

Legislative History for Connecticut Act

HB 5645 P.A. 252 1993

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House: 4921-4944, 9067-9070 (28)

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Bill 5796, as amended by Senate Amendment "A" on the  
Consent Calendar? Is there any objection? Hearing  
none, it is so ordered. Mr. Clerk.

THE CLERK:

Calendar Page 10, Calendar No. 451, File No. 615,  
Substitute for House Bill 5645, AN ACT CONCERNING  
RELIGIOUS FREEDOM.

Favorable Report of the Committee on Judiciary.

The Clerk is in possession of one amendment.

THE CHAIR:

Thank you very much. The Chair would recognize  
Senator Jepsen.

SENATOR JEPSEN:

Thank you, Madam President. I move acceptance of  
the Joint Committee's Favorable Report and passage of  
the bill.

THE CHAIR:

Thank you very much. Mr. Clerk.

THE CLERK:

LC08819, which will designated Senate Amendment  
Schedule "A". It's offered by Senator Jepsen of the  
27th District.

THE CHAIR:

The Chair would recognize Senator Jepsen.

SENATOR JEPSEN:

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Thank you, Madam President. I move adoption of the amendment and request permission to summarize.

THE CHAIR:

Please proceed, Senator.

SENATOR JEPSEN:

Let me just make sure that this is the correct amendment number. Yes, that is the correct amendment. What this amendment does is to make crystal clear the intention of this bill which is not to in any way infringe upon the establishment clause of the State Constitution, that it is limited to the issue of the free exercise of religion and what that means in very concrete terms is issues that have really already been adjudicated and are well established law under our Constitution in this state, such as the legality of our state paying for certain private and parochial school services such as bus services and the like, that these issues would not be reopened and what is currently good law, which is that it is constitutional for the state to provide those kinds of subsidies would remain constitutional.

THE CHAIR:

Thank you very much, Senator. Would anybody else wish to remark on LCO No. 8819? Senator Fleming.

SENATOR FLEMING:

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Yes, thank you, Madam President, if I might, a question to the proponent.

THE CHAIR:

Certainly, sir.

SENATOR FLEMING:

Understanding the way the legislative process works and there are a lot of different parties, Senator Jepsen, involved in development of compromises, I was curious, through you, Madam President, if the different parties to this issue had input into development of this amendment and if they were satisfied with this amendment?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

Thank you, Madam President. I think Senator Fleming is aware that over the years I've developed a close working relationship with some of the parties which he makes reference to, yes, that one, and I can state with great assurance that this language has been run past all the affected religious minorities and majorities who have an interest in it and it has the support of everyone that I am aware of.

THE CHAIR:

Senator Fleming.

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SENATOR FLEMING:

Yes, bless you, Brother Jepsen.

LAUGHTER

THE CHAIR:

Gracious. Senator Kissel

SENATOR KISSEL:

Just a question, Madam President, to the proponent of the amendment.

THE CHAIR:

Yes, sir.

SENATOR KISSEL:

Is it your considered opinion that this bill, as amended, would a member of the public be able to indulge in what we would normally perceive as adverse behavior, one that we might view as illegal or immoral and raise up this bill as a defense, for example, to a criminal proceeding?

I know that one of the underlying concerns regarding this measure was a Supreme Court decision regarding marijuana use and people I think of the Rastafarian Sect, and again, my concern would be while pushing forward this protection, whether it could be used as some type of defense like that.

THE CHAIR:

Just a second. Can we get rid of that noise? Did

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you finish your question, Senator, I think?

SENATOR KISSEL:

Yes, in a nutshell, could this bill be used as a defense to a criminal action?

THE CHAIR:

Senator Jepsen.

SENATOR JEPSEN:

I'm not trying to avoid the question, but if I could make two points. Number one, I think that this discussion, if we could adopt the amendment, this gets to the part of the bill that is being amended.

SENATOR KISSEL:

I'd be happy to withdraw the question until after the adoption of the amendment.

SENATOR JEPSEN:

And then we can just pick it up from there.

THE CHAIR:

The Chair will accept that. Are there any other remarks for Senate Amendment "A"? Any further remarks? Then if not, please let me know your mind. All those in favor of LCO No. 8819, designated by the Clerk as Senate Amendment "A", please signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

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Opposed.

The ayes have it.

The amendment is adopted.

Senator Jepsen, you now have before you Substitute for House Bill No. 5645, as amended by Senate Amendment "A".

SENATOR JEPSEN:

I will remark on the bill as amended and in that time I hope to respond to the very pertinent question raised by Senator Kissel. For 31 years until 1989 the United States of America had a standard by which -- a constitutional standard by which to evaluate whether a religious minority was having its legitimate constitutional rights infringed upon by a state action or state law.

This standard which required that the state show a compelling state interest in enacting a law and its impact on the free exercise of religion was overturned in a narrow decision in 1989 by the Supreme Court.

The court left in place a far weaker standard by which to evaluate whether laws affecting the free exercise of religion violated the Constitution.

This is a very difficult and delicate area. I don't think anyone really thought that the old standard was working poorly, in fact, it seemed to work fairly

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well. In overturning the standard and leaving essentially all a state had to show was that it had a rational basis for enacting a law that could have an incidental impact on religion. Many argued, in fact most argued that, that that left religious minorities essentially at the mercy of the state, and for example, one could argue that candle lighting in churches, because it violates local fire codes, could be prohibited absolutely.

One could argue that serving of alcohol to minors as part of a ceremonial glass of wine, which is part of the religious practice of a wide number of mainstream religions in this country would be illegal because all the state would have to show is that it had a rational purpose in enacting that fire code, a rational purpose in saying that minors should not drink alcohol.

Under the old compelling interest test, the free exercise of religion would easily, by all, by consensus trump that state law. You could not tell a church that it absolutely could not light candles in any circumstances because it was part of their religious ceremony. You could not tell a religious group that it could not serve a ceremonial glass of wine to a youngster and under the newer standard, all of this is thrown into doubt.

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Some would argue that the old standard was a little too loose. The consensus is, including in Washington, by the way, where parallel federal legislation is apparently on track and by consensus with all the religious groups involved is very likely to be passed. It is felt that the new standard is simply guts and makes the free exercise clause of our Constitution null and void.

To zero in directly on Senator Kissel's question, by definition, you are always dealing here with a potential violation of the law and therefore a criminal act by a member of a religious minority sect and so, yes, it's certainly true that virtually every case where this would be at issue, yes, you're saying that a particular act by a particular individual violates the law in one form or another and the question is when that should give way and admittedly in those difficult issues, for example, the marijuana smoking question or where there's an Oregon case involving the ceremonial use of peyote, it does get into some very difficult questions and the appropriateness of whether a particular action is -- should be protected by the Constitution and it is my personal belief that under the compelling interest standard that there is plenty of room to make the case that the ingestion of peyote

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is part of a religious ceremony, just as, for example, the torture of wild animals, you know, nailing a cat to a board, I'm not sure that under any circumstances any religious group could make the claim that they have the right to do that just because it's the free exercise of religion, but it does take judgment calls in the margin and I think that the compelling interest standard leaves plenty of room to rule invalid the more extreme forms of religious practice that might be at issue while protecting the legitimate exercise of religion, as we know it, and even allowing the wide variation in the practice of religion, which is part of our political heritage.

I would like to state for the record and I think I have some written language somewhere which characteristically I can't find, but there is nothing intended in this law as proposed and by consensus of everyone I know who had a hand in drafting it or working on it from all sides of this very sensitive question, there's absolutely nothing in this law as we're enacting it that is intended to expand or diminish or in any way affect abortion rights as they may exist in this state or any rights to choose or any issues affecting the funding or exercise of any abortion rights from either side of that very difficult

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question.

THE CHAIR:

Thank you very much, Senator Jepsen. Senator Kissel.

SENATOR KISSEL:

For the record, Madam President, through you, I just want to thank Senator Jepsen for responding to my concerns. I was simply voicing some concerns which had been articulated to me by many of my constituents and I also would like to associate myself with Senator Jepsen's remarks and urge full support for this bill as amended. Thank you, Madam President.

THE CHAIR:

Thank you very much, Senator Kissel. Senator Jepsen, again. Just a second, Senator. It's getting a little --. (Gavel) It's the perennial plea. If you have conversations, please take them outside in the hallway, so that people can hear the business that's being conducted. We are in session and we would appreciate that courtesy. It applies to all the people in this Chamber and in the galleries as well. Thank you. Senator.

SENATOR JEPSEN:

Thank you, Madam President. I found the language I wanted to read, better a little bit late than never.

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So if I might, if the Chamber will indulge me.

THE CHAIR:

The Chair is just delighted to indulge you.

SENATOR JEPSEN:

And if I could share this as part of the legislative record and I believe this is by consensus that there's much stated about this bill's relevance to the issue of abortion. Some have suggested if Roe vs. Wade were reversed, the bill might be used to overturn restrictions on abortion.

