sects inhabit our land. Some believe in a purely personal God, some in a supernatural deity; *others think of religion as a way of life envisioning as its ultimate goal the day when all men can live together in perfect understanding and* ***peace***." *United States v. Seeger*, 380 U.S. 163 (1965)

1969/1987 Second & Ninth Circuits find religion includes non-theistic Scientology. *Founding Church of Scientology v. United States,* 409 F.2d 1146 (DC Cir 1969); *Church of Scientology v. Commissioner of Internal Revenue*, 823 F2d (9th Cir 1987)

1970 The Supreme Court recognizes confusion over the broad meaning of religion. Even though a conscientious objector failed to describe his beliefs as religious as required for an exemption from combat, the Court found the beliefs to be religious. In rejecting the opinion of the objector the Court stated that "very few registrants [for the military draft] are fully aware of the broad scope of the word 'religious' as used in [the statute], and accordingly a registrant's statement that his beliefs are nonreligious is a highly unreliable guide for those charged with administering the exemption." *Welsh v. United States*, 398 U.S. 333 (1970)

1979/1981 The meaning of "religion" is functional and means the same in the Establishment Clause and the Free Exercise Clause. Religions address "ultimate questions," not the mundane. The Third Circuit holds that nontheistic religions like the Science of Creative Intelligence and Transcendental Meditation (SCI/TM) may not be taught in public schools under the guise of "science." "It seems unavoidable, from *Seeger*, *Welsh*, and *Torcaso*, that the theistic formulation presumed to be applicable … is no longer sustainable." "First, a religion addresses *fundamental and ultimate questions* having to do with deep and imponderable matters." In *Malnak v. Yogi*, the Court found that SCI/TM addressed ultimate questions, while in a subsequent case a diet regime did not. *Africa v. Commonwealth of Pennsylvania,* 662 F.2d 1025 (3rd Cir 1981)

The Court also explained that "the question of the definition of religion for first amendment purposes is one for the courts, and is not controlled by the subjective perceptions of believers. In *Malnak* the "Appellants … d[id] not consider SCI/TM to be a religion.... But Supporters of new belief systems may not 'choose' to be non-

religious, particularly in the establishment clause context. There is some indication that SCI/TM has attempted a transformation from a religion to a secular science in order to gain access to the public schools." *Malnak v. Yogi*, 592 F. 2d 197 (1979)

1983 Second Circuit embraces a broad definition of religion. "[T]here are religions which do not positively require the assumption of a God, for example, Buddhism and the Unitarian Church. Hence, a broader definition of the word religion – one which we think more accurately captures its essence – is that formulated by the pre-eminent American philosopher, William James, who said religion means: *'the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine.' " United States v. Sun Myung Moon*, 718 F.2d 1210, 1227 (1983)

1987 Religion is a set of beliefs about the cause, nature and purpose of life. "**Secular" Humanism is a religion for establishment clause purposes because it depends on certain "faith assumptions" concerning the cause, nature and purpose of life.** *Smith v. Board of School Commissioners of Mobile County*, 655 F. Supp. 939 (S.D. Ala. 1987)

On appeal this conclusion was not disturbed, but the District Court's holding that certain sociology, home economics, and history books promoted religion was reversed as the court did not find a religious effect "in the context of the books as a whole." *Smith v. Board of School Commissioners of Mobile County*, 827 F. 2d 684 (11th Cir. 1987)

1992 Atheism is a religion for Establishment Clause purposes, as belief or disbelief in God is an impermissible religious orthodoxy. "[A] nonpreferentialist who would condemn subjecting public school graduates to, say, the Anglican liturgy would still need to explain why the government's preference for theistic over *nontheistic religion* is constitutional." The "settled law" is that the "Clause applies 'to each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker.' " *Lee v. Weisman*, 505 U.S. 577 (1992)

1996 Tenth Circuit embraces a broad definition of religion. The Tenth Circuit adopts a very broad definition of religion using a parallel position test and a set of indicia that would include non-theistic religions like "Secular" Humanism. *United States v. Meyers*, 95 F. 3d 1475 (1996)

2002 Atheistic White Supremacism is a Religion. A federal district court holds that an atheistic White Supremacist belief system based on survival of the fittest and natural selection is a religion. *Peterson v. Wilmur Communications, Inc.*, 205 F. Supp. 2d 1014 (E.D. Wisc. 2002)

2003 "Secular" Humanism is a religion. The Texas Court of Appeals rules that the use of the "Supreme Being" test (belief in a higher power) denies the Ethical Society of Austin's First Amendment rights. The court holds that the "Supreme Being" test is unconstitutionally under-inclusive and replaces it with the *Malnak* test (a religion addresses fundamental and ultimate questions). *Strayhorn v. Ethical Society of Austin*, 110 S.W. 3d 458 (Tex. App. - Austin 2003)

2005 Atheism is an Establishment Clause religion. The Seventh Circuit holds that an atheist's rights under the Establishment Clause were violated when prison officials refused to grant his request to form an atheist study group in a Wisconsin prison. *Kaufman v. McCaughtry*, 419 F.3d 678 (7th Cir. 2005)

2008 EEOC Compliance Manual defines religion. A compliance manual adopted by the Equal Employment Opportunity Commission states that religion is concerned with " 'ultimate ideas' about 'life, purpose, and death,' " and includes atheism and other "religious beliefs that are new, uncommon," citing many of the cases discussed above.