While the committee, like the Congressional Research Service, is not persuaded that this is the case, we do not seek to resolve the abortion debate through this legislation. Furthermore, the Supreme Court's 1992 decision, Planned Parenthood vs. Casey, makes clear that any claims relating to this issue would be academic. And furthermore, and this is the one part I really did not address in my proceeding remarks, and to be absolutely clear, this does not -- this bill does not expand, contract or alter the ability of a claimant to obtain relief in a manner consistent with the Supreme Court's free exercise, juris prudence under the compelling interest test prior to the Smith case.

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Thank you very much, Senator Jepsen. Now would anyone else wish to remark on Senate Calendar No. 451? Are there any further remarks on that bill as amended? If not, then Senator Jepsen, if there's no objection, would you entertain a motion to place this item on the Consent Calendar?

SENATOR JEPSEN:

I so move.

THE CHAIR:

Is there any objection, any objection to placing Senate Calendar No. 451, Substitute for House Bill 5645, as amended by Senate Amendment "A" on the Consent Calendar? Any objection? Any objection? Hearing none, it is so ordered. Mr. Clerk.

THE CLERK:

Calendar Page 11, Calendar No. 467, File No. 524 and 825, Substitute for House Bill 7183, AN ACT CONCERNING CANDIDATE'S PAYMENTS OF CAMPAIGN EXPENSES, REQUIRED ATTRIBUTION ON POLITICAL CAMPAIGN ADVERTISING MATTER AND THE THRESHOLD FOR THE DISCLOSURE OF THE OCCUPATION AND EMPLOYER OF CAMPAIGN CONTRIBUTORS. (As amended by House Amendment Schedules "A" and "D").

Favorable Report of the Committee on Government Administration and Elections.

The Clerk is in possession of three amendments.

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has been ordered in the Senate on the Consent Calendar.  
Will all Senators please return to the Chamber.

THE CHAIR:

Thank you very much, Mr. Clerk. The issue before  
the Chamber is Consent Calendar No. 1 for today,  
Thursday, May 27, 1993. Mr. Clerk, would you please  
read off the items that have been placed on Consent.

THE CLERK:

The first Consent Calendar begins on Calendar  
Page 2, Calendar No. 225, Substitute for Senate Bill  
No. 713.

Calendar Page 5, Calendar No. 351, Substitute for  
House Bill 5796. Calendar No. 376, House Bill 5072.

Calendar Page 10, Calendar No. 451, Substitute for  
House Bill 5645.

Calendar Page 14, Calendar No. 486, Substitute for  
Senate Bill 873.

Calendar Page 16, Calendar No. 501, Substitute for  
House Bill 7260.

Calendar Page 19, Calendar No. 518, House Bill  
6925.

Calendar Page 26, Calendar No. 152, Substitute for  
Senate Bill 803.

Page 27, Calendar No. 256, Substitute for Senate  
Bill 894.

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Calendar Page 28, Calendar No. 283, Substitute for Senate Bill 25. Calendar 296, Substitute for Senate Bill 984.

Calendar Page 30, Calendar No. 363, Substitute for House Bill 6306.

Calendar Page 31, Calendar No. 406, Substitute for Senate Bill 820. Calendar 455, Substitute for House Bill 6776. Calendar Page 34, Calendar No. 401, Substitute for Senate Bill 54. Madam President, that completes the first Consent Calendar.

THE CHAIR:

Thank you very much. Ladies and gentlemen of the Chamber, you have heard the items that have been placed on the Consent Calendar No. 1 for today, May 27, 1993. The machine is on. You may record your vote.

Have all Senators voted and have your votes been properly recorded? Have all Senators voted and have your votes been properly recorded? The machine is closed.

The result of the vote:

36	Yea
0	Nay
0	Absent

The Consent Calendar No. 1 for today has been adopted.

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SPEAKER RITTER:

I'd like to join in on behalf of the Waterbury delegation to welcome you here. And also, Representative Hartley is in Washington today, trying to get some more federal money, otherwise she'd be joining us here also.

Are there any other points of personal privilege? If not, please continue with the Call of the Calendar.

CLERK:

Page 10, Calendar 470, Substitute for House Bill 5645, AN ACT CONCERNING RELIGIOUS FREEDOM. Favorable Report of the Committee on Judiciary.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER RITTER:

The Honorable Chair of the Judiciary Committee, Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move for acceptance of the Joint Committee's Favorable Report and passage of the bill.

SPEAKER RITTER:

The motion is on acceptance and passage. Please proceed, Sir.

REP. TULISANO: (29th)

Yes, Mr. Speaker. Mr. Speaker, the bill before us

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today is one of the more important bills to come before the General Assembly this year. Although it seems, on its face, to be not so important, it makes it clear that at least under the Connecticut Constitution, the State will be held to the highest degree possible, when it attempts to regulate the activity of any religion in our State under the Connecticut Constitution.

This parallels legislation being proposed in the Congress, and in fact today culminates a three or four year attempt by members of both sides of the aisle to introduce similar legislation in Connecticut.

Three years ago we did not go forward as Representative Ward reminded me because we were told a similar bill was going to pass in Washington and we wouldn't have to worry about it. Well, Mr. Speaker, we do have to worry about it.

Let me make it clear. There was a case a few years back called the Smith case, which it reduced the requirements upon a state when it tried to limit the free exercise of religion.

Mr. Speaker, for purposes of legislative intent, I want to make it clear that in no way is this intended to address portions of the Constitution dealing with equal rights of all religious societies or denominations, nor to limit any granting or withholding

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of funds that go on in our General Assembly that are otherwise legitimately concerned.

All we're talking about here is that in fact when the State tries to limit activities, such as candles in a church, receiving wine at Holy Communion, wearing a yarmulke in court, in order to restrict that activity, which is otherwise religiously allowed, that there must be a compelling State reason in order to do it.

Recent cases have come down which seem to lessen that burden. I think that's wrong, and one of the most important fundamental rights in this State, and in this nation, has been that of religious freedom. This bill enhances religious freedom and puts Connecticut once again in the forefront of supporting the variety of denominations that exist in the State and supporting that free exercise there.

I move for passage of the bill, Mr. Speaker.

SPEAKER RITTER:

Thank you, Sir. Any other comments on this bill?  
Representative Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker. I also rise to support the bill and Representative Tulisano does not exaggerate a bit when he suggests that although the language is fairly simple that it is in fact a very, very important

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bill for the people of Connecticut. Connecticut will now be the first state in the nation to say that what had been the law for 40 years in this country, will remain the law at least in this State, that if you have a deeply held religious belief and are exercising your religion, that the State cannot interfere with that, absent a compelling interest and absent less restrictive means of applying the generally applicable law.

That's what had been the law up until the Smith case and worked quite well. Since the Smith case in Connecticut there have not been a lot of cases that have been challenged where an individual's rights were affected. But throughout the country there have been.

One court in Ohio described it, at this point, with what the Supreme Court had ruled in the Smith case that the free exercise was no more than a puff of smoke. It became almost meaningless.

Connecticut can now step forward and say that under our State Constitution, the free exercise of religious is not a meaningless right. It is a very carefully protected right. This law will allow a balancing when there is a compelling State interest to apply a generally applicable law, but it says that you've got to have that compelling interest so that we will say to

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all the citizens of Connecticut, your religious practices are protected in this State and as I say, we're the first state in the nation to do that.

I think we shouldn't wait for Congress to move because they haven't moved in three years. We now here they'll move again, but that's exactly what we were told, three, three and a half years ago.

I would also point out that Representative Tulisano was right, and some people would ask questions. What it does is clear. What it does not do should also be clear. This is not about tax exempt status. It's not about whether an individual has a right to a benefit or not, applying or denying benefits. It's simply defining a free exercise claims, it's not defining establishment clause claims either under the federal or State Constitution, but it deals with free exercise claims and all of the case law that used to be decided under free exercise.

I urge the Chamber to support the bill.

SPEAKER RITTER:

Thank you, Sir. Representative Scalettar from the 114th. Madam, you have the floor.

REP. SCALETTAR: (114th)

Thank you, Mr. Speaker. I also rise in support of this bill. I believe this is one of the most important

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bills we will have the opportunity to vote on during this session. It guarantees to the people of Connecticut the most fundamental religious freedom and I would like to read a list of the religious organizations that have supported the principles of this bill at the national level.

These organizations include the National Association of Evangelicals, the Baptists Joint Committee on Public Affairs, People for the American Way, The Presbyterian Church U. S.A., the American Civil Liberties Union, the Christian Legal Society, the Anti-Defamation League, the General Conference of Seventh Day Adventists, the American Jewish Committee, the Unitarian-Universalist Assembly, the American Jewish Congress, the Lutheran Church, the Missouri Synod, and many other organizations.

I urge all of my colleagues to support this bill.  
Thank you, Mr. Speaker.

SPEAKER RITTER:

Thank you, Madam. Representative Jarjura.

REP. JARJURA: (74th)

Mr. Speaker, if you'll notice in the Committee report, I was the only member of the Judiciary Committee to oppose this piece of legislation.

I very rarely ever, disagree with Representative

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Tulisano.

SPEAKER RITTER:

You're the only one, then.

REP. JARJURA: (74th)

And I want to say what respect I've had for all the members on the Judiciary Committee in serving here. But I have to speak against this bill and I'll tell you why.

What this bill does is represent a very substantial change in the law as we know it. What it does is, it says now, taking the Smith case which Representative Ward mentioned, under the Smith case the Supreme Court said that all the State needed to show as a rational basis for restricting activities.

The Smith case involved the use of a narcotic by an employee and he claimed that the use of this narcotic was protected under his religious beliefs. Now, I raised the concern and I'll raise it again here for the members of the Chamber, that I felt that maybe by elevating the test of the compelling State interest test, which was the test prior to the Smith case, yes, I'll admit that, that somehow we would be giving protection to fringe religions, to bizarre conduct. That's my concern. I still have that concern.

Now, Representative Tulisano brings up the very

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important situation of the yarmulke, in which somebody was prevented from wearing their yarmulke in court and of the, in the Catholic ceremony, the use of the wine representing the blood and the host, but my concern with this bill is that we will be giving protection to fringe and bizarre activities and it's a legitimate concern.

My other concern is that I think the federal Congress is poison ready to take action, and I understand what Representative Ward and Representative Tulisano have said here today, that they've been waiting for several years. But I do feel that this is something that the nation should speak with, with one voice and what would happen if we do pass this law, as by all indications we probably will here today, and the federal government either passes one more expansive than ours or more restrictive than ours.

So, I did want to express my concerns to the members of the Chamber. I do note that I was the only vote against it in the Committee, so I probably represent a minority view and I thank you very much, Mr. Speaker.

SPEAKER RITTER:

Thank you, Sir. Representative Powers of the 151st. You have the floor, Madam.

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REP. POWERS: (151st)

Thank you. Mr. Speaker, through you, a question to the proponent of the bill.

SPEAKER RITTER:

Please proceed, Madam.

REP. POWERS: (151st)

My question is, in the case of a situation where you have parents and a child is sick and they do not believe in going to a hospital and using modern medicine, at what point does the State under this new language, does the State's concern kick in, in terms of helping that child get the medical attention that they need if indeed the situation is life-threatening.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. Through you, Mr. Speaker, it's clear the State would have to show a compelling State interest. And as everybody has indicated, until the Smith decision, compelling State interest was a standard which this State and the nation merely were bound by. And during that period of time, you had situations such as described by Representative Powers. And in that situation, if the child's health and welfare were in jeopardy, what often happens is

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it steps in and seeks other guardianships. There's a hearing on that, whether it's appropriate in the case, etc., application for a temporary guardian to make a decision as to whether or not other kinds of alternatives would be available for the child.

But they go in, they move in because the child's health and welfare is in danger, just like they do in any other situation regarding the health and welfare of a child, because they have shown that the compelling state interest for the State is that the generation, children are well cared for, etc. and that outweighs the individual. That has been upheld in the past, if it's ever been appealed, I don't know if it's ever been appealed, but at least it's been practically implemented in that manner in the past.

SPEAKER RITTER:

Representative Powers.

REP. POWERS: (151st)

Through you, Mr. Speaker. Then you're saying that this new language would not affect the ability of establishing guardianship and getting medicine to the children at all.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

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Mr. Speaker, it is my opinion that it wouldn't because that's the steps that were taken under this similar language in the past.

REP. POWERS: (151st)

Thank you, Mr. Speaker.

SPEAKER RITTER:

Thank you, Madam. Anybody else? Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. Mr. Speaker, every action that we take causes a reaction and through you, to Representative Tulisano, a very theoretical question. Should this bill pass, could you summarize what you think the major legal actions that might occur after its passage would be in terms of current law and what might be challenged. Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, I don't think anything would be challenged, to be honest with you, under current statute.

What might happen is, that in fact whenever one is trying to effectuate a particular law, I'll give you, I think one might come to a challenge. I always use the

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same one, it's wine, but that's me, through you, Mr. Speaker.

I suspect that technically under our statutes, it is illegal to serve alcoholic beverages, or to give, for money or otherwise, to somebody under 21 years of age, any alcohol, as long as they're not accompanied by a parent, exclusions, parents, etc.

Assuming our law does not exclude religion, and I don't know if it does or not, it's been a long time since I read it, but assume it hadn't, I suppose the State could go in and try to prosecute a priest or minister who gave wine in a communion service, and at that point in time, the challenge would be that no compelling State interest was served by trying to prosecute the server in that there was no degree of harm to the State, even though the State can generally outlaw the use of alcohol, the amount involved and the conditions in terms to which it has in fact been given, were such that it would not reach to the level that the State does or should, intervene.

That's different than if you're sitting in a bar and doing it, because it's not in the exercise of religion. I suppose that's the one area I always think of that one, because that's the obvious.

Through you, Mr. Speaker.

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SPEAKER RITTER:

Thank you, Sir. Representative Belden, you still have the floor.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. One other question, if I might. If this were to pass, would you expect there would be any problems with State employees or municipal employees as relates to current contracts, labor negotiations, etc. should this become law?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, I don't believe so. In fact, let me just make it clear. We are not sure that in Connecticut we still don't have this standard yet. I mean, this may still be the standard in Connecticut, so I don't think it's going to affect any of those.

What we are doing is insuring that Connecticut, for some reason that doesn't start to follow the new federal line of change, and so I don't think it adversely affects anything we already have and has already been decided in Connecticut at this point. It insures the future.

REP. BELDEN: (113th)

Thank you, Mr. Speaker.

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SPEAKER RITTER:

Thank you, Sir. Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. I, too, rise to support the bill. But just to be certain and for purposes of legislative intent, because we're dealing here with a statute and not a constitutional provision, I want to make sure that we're not ratifying some of the bizarre conduct that my good friend from Waterbury alluded to in his earlier remarks. I think we should have something on the record.

First of all, through you, Mr. Speaker, in the first amendment there are really two clauses that have been litigated. The free exercise clause which the Smith case involved and the establishment clause.

Through you, Mr. Speaker, does this statute in any way deal with the establishment of religion clause in that amendment?

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, no, it doesn't. Only the in the free exercise.

SPEAKER RITTER:

Representative Radcliffe.

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REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. Just to take a couple of examples. The Smith case did involve the use of a controlled substance. Through you, Mr. Speaker, if this test were put into our statutes and we reverted, essentially, to the Wisconsin v. Yoder test which was the law in this State and in the United States since 1960, are we rendering our drug laws in any way inapplicable? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. The answer is no, clearly. And I believe even under the prior test, Yoder there were example payote laws that were held, that they could restrict the use, even in certain religious ceremonies than, that in fact the compelling State interest raised was fulfilled in those areas also.

REP. RADCLIFFE: (123rd)

So through you, Mr. Speaker, we're not saying that an individual may avoid the application of Connecticut's controlled substance statutes simply by raising a religious question. Through you, Mr. Speaker.

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SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, no, we are not doing that.

REP. RADCLIFFE: (123rd)

Once again, through you, Mr. Speaker, because we're dealing with the free exercise clause, would a municipality in this State, or the State of Connecticut itself, because it deals with State action, be able to restrict religious parades on the basis of permits or other such licenses for parades of this statute were enacted? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. As long as it is like they applied it to everybody, generally, it would be fine and wasn't interfering.

Say there was a conflicting parade already scheduled and they were going to march through the middle of it, I suppose the compelling State interest is to keep the peace. But otherwise, they could not intervene in it.

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Thank you, Sir. Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker, a group simply by evoking this statute or evoking the First Amendment, would not be able to avoid a municipal, a reasonable municipal requirement that a permit be obtained. Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, no. Assuming that the permit requirements would effectuate the public health, safety and welfare, are equally and evenly applied to all participants, then it would be the same.

Unless, of course, they made it so great, against everybody, that they couldn't ever get a permit, then I think you'd have another issue. But assuming, as you said, that we're all reasonable, and were legitimately connected to that compelling State or local interest, it would be appropriate.

REP. RADCLIFFE: (123rd)

Well, through you, Mr. Speaker, given the last example, we would have an absolute prohibition. A reasonable regulation would not be an absolute prohibition. Without getting into whether or not a

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State could absolutely prohibit, which I think would clearly be violative of the free exercise clause, through you, Mr. Speaker, there's nothing to prevent a municipality or the State from establishing the time of a parade, the manner of a parade, and adequate protection.

Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker, no. Obviously, Mr. Speaker, again, and I use the same words consistently. The compelling State interest is safety of individuals, so you don't want a parade, as an example, marching down a busy thoroughfare where someone might get killed, and who may not be interested in the religion or causing, so that is something that the normal regulatory process, just like churches, under this law, may be required, are required to fulfill the building codes that are required of them. Those similar type things are required of everybody and they are, do fulfill the State's interest.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. Representative Belden mentioned something regarding employment and employment of individuals by the State or by a municipality. Through you, Mr. Speaker, would the provisions of this

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statute apply to a private employer, who for example required employees to work on Saturday and for example, a 7th Day Adventist or an Orthodox Jewish individual, applied for a position. Through you, Mr. Speaker, would that private employer still be able to deny employment on the basis of the legitimate needs of that business? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, this deals with State action, not private action initially, to begin with. And there is a United States Supreme Court which predates Smith, I believe, which says that one could be excluded from say, unemployment comp for failing to work on a day otherwise prohibited.

However, and I would have to again, my memory is slipping, I think Connecticut has a statute that says you can't do that versus private employers, but I would have to check that statute which is another law, and not this one.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker, although that case to which the Chairman of the Judiciary Committee referred predates Smith, it postdates Wisconsin v. Yoder where

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this test is first articulated, does it not? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, yes, it does.

REP. RADCLIFFE: (123rd)

Thank you. And just one other question. In introducing the bill Representative Tulisano referred to the State Constitution, the State constitutional provisions. This is a statute. We're in effect adopting a compelling interest test as a statutory standard.

Through you, Mr. Speaker, given the decision in Smith and the fact that no similar case has been decided under the State Constitution, if this Legislature or a subsequent Legislature does desire, might we establish a rational basis test to replace this compelling interest test in statute? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, I believe we could. However, we could pass the State Constitution, the

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State Supreme Court may very well, could very well say, that despite what we did, that it is the compelling State interest test under Connecticut's Constitution because our Constitution in some people's beliefs, mine included, but it is not unanimous, has greater protections than that given under the federal, and so they could very well interpret our Constitution to have always had that despite what we say, and we cannot minimize what has already been granted by the people of the State of Connecticut.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. I'm just concerned about some of the potential bizarre results that Representative Jarjura indicated earlier.

Through you, Mr. Speaker, if a bizarre result unknown to me or to the Chairman of the Judiciary Committee at this time were to occur at a subsequent time, could that bizarre result be dealt with by a statute that said notwithstanding this particular statute and deal a prescribed certain conduct? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker. In fact, I'm not sure

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what bizarre means, I think that's the real problem. I mean, what is bizarre for others may be okay for some others, you know. Some people might think it was bizarre, I don't.

REP. RADCLIFFE: (123rd)

I won't say it.

REP. TULISANO: (29th)

I think what we're describing is activity which endangers public safety, health, welfare by calling it bizarre, and that is regulated. You may regulate it. If we find some group, just because they call themselves a religion, and we're not dealing with easy, easy things, through you, Mr. Speaker. That's a hard thing to find out in and of itself, and I certainly can't judge what that is here.

But if in fact one, I think first of all, we'd say, the burden has got to be on the State when someone is exercising what they call a religious freedom. Once that is identified, and it results in something which is otherwise regulated and again, rises to the occasion that we should, as a State, in order to protect our public health, safety and welfare, I think we can regulate it and address those particular issues which we haven't been able to envision at this point in time.

Assuming, of course, they are not of such nature

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that it's irrelevant, even though you might think it's bizarre from an outsider's point of view.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. I do rise, as I said earlier, to support the bill. I think that all this bill will do is to reestablish, in case there was any ambiguity, the test which has been the test for free exercise of religion since Wisconsin v. Yoder in the early sixties which says that if the State is going to burden the free exercise of religion, it must have a compelling State interest and there may be no less onerous means by which that compelling State interest can be accomplished.

All the parade of horrors that have been discussed by some individuals, or were discussed in the Judiciary Committee did not occur between the decision of Wisconsin v. Yoder and the decision of The Employment Division v. Smith, nor frankly, have they occurred since the Smith decision. This is simply to codify good law and on that basis, I would hope that the Assembly would act favorably on this matter. Thank you.

SPEAKER RITTER:

Thank you, Sir. Anybody else care to comment? If not, staff and guests come to the well of the House.

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The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber, please. Members please report to the Chamber. The House is voting by roll.

SPEAKER RITTER:

Have all members voted? If all members have voted, please check the roll call machine to make sure your vote is properly cast. The machine will be locked. The machine is still open, Representative Gavin. Just push the button, it's still open. Just push the button. The machine will be locked. The Clerk please take a tally. The Clerk please announce the tally.

CLERK:

House Bill 5645.

Total number voting 148

Necessary for passage 75

Those voting yea 147

Those voting nay 1

Those absent and not voting 3

SPEAKER RITTER:

The bill passes. The Clerk please continue with the Call of the Calendar.

CLERK:

Page 13, Calendar 500, Substitute for Senate Bill

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Representative Bysiewicz, do you accept the yield,  
Madam?

REP. BYSIEWICZ: (100th)

Yes. Thank you, Mr. Speaker. I would like to  
welcome Rosemary Shay's fourth grade class. We are  
happy they are here and we thank them for coming and we  
hope they learn something.

SPEAKER RITTER:

Welcome.

Clerk, please continue with the call of the  
Calendar.

CLERK:

Page 36, Calendar 470, substitute for House Bill  
5645, AN ACT CONCERNING RELIGIOUS FREEDOM, as amended  
by Senate "A". Favorable report of the committee on  
Judiciary.

SPEAKER RITTER:

The Honorable Richard Tulisano representing the  
towns of Hartford, Wethersfield, and Rocky Hill.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move for acceptance of the Joint

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Committee's favorable report and passage of the bill in concurrence with the Senate.

SPEAKER RITTER:

The motion is on acceptance and passage. Please proceed, Sir.

REP. TULISANO: (29th)

Mr. Speaker, this bill before us in which we have passed some week or so ago, in the Senate, they did pass an amendment which is entitled LCO8819 which I would ask the Clerk..

SPEAKER RITTER:

Clerk has amendment LCO8819 which will be designated Senate "A" previously designated Senate "A". Representative Tulisano after it is called by the Clerk, would like to summarize.

CLERK:

LCO8819, Senate "A".

REP. TULISANO: (29th)

Mr. Speaker, this amendment effectively puts into amendment form, some of the items I had indicated when bringing the bill out that it should be construed to an effect...nothing should be construed to effect, interpret or address Article VII which is the establishment clause and it would not in any way effect any funding or benefits given to religiously oriented

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groups.

I move for its adoption.

SPEAKER RITTER:

The question is on adoption. Will you remark further? If not, I will try your minds. All in favor, say Aye.

REPRESENTATIVES:

Aye.

SPEAKER RITTER:

Opposed, Nay.

Senate "A" is adopted and ruled technical. Will you remark further on this bill? Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, as amended, I would hope that the House would vote for this bill. We had voted, I think unanimous with one vote against it a couple of weeks ago and I hope we can do it again today.

SPEAKER RITTER:

Will you remark further? If not, staff and guests come to the well of the House. The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber, please. The House is

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taking a roll call vote. Members, please report to the Chamber.

SPEAKER RITTER:

Have all the members voted? Please check the roll call machine and make sure your vote is properly cast. The machine will be locked. Clerk, please take the tally.

Clerk, please announce the tally.

CLERK:

House Bill 5645	
Total Number Voting	143
Necessary for Passage	72
Those voting Yea	141
Those voting Nay	1
Those absent and not Voting	9

SPEAKER RITTER:

Bill as amended passes. Clerk, please continue the call of the Calendar with Calendar 313.

CLERK:

Page 35, Calendar 313, House Bill 5072, AN ACT CONCERNING THE STATE TASK FORCE ON SUPERFUND CLEAN-UPS, as amended by Senate "A". Favorable report of the committee on Environment.

SPEAKER RITTER:

The Honorable Chair of the Environment Committee,

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In addition, confidentiality does promote settlement of suits, as many of you know, as being trial laws, and it also promotes cooperation during discovery, reducing the number of time consuming and costly trial and discovery disputes.

I think by effectively taking matters within the province of the jury and shifting them to the judge, you also have a situation here that may be proven unconstitutional. There have only been two states that have actually enacted this type of legislation, both Florida and Texas, and in those states they are now trying to challenge the constitutionality of these provisions.

In addition, there have been dozens of litigation spawned in an attempt to determine how these procedural rules should actually be implied because in effect the courts have said they're extremely confusing.

In addition, we really have not seen any demonstrated need for this legislation in Connecticut. The cases presented by proponents of the bill have very frankly neither demonstrated that protective orders nor settlement agreements have interfered with the public's right to know. We feel that the anecdotal cases put forth by the trial bar have always been discredited upon close scrutiny and in fact in the Fall of 1992 the U.S. Judicial Conference's Advisory Committee on Civil Rules concurred with that, stating that there is not yet sufficient evidence of practical problems to justify restrictions under judicial discretion and since the issue here is not one of liability but rather whether the public is and was well informed about the risks and benefits of certain products or environmental conditions that we really do not feel that there is any demonstrated need for this legislation. Thank you.

SEN. JEPSEN: Thank you, Betsy. Any questions at this time? Seeing none, John King to be followed by Patty Shea.

ATTY. JOHN KING: Senator J psen, Senator Looney, HB 5645 members of the Judiciary Committee, my name is John King. I'm an Attorney with Updike, Kelly and Spellacy in Hartford and I am appearing this

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evening on behalf of the Connecticut Catholic Conference, which is the umbrella organization representing the six bishops in the State of Connecticut in their various activities ranging from schools to hospitals to shelters and family centers and so forth.

I'm testifying tonight in opposition to Raised Committee HB5645, AN ACT CONCERNING RELIGIOUS FREEDOM. This bill is nearly identical to last year's Raised Committee HB5019, which was not reported out of this committee except that last year's bill was entitled AN ACT CONCERNING THE RESTORATION OF RELIGIOUS FREEDOM.

It's also similar to a bill which was rejected by the Congress called a Religious Freedom Restoration Act this past year. In essence, the opposition to this bill really is similar to what the prior speaker said. We are not aware of, in representing the Connecticut Catholic Conference, instances of infringement of religious freedom in the State of Connecticut to justify what would in effect be overturning the recent decisions of the United States Supreme Court in this area as it applies to Section 3, Article 1 of the Connecticut Constitution.

What the bill would do, as proposed, is it would provide that the state or political subdivision of the state shall not burden a person's right of the free exercise of religion as guaranteed by Section 3, Article 1st of the Constitution even if the burden results from a rule of general applicability unless the state can demonstrate a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

In addition, and very significantly in Section C of the bill, the legislation provides that a person whose right to the free exercise of religion has been burdened in violation of the provisions of this section may assert a claim or defense and obtain appropriate relief, including relief of the state from the state or a political subdivision in the Superior Court.

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This bill arises presumably out of the recent Supreme Court decision and would reduce the governmental role if passed over conduct, not belief, conduct which might otherwise be prohibited either by state statute or by some other body or within the workplace but for the fact that that conduct is grounded on a sincere religious belief and if this -- if there is a sincere religious belief, the state would have to show a compelling governmental interest to overcome the conduct that grows out of this belief.

In the case of employment division, Department of Human Resources vs. Smith, which is a 1990 Decision of the United States Supreme Court, and a six to three opinion, and I'll try to summarize that case briefly, that case involved the use by an employee, a state employee in the State of Oregon, of a hallucinogenic drug called payote, who worked for the Department of Human Resources that dealt with drug and alcohol abuse.

The employee was discharged for the use of payote and that discharge was upheld, I believe, by the lower court or the Unemployment Compensation Board as being misconduct and not entitling the employee to benefits.

The Oregon Supreme Court reversed stating that the state had to show a compelling governmental interest which would override the free exercise of religion, that is, the use of payote on the job so that any termination would not be for misconduct because there would not have been just cause.

The Supreme Court overruled the -- the Supreme Court of the United States overruled the Supreme Court of the State of Oregon, reversed the Supreme Court an in essence did away with the compelling interest test in terms of governmental regulation of conduct premised upon religious belief and the court stated in pertinent part respondents are just a whole, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions, but the conduct itself must be free from governmental regulation. We have never held that and declined to do so now and the court goes on to state that to make an individual's obligation to obey such a law

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contingent upon the law's coincidence with his religious beliefs except where the state interest is "compelling" permitting him by virtue of his beliefs to become a law unto himself contradicts both constitutional tradition and common law sense.

The Supreme Court, in the Smith Case, reversed a case called Sherbert vs. Verner which was a 1963 case, which had imposed this compelling interest test and the reason is that the compelling interest test had spawned a great deal of litigation having to do with, one, making a determination by a court under this test as to the importance of a law, and secondly, a determination as to the centrality of this law to one's religious belief and putting the courts in a very difficult area in which there were a number of bizarre results much as the result in the State of Oregon was reversed by the Supreme Court.

Secondly, the courts had stated that is type of rule, the compelling interest rule, really exalts religion over a law of general applicability making the holder of this religious belief a law unto himself and the court on the opinion stated that this would really court anarchy in our system if a person's religious belief could determine what was the appropriate code of conduct for him unless the state could show a compelling interest otherwise.

The court stated that the appropriate standard was that unless the law purposefully discriminates against religion, an individual or an entity must follow the law if there is a rational basis for the law.

And I go back to the State of Connecticut where there has been no significant infringement of religious freedom of which we are aware. There are cases, for instance, where parochial schools have been denied permits that the church, as a litigant, might be disappointed with, but would not justify the standard.

In the operation of its school, for instance, premised on a religious belief, but that a law of general applicability must be applied across the board.

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The concern for the church is that if these religious beliefs are afforded the protection of free exercise, I should say another way, if a belief is afforded the protection of the free exercise clause subject only to the compelling interest test, this would lay an organization such as the church open to warfare in a sense between competing religions and indeed has done so over the years. By way of an example, there has been litigation and this is obviously something the church is concerned about, over the church's tax exempt status by those who believe granting the tax exempt status to a church violates one's free exercise of religion because that impinges on someone else's religious belief and the state ought to be able to do that unless there's a compelling interest to do that and necessarily leads into further litigation.

And I could cite other examples along the way where is compelling interest test has not worked, why it was rejected by the Supreme Court. It's very clear in that opinion and why we believe that in the State of Connecticut it doesn't make any sense to reject the reasoning of the United States Supreme Court and apply a different standard under the Connecticut Constitution.

SEN. JEPSEN: Just a quick question. I don't want to make a speech or anything, but it seems to me that where the context is free speech or free exercise of religion, that it's very easy to protect, to protect a right in the easy case. In China today, 99 percent of all speech -- of all free speech is protected because you can talk about the weather. You can talk about how your breakfast was.

It's only in the hard cases where you get down to doing something that's unpopular or out of the mainstream that these amendments really count. I mean, you know, an amendment, a freedom is really meaningless if all it does is to protect the easy case, the case where a consensus exists in society that certain behavioral norms are going to be obeyed and that consensus is reflected in the laws that are enacted by those who, on a majority basis, tend to come from that consensus and it's only when you're willing to step out and protect the relatively non-conformists behavior that these

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constitutional rights really have teeth and really have meaning and not to give a speech about it, but I'm not really persuaded that the compelling interest test was all that bad and that the rational -- having all the -- if the only burden you have to meet is a rational basis test, then those familiar with the constitutional law know that that's really no test at all.

Basically, whatever the state decides, if it can articulate any basis, any reason whatsoever, you can wear hats in a courtroom, well, does that mean if you're Jewish you can't wear a yarmulke? Well, if a consensus exists to -- behind any law and by definition it becomes a law, then under the rational basis test, that's going to prevail over the heartfelt rights of any religious minorities and it's easy to point to an extreme example, like the Oregon case, that's obviously a very difficult case, but involving the use of drugs by a government employee, but if you'd care to comment on this, if you're really going to have a religious freedom that's going to exist and allow people who are essentially non-conformist to exist in a society that purports to have a free exercise clause, do you think you have to have maybe not a compelling interest test, but at least something a little bit stronger than rational basis?

ATTY. JOHN KING: Well, I suppose the answer is when you say rational basis it's like good faith or some of these other terms and it's up to the court to decide what is a rational basis and it sets a standard which is subject to judicial review.

In terms of wearing the yarmulke or wearing a beard, I think in the State of Connecticut those issues have been addressed and Connecticut over the years appears to have applied in some instances the compelling interest test and in some instances the rational standard, but if you were to apply the rational standard to those instances, there is no doubt in my mind that a court today would determine that now allowing someone to wear a yarmulke, say in a public building or a public facility, violates anyone's sense of rationality because there can't be any, it would seem, governmental interest that would be asserted that would outweigh that exercise of religious belief, but what we're talking about

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is those with different religious beliefs conforming to laws of general applicability and there have been organizations that have said, for instance, because we don't believe in Social Security we don't have to pay FICA taxes which is a hotter issues these days than it might have been in the past, but does one's religious belief excuse one from participating in the Social Security system with its employees and under the compelling interest test that argument could at least be advanced to litigation and create the litigation that, with all due respect to your observation, the Supreme Court looked at it over 30 years and if you look at the instances cited in the Supreme Court decision in the Smith Case, you will see a number of truly bizarre results which didn't protect religious beliefs, but rather protected rather bizarre conduct that was not essential to those religious beliefs.

And the problem with the compelling interest test is that it gets you into that morass, that the courts ought not to be in to begin with, whereas the rational relation test of a law of general applicability is there a rational relation between the law and what the law seeks to effect, that ought to govern unless you can show that there is an intentional invidious discrimination and I would submit respectfully that the Supreme Court's review of those cases and situations and certainly you have a Supreme Court that has been very protective of individual rights over the years regardless of swings on that bench has determined that the compelling interest test really is unworkable and unneeded.

SEN. JEPSEN: Well, except to observe that this is clearly an issue that when you had a fairly liberal court it won't lift the compelling interest test and when you added some conservative justices, it moved back the other way, so we're dealing with an issue that shifts and goes depending on who is control and there are some areas that you and I have discussed at some length in another context where I submit that the current court has not been as respectful of individual rights as the court of 20 years ago was, but just accept and note that what you refer to as bizarre behavior is exactly the point I'm talking about. If it's

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non-conformist, if it's out of the ordinary, if it's something that's out of the mainstream, we label it bizarre and then find a basis to disallow it and it's the act of calling it bizarre which I think calls attention to this fact and that if we're going to have effective religious freedom, sometimes you've got let the bizarre exist.

ATTY. JOHN KING: I think in terms of the beliefs and the conduct surrounding those beliefs, no matter how bizarre you or I may categorize it, that is up to that individual as to one's belief and one's lifestyle, but when you're talking a law of general applicability and I'm just talking about the payment of FICA taxes, if someone says my religious belief preclude me from participating in the Social Security system, that's the question and that conduct would be bizarre from the sense of how the state would enforce its tax policies and how it would collect those taxes if we made a determination that the free exercise of religion allows individuals to make that determination rather than the state under a rational basis test.

SEN. JEPSEN: Thank you. Further questions?

REP. TULISANO: I'm sorry I'm late.

ATTY. JOHN KING: You missed a good presentation.

REP. TULISANO: I'm sure I did, Mr. King. So I came in late and I heard some comments. Roman Catholic, communion, bread and wine. The General Assembly passes this statute. It may not deliver, give in any situation wine to a person under 21. Enforceable against the church?

ATTY. JOHN KING: If the --.

REP. TULISANO: Savings lives, drunk drivers, we have plenty of evidence and plenty of cases where under 21 they drink -- I heard all the stories.

ATTY. JOHN KING: If there is a rational basis and the rational basis is, as you articulated, I would think that it would be enforceable against the church. Of course, I'm opting out because you can receive under two species now, so that I am capable of receiving the other way, but I would think if

there was a demonstrable showing that this -- the giving of wine to minors in church services resulted in --.

REP. TULISANO: Just giving the wine to minors period. It doesn't make any difference whether it's through a church service or anywhere else. I mean the presumption is in this General Assembly, generally expanding that no wine should be given in way or form by members of family or with any kind of alcohol, family or anybody else to people under 21.

I may not agree with that policy, but that certainly is a prevailing public policy here. Now what happens? I would suspect that we would have to monitor each church to make sure that kids are only taking under one species.

ATTY. JOHN KING: I'm just not sure that when you -- that that would serve a rational basis and the other part of the Supreme Court test -- if I may finish -- the other part of the Supreme Court test is that if there is an invidious discrimination and it can be shown that that's the case --.

REP. TULISANO: No, during Passover you can't drink wine either, not just in the Roman Catholic -- any religious --.

SEN. JEPSEN: I think what he's talking about is a law of general application you may not serve alcohol to a minor, a person under 21 period. The law of general application, non-discriminatory, clearly serves a rational basis.

ATTY. JOHN KING: I would think if the state were to pass that and I'm only speaking as a representative, obviously, without the bishops and the members of the clergy and I see Father Barry lurking in the wings over on my left shoulder, might disagree with that.

I just don't know whether, one, a receipt of a sip of wine in that ceremony would pass the rational basis test, but if it did, if it did, then that might be an appropriate statement.

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REP. TULISANO: Well, we've had so many suggestions and it's on the table this year. Any alcohol ingested by a minor they'll lose their license so actually whether they go to church and have it, whether they're going to Passover dinner and have it or they're going to a Congregational Church and have it, wherever they happen to be doing wine, whatever form that we in fact -- there is a rational basis. We've had to fight these battles on the floor using religion as one of the reasons why we shouldn't pass the law, but maybe we lose some day.

So then I suspect -- I suspect then you'll be in here trying to get what we have before us.

ATTY. JOHN KING: Well, I don't know, but I would suggest the other side of the coin would be if you had to show a compelling governmental interest, it would be very, very clear, it seems to me, that you could not do that and regulate this type of conduct and if you're telling me that there is a rational basis, I'm not sure but you ought not to have that authority if you can make the case for it.

But the other compelling interest test would preclude you from either entering into that observation or discussion. It would certainly spawn a great deal of litigation on the issue.

SEN. JEPSEN: My own observation is that if there is a compelling interest test in place, it would be abundantly clear that it ought not apply to this kind of situation and you would be forced to carve out in anticipation -- because we have an obligation to uphold the Constitution. We would be forced to carve out a legislative exception for this kind of event to meet that test.

I'm not sure that the same argument could be made for a rational basis test. The number of cases to get the Supreme Court that are struck down on a rational basis test is minuscule.

ATTY. JOHN KING: Well, the only thing I can say, as you mentioned, Senator, earlier, you can go through example after example and that's not to say that across the board, whether you're talking compelling interest or whether you're talking rational basis that in each and every instance it is an easy

question or you wouldn't have cases going to the Supreme Court to begin with, but I think what we're saying is from the position of the Connecticut Catholic Conference, as a general proposition, the conference is much more comfortable with the rational basis test than it is with the compelling interest even though when given instances problems certainly may arise.

SEN. JEPSEN: And I would submit that in this instance because -- well, there's -- well, I'm sure we'll do this outside. Senator Looney.

SEN. LOONEY: Thank you, Mr. Chairman. Good evening, Mr. King. Just to explore a couple of things. Doesn't it follow, just as a matter of course that the compelling interest test would provide more protection to all kinds of religious expression, mainstream and otherwise, despite -- notwithstanding the fact that your testimony earlier is that you're not aware of any evidence of religious discrimination in Connecticut that has given rise to a problem?

ATTY. JOHN KING: It would provide greater protection to I suppose religions and to those things which others may choose to call a religion which then would impact upon laws of general applicability, but it would provide a greater protection to everyone's individual acts of conscience, but at what price to the state I think is the position that we're advocating.

SEN. LOONEY: I see, well, it just seems to me a little bit peculiar that the Catholic Conference would be supporting a position that would allow the state to intervene more readily in matters of religious expression.

ATTY. JOHN KING: As long as we're dealing with laws of general applicability.

SEN. LOONEY: Yes, but isn't it true that the compelling interest test would provide greater protection ultimately to the beliefs of the Catholic Church in the event the State of Connecticut ever turned hostile to those beliefs?

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ATTY. JOHN KING: Well, I guess the answer would be yes if you make the assumption that the State of Connecticut would turn hostile to those beliefs and then that might result in a need for this type of legislation and that course of events has not occurred and absent that course of events, it seems to me to fly in the face of the Supreme Court experience is a mistake and the other thing that could occur that would cause a problem to the Catholic Church is that giving the protection to one's beliefs of conscience under the free exercise clause, as the Supreme Court has stated, really could create a series of different -- 12 different religions even within this committee under the umbrella of free exercise protection and an example that I cited, another example that the church is concerned about in a very practical sense is that there are those who believe that any religious participation in a public event by a church entity, such as in a charitable event, a family service event, is a violation of that individual's free exercise of religion, that it impinges upon his free exercise, his beliefs to have the church involved in any affairs of the state.

And with that then spawned the litigation that the church could not longer be involved in any public activities because a compelling interest could not be made to override the free exercise of religion of this individual who objects to that conduct and there are cases, both in the area of tax exempt status and church participation in public events stemming from this interpretation by others that these church activities are violative of their conscience and religious beliefs and the argument that the court not get into these disputes unless there's no rational basis for the law which permits it in the first instance.

SEN. LOONEY: Thank you.

SEN. JEPSEN: Representative Jarjura.

REP. JARJURA: A couple of things, Mr. King. Do you have that cite with you from the United States Supreme Court?

ATTY. JOHN KING: Yes, I do.

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REP. JARJURA: May I have it please?

ATTY. JOHN KING: Yes, it is 1-10 and this is the Lawyers' Edition Cite, 1-10 Supreme Court at 1595, and it's a 1990 case, a six to three decision by the Supreme Court.

REP. JARJURA: In listening to the testimony today, it's my understanding that from listening to you that this bill would basically legitimize fringe religions.

ATTY. JOHN KING: Well, I think if you look at the payote instance, that that is correct.

REP. JARJURA: If I believed that the use of controlled substances was religiously correct, the use of marijuana was within my religion, under this bill, that Connecticut would have to show compelling state interest?

ATTY. JOHN KING: In order to regulate that conduct or to prohibit that conduct, the answer would be yes.

REP. JARJURA: If I believe that bigamy or polygamy was a religious expression or a religious conduct, would I, in the State of Connecticut, I would have to show compelling state interest?

ATTY. JOHN KING: If that were determined to be a -- someone conscientiously and sincerely held that religious belief under the free exercise clause, the answer would be yes.

REP. JARJURA: Yes, okay. Thank you very much. Thank you, Mr. Chairman.

REP. WARD: Mr. King.

ATTY. JOHN KING: Yes.

REP. WARD: You just had some questions about compelling interest tests, and I don't recall, I've got to look back to my notes -- for how many years if you recall, was the compelling interest test in fact a test applied by the U.S. Supreme Court.

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ATTY. JOHN KING: The Supreme Court in the case of Sherbert vs. Verner, applied the compelling interest test and that was 1963 and that was overturned in 1990 in the Smith case. It was 27 years of experience.

REP. WARD: The other issues that you raised with regard to tax exempt status and one claim -- were not those challenges under the establishment clause, not under the free exercise clause?

ATTY. JOHN KING: Most of them cited both in their challenges. There were establishment clause challenges and in many instances it's two sides of the same coin.

REP. WARD: Rather than what the basis of the challenge was, what the basis of the court's decision, if there were anything in this -- I'm not familiar with, but I may be mistaken with cases that say that the church's involvement with a public activity violated someone else's free exercise and therefore they couldn't participate.

I thought that usually when they were excluding religious activity in a public act, it was because that was seen as state action and therefore an establishment clause violation and I'm wondering if you think I'm incorrect.

ATTY. JOHN KING: I think what I would like to do is have the opportunity since I have a -- at my disposal a summary of the position in some of the case cites, get that information to you so that we could look at the cases rather than -- I could easily say they were a free exercise case, but I'd rather look at the cases and see what the analysis is.

REP. WARD: And on a concrete example because it seems to me it had occurred in at least some churches, just a simple issue of using candles in the liturgy and in some places fire marshals came in and say the Fire Code, we think you can't use them and the fact that it may be a 200 year tradition in that church to use on Easter service candles that they don't have to show anything except the general Fire Code says, "public building, no use of candles," and I seem to remember some parish priests saying

that they would act on matters of liturgy and the fire marshal could act on public matters and I wonder if you feel that as long as we generally have rules prohibiting the use of candles in public ceremonies that that ought to apply to churches as well if it's in the Fire Code.

ATTY. JOHN KING: Well, I guess as a matter of general rule, I know churches continue to use candles in their ceremonies, by and large, at least the churches with which I'm familiar, so I don't know whether or not a determination -- that doesn't mean that the administrative policy evenly handed is applied in every instance, but it would appear that under most circumstances that's not posed a problem under the interpretation of the law by the fire marshal. I'm sure there are those instances in which there would be a problem.

REP. WARD: I just recall that in Connecticut there were a couple of officious fire marshals that seemed to -- and I can't recall the towns, but it would seem to me that it would -- if the protection of having to show a compelling interest, they'd have to show a real risk at that town as opposed to just saying there's a general rule.

ATTY. JOHN KING: Well, as you said, they were officious fire marshals and maybe --.

REP. WARD: But probably technically following the law.

ATTY. JOHN KING: That's probably correct. There are many instances today in which those laws are being interpreted now in which a number of facilities are having to do things far differently than they did five years ago because of considerations of the fire marshal.

REP. WARD: But in terms of your asking, you know, and I was a little late on the testimony, but if there's any incidents in Connecticut, I would cite that as an example of the kind of thing as a sponsor of the bill and I'm attempting to protect against --.

ATTY. JOHN KING: I understand.

REP. WARD: Thank you.

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SEN. JEPSEN: Further questions?

REP. TULISANO: It was Rocky Hill, remember? Rocky Hill.

ATTY. JOHN KING: Well, it was a burning issue there, Representative Tulisano, but --.

REP. TULISANO: It still is.

ATTY. JOHN KING: Whether it justifies the enactment of this type of legislation is the issue, respectfully.

REP. TULISANO: We did fine up until 1993. Why is it such a problem now and why is -- I really want to ask you, wasn't the Catholic Church nationally working on developing a bill similar to this a couple of years ago in Washington in conjunction with a number of others?

ATTY. JOHN KING: The only thing I know is that since the Smith Decision was passed that the United States Catholic Conference is not in full agreement with that decision, but believes is opposed to this type of a response.

REP. TULISANO: Well, what response are they in support of?

ATTY. JOHN KING: That I don't know, Representative Tulisano, whether they have a counter proposal, which has been proposed nationally or whether or not the conference has reacted and I'm not saying that not to advance a proposal, I just don't have it at hand but certainly I will make an attempt from the U.S. Catholic Conference to find out whether there has been a proposal at the federal level which is contrary to the rejected Religious Freedom Restoration Act.

REP. TULISANO: Okay, thank you.

SEN. JEPSEN: Patty Shea to be followed by Rosemary Niedzwicki.

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LISA MAZZELLA: Often, it doesn't get as far as the court room because of what goes on. So I think the sensitivity training is excellent. And I hope you all support it.

REP. TULISANO: Okay. Thank you. Cathy Paul. She's gone. Robert Leikind. Religious freedom now.

ROBERT LEIKIND: Good evening and thank you very much Sen. Jepsen and Rep. Tulisano and members of the Judiciary Committee.

The Connecticut Office of the Anti-Defamation League. First of all, my name is Robert Leikind and I am Director of the Connecticut Office of the Anti-Defamation League. We are pleased to offer this testimony in support of HB5645, AN ACT CONCERNING RELIGIOUS FREEDOM.

The Anti-Defamation League believes this legislation is necessary in light of the Supreme Court's decision in Employment Division vs. Smith and we urge its prompt adoption.

The Anti-Defamation League was organized in 1913 to advance good will and mutual understanding among Americans of all creeds and races and to combat racial and religious prejudice in the United States. ADL has always adhered to the principle that these goals and the general stability of our democracy are best served through the vigorous protection of the free exercise of religion.

More than 200 years ago, this country was founded as a bastion of religious freedom. The free exercise of religion became a core value of the nation in trying the First Amendment of the U.S. Constitution together with other fundamental freedoms.

Over time, the free exercise clause of the First Amendment served its purpose well insuring that Americans have the freedom to celebrate their religious customs and rituals without government interference. This (inaudible) of religions to flourish across the land and Americans have supported it enthusiastically. And that is why the Smith Decision came as such a shock. And that is

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why the Connecticut Legislature, we hope, will protect the citizens of Connecticut by passing HB5645.

In advocating this course of action, we are not saying that Connecticut should be barred from enacting laws because they might interfere with an individual's religious practice. For the Smith case, however, is a legal matter the State had to show what the courts termed a compelling interest in order to justify a restriction of an individual's exercise of her or her right of free exercise rights.

And the State's restrictions had to be tailored as narrowly as possible. Failure to meet that extremely high standard resulted in the individual's constitutionally guaranteed free exercise rights taking precedence over State's laws. The Smith Decision effectively discarded this standard. In the aftermath of Smith, unfortunately, an individual can no longer rely on the free exercise clause to exempt a religious practice unless the law expressly targets the specific religious practice.

Instead, each individual religious group that wants to protect its religious practices may have to seek legislative exemption from laws that (inaudible) application. Ironically, this is exactly what happened in Oregon where the right of members of the Native American Indian Church to use small amounts of parody as part of their religious rights is now protected again.

But what about the multitude of religious practices that are now in jeopardy? Are people safe to seek exemptions for every practice that may one day be barred of laws of general application? And what if small and unpopular religious groups are unable to muster legislative muscle to protect their interests? Until Smith, the courts were there to protect their right of free exercise. But now, this is no longer true. These groups are vulnerable as a result which is (inaudible) of the ideals of our Constitution.

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The need for corrective legislation to overcome the effect of Smith can be illustrated by a few examples, some of which were mentioned earlier. In the absence of the act concerning religious freedom laws, presently on the books, which bar the consumption of alcohol by minors could prevent priests from giving a sacrament to the line of children during Communion. Similarly, neutral laws could render vulnerable conscientious objection, Jewish Circumcision rituals, Kosher butchering, the wearing of various religious garbs and a variety of accommodations afforded the Amish and other religious groups in other parts of the Country.

This act concerning religious freedom could spare us these dangerous results by restoring the pre-Smith standard analysis and free exercise cases here in Connecticut. It would not favor any individual faith or religious practice nor would it prevent the State from enacting statutes promoting the general welfare. It would simply protect all of us, all of our basic rights to exercise our religious faith, free from government coercion.

It is this fundamental interest that motivated dozens of organizations and prominent legal scholars from across the religious spectrum to urge the Supreme Court to reconsider its holding in Smith and subsequently to join together to support legislation in Congress overturning its effects. These organizations include The National Association of Evangelicals, the Baptist Joint Committee on Public Affairs, People for the American Way, The Presbyterian Church of the United States, The ACLU, The Christian Legal Society, The Anti-Defamation League, The General Conference of Seventh Day Adventists, the American Jewish Committee, The Unitarian University Association, The American Jewish Committee, The Lutheran Church, The Missouri Synod and many, many, many other organizations.

We urge you to join today by facilitating the message of the Connecticut Act Concerning Religious Freedom. Doing so, will ensure that we in Connecticut will not be entirely dependent upon passage of the Federal Religious Freedom Restoration Act. It will also resolve ambiguities in the Connecticut State Constitution with regard

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to the free exercise of religion, as least as it pertains to the conduct of the State of Connecticut and any of its political subdivisions.

This is an interest which is of great importance to the health of our society. We urge you to support it.

REP. TULISANO: Any concrete example since the passage of this law, since the Supreme Court came out with the decision, of some change in the ways some religions have been affected by it?

ROBERT LEIKIND: Absolutely. As an example, the Amish in Minnesota had a problem where they had to have their, they were not supposed to use reflectors on their buggies, horse and buggies, because it is considered an adornment. They have been required, as a matter of law, to do that. In Michigan, there was a Jewish man who died in a car accident. His religion barred an autopsy. He had an autopsy contrary to his family's wishes. That would have not happened prior to this happening.

REP. TULISANO: Is that true? General law requiring an autopsy on a sudden death was held not to apply because of someone's religious beliefs? That's a general rule.

ROBERT LEIKIND: Again, prior to that happening...(interrupted by Tulisano)

REP. TULISANO: Was it that Jewish men could get poisoned by their wives and no one would know?

ROBERT LEIKIND: It could happen. I think the issue here would be this compelling interest test and they would have balanced whether the State has a compelling interest. That would have been the exercise that would have happened. In this instance, you no longer have to go through this.

One of the classic examples that happened was about two weeks before the court came down with the Smith case there was a situation in South Carolina involving a high school in which a Jewish student was told that he could not wear a jomaca because it was a head covering because there was an ordinance against the - there was a rule in the school

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against the use of a head covering. The ACLU at the time, went to the principal and said, the law is not on your side. If you persist in this case, we are going to sue you. The principal recanted. According to people I have spoken to, subsequent to the Smith decision, the ACLU would not have had a leg to stand on in that case and the child would have had to take off his head covering.

REP. TULISANO: Where was this, South Carolina?

ROBERT LEIKIND: South Carolina.

REP. TULISANO: Dealt with the Klu Klux Klan probably. We have a lot of old laws ...

ROBERT LEIKIND: I am not clear that this was the case. This was just a regulation of the school.

REP. TULISANO: Same kind of issue. We had it happen in Connecticut. A judge made a lawyer take his jomaca off. Did you know that?

ROBERT LEIKIND: I didn't.

REP. TULISANO: Oh, that was fun. He learned his lesson. Senator?

SEN. JEPSEN: Rep. Jarjura.

REP. JARJURA: If we were to enact the bill as proposed, do you feel it could be used in an abusive manner?

ROBERT LEIKIND: It's not clear to me how it might.

REP. JARJURA: The previous speaker representing the Bishops indicated that it would go towards conduct, it couldn't prohibit conduct if people showed that this conduct was pursuant to what they firmly believed was within their religion. If this bill was enacted, we would be unable to prohibit certain conduct unless we were able to show a compelling state interest?

ROBERT LEIKIND: I think that is probably an accurate statement. What I am having difficulty seeing is where the problem arises.

REP. JARJURA: That becomes the question. What is legitimate religious conduct and what isn't legitimate religious conduct? I don't hear there to be any dispute regarding the wearing of a jomaca or the right of priests to put the host into the wine as part of the ceremony. I think we open up the whole can of what is legitimate religious conduct and what is not legitimate conduct?

ROBERT LEIKIND: I respectfully disagree. For this reason. I don't think that would be a proper inquiry - what is legitimate religious conduct and what is not. I think the appropriate inquiry would be whether there is a religious right/exercise that someone wants to go through and whether or not the State has a compelling interest in limiting that because of various other interests. That's the beauty of the compelling interest test. It doesn't require a judgment to be made. All it says is that we have two interests. One of them is a very fundamental one enshrined in our Constitution and the other is another one that is enshrined in our Constitution and usually related to health and welfare although it could be morals and things of that kind.

What we are doing is that we have a very effective structure for helping to balance those interests and that has been the compelling interest test. So, I disagree only to the extent that I don't think that that is an inquiry that the courts would have to engage in.

REP. JARJURA: Very credible religions. In Utah, I believe in the right to marry more than one person. Under this change, would that measure up to the compelling interest test, could they prohibit that?

ROBERT LEIKIND: Yes. Again, the evaluation is whether the State has a compelling interest and in fact, that has been found. Polygamy is not legal. The question is whether the State has a compelling interest in barring certain kinds of conduct and situations, usually situations that are in one way or another, viewed as aggregious or because laws are narrowly enough framed, the compelling interest standard that gives the government the right to define that compelling interest and argue it.

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I think this is one where it was felt that polygamy threatened the ... I will tell you it has been used since I read the case... where polygamy was found to run afoul of governmental interest. I can't speak to specifics of the case.

REP. JARJURA: Outside of the one incident that you told us about regarding the jomaca, Chairman Tulisano related one incident here in Connecticut involving the courts, is there anything other that has been prevented under your religion under the current law?

ROBERT LEIKIND: Under the ways the laws are configured now? Is there anything we can do?

REP. JARJURA: That the states have prevented you from doing?

ROBERT LEIKIND: No, not at all. But I think, here in Connecticut, we have not, to my knowledge, there has been no problem, but I think the concern goes beyond that question which I think is a fair one. But the concern we are really dealing with is that we have had a weakening of a very fundamental right that is a pillar of what society is built on and that's the effect of this decision. I think it is important to note that Justice O'Connor who is part of the majority was joined by a number of other people, she agreed with the conclusion, but said we are getting rid of this basic test which has served our interests so well. That's a matter of deep concern.

I think the depth of the concerns are reflected by the scope of the coalition of organizations that it gathered together to overturn the effects of this bill. Unsuccessfully so far, but they remain committed to it.

REP. JARJURA: The effects of a court decision? Through legislation.

ROBERT LEIKIND: Correct.

REP. JURJURA: I need to read that decision and I haven't yet, but I will. I can get a copy.

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REP. TULISANO: Has there ever been a decision in Connecticut what standard you use under the Connecticut Constitution (inaudible)?

ROBERT LEIKIND: We looked at that and I think there is some ambiguity under the Connecticut Constitution. The Connecticut Constitution, there are only a few cases that we found that actually talked about interpretation of free exercise rights. And they did rely on the Shurburt test. But the cases were kind of - I will be candid with you - it was about four weeks ago that I read them and I would have re-read them if I had known that I was to be testifying, but I didn't until about 2 o'clock.

REP. TULISANO: Can you get me some of those cases?

ROBERT LEIKIND: Yes, I would be glad to.

REP. TULISANO: Because, of course, when they came down, there was long before where people thought of looking towards the State Constitution in recent history for protection. The State Constitution may be better.

ROBERT LEIKIND: Right and if you look at Section 3 of Article 1, there is some ambiguity as to whether or not, in the absence of a clear body of case law, I think there is some question as to whether or not as to how it would be interpreted, just on the basis of state law alone.

REP. TULISANO: You gave us a litany of religious organizations who were working on the federal level for a particular bill and the federal constitution. I recall last year or the year before the National Conference of Bishops were involved with that at one point in time?

ROBERT LEIKIND: I don't believe so, but I'm not sure about that.

SEN. JEPSEN: The Smith case that overturned .. what year was that?

ROBERT LEIKIND: I believe, 1989 the Smith case was held and there have been efforts in Congress since then.

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SEN. JEPSEN: So, the new laws are general application that would be judged under the new rational basis standard only now starting to - we would start to feel their effect? People have asked for examples of how the Smith decision has adversely effected religious minorities. We are only now starting to find out because of it's a relatively recent case. Isn't that correct?

ROBERT LEIKIND: That is correct. Actually, if you look at Shepards and again, I regret not being able to bring some of this to you today, but there is a growing body of case law in which Smith is being applied. It is being applied in zoning cases, in the State of Washington, the Supreme Court necessitated that there and there is a whole body of law. I would be glad to provide you with that, but it is clear that when this case first came down, many people thought that it was going to narrowly construed. It appears now, with the benefit of four years that it is not being narrowly construed.

SEN. JEPSEN: Just to go back to the other side. Under the former standard, you have mentioned polygamy as one example of where religious belief now matter how profoundly felt, had to give way under the compelling interest test to the State's interest in enacting a particular law. I can think of other things like killing animals, ritualistic sacrifice of animals as part of a religious ceremony. Are there any other examples you can give of religious acts giving way to compelling interest tests?

ROBERT LEIKIND: I think one here was the use of narcotics. If you would have followed Justice O'Connor's views, there was no reason in this case to address the Constitutional issue and Justice O'Connor's view and that was part of what she complained about in her concurrence, and what she said is on the basis of compelling interest tests, there would have been sufficient basis to say that the use of parody here was not a protected act.

REP. TULISANO: I swear there was an old case that once said it was.

ROBERT LEIKIND: That could be. I am not aware of it.