REVISED

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-993

TITLE PAULA A. HOBBIE, Petitioner V. UNEMPLOYMENT APPEALS COMMISSION OF FLORIDA AND LAWTON & COMPANY

PLACE Washington, D. C.

DATE December 10, 1986

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ALDERSON REPORTING
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IN THE SUPREME COURT OF THE UNITED STATES

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PAULA A. HOBBIE, :

Petitioner, :

V. : No. 85-993

UNEMPLOYMENT APPEALS COMMISSION :

OF FLORIDA AND LAWTON & COMPANY :

- -x

Washington, D.C.

Wednesday, December 10, 1986

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:08 o'clock a.m.

APPEARANCES:

WALTER E. CARSON, ESQ., Washington, D.C.; on behalf of the petitioner.

JOHN D. MAHER, ESQ., Tallahassee, Florida; on behalf of the respondents.

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P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: We will hear argument next in No. 85-993, Paula A. Hobbie versus Uemployment Appeals Commission of Florida and Lawton and Company.

Mr. Carson, you may proceed whenever you are ready.

ORAL ARGUMENT OF WALTER E. CARSON, ESQ.,

ON BEHALF OF THE PETITIONER

MR. CARSON: Mr. Chief Justice, and may it please the Court, this is not a factually complex case. However, it is a case that will have profound effects on the free exercise rights of all Americans.

The issues to be addressed by the appellate in this case are threefold. First, this case is controlled by the Court's decisions in Sherbert, 374 US, and Thomas, 450 US, and is factually indistinguishable from those cases.

Secondly, the basis that unemployment compensation was denied to Paula Hobbie, that basis being misconduct, creates a vehicle, a mechanism, if you will, whereby the state of Florida can discriminate against individuals because of their religious beliefs. And finally, both the free exercise clause and the establishment clause ask that the courts and the laws of

this land accommodate a person's religious practices and beliefs.

Moving to the first phase of our argument, Your Honor, the case, as we indicated, is factually and legally indistinguishable from the Court's decisions in Sherbert and Thomas, and I would like to lay before the Court briefly the facts of those cases so that the Court can appreciate the similarities.

Paula Hobbie had worked for Lawton Jewelers for approximately two and one-half years. At that time she was converted to the teachings of the Seventh Day Adventist Church. As such she was convicted that the Sabbath, that period from sundown Friday to sundown Saturday, was a holy day and was a special day.

She reached these convictions and they were sincerely held. She brought this information to the attention of her employer and her immediate supervisor and she worked out an accommodation, an arrangement whereby she worked for him on Sundays and in turn he worked for her on Friday evenings and during the Sabbath hours on Saturday.

This arrangement worked out. It was, at least according to the immediate supervisor, an acceptable arrangement. When upper management learned of this accommodation they put a stop to it immediately, gave

Paula Hobbie the choice of her job or her religious beliefs. She refused to give up her religious beliefs. She refused to resign. And she in fact was fired by the employer.

She applied for unemployment compensation. The employer objected, the state agreed, and she was denied unemployment compensation for misconduct associated with her work. She took an appeal to the Fifth District Appellate Court in Florida. The court there affirmed the Florida Unemployment Appeals Commission decision denying her unemployment compensation, and she has brought the case here today.

There are a number of factual and legal parallels between Hobbie and this Court's decisions in Sherbert and Thomas. Hobbie, like Sherbert and Thomas, was denied unemployment compensation by the state. Hobbie, like Sherbert and Thomas, was asked or forced to choose between her religion and/or her work. Hobbie, like Sherbert and Thomas, was put into a situation where work once acceptable for religious reasons became objectionable, and because of those changed conditions she was no longer able to work during that period.

And in Hobbie just as in Sherbert and Thomas the state once again has brought pressure to bear on her to modify her religious beliefs. The holding in

Sherbert and Thomas reached an important, we believe, milestone in free exercise jurisprudence. The compelling state interest standard was applied to the free exercise of religion, and we believe that that same standard applies here in this case, that the state of Florida cannot burden Paula Hobbie's religious beliefs unless it is able to show that a compelling state interest exists and justifies such a burden.

There is one unique aspect in the Hobbie case that was not before the Court in Sherbert or in Thomas, and of course that is the defense that was raised by the state, the agent of change. The agent of change theory suggests that because Paula Hobbie converted and adopted her religious practices after she began her employment, that that act of conversion, that act which is so fundamental to a free exercise right, distinguishes her situation from Sherbert and from Thomas and thus disqualifies her from entitlements to the benefits under the state's unemployment compensation program.

We would suggest that such a distinction is not a valid one and that the principles in Sherbert and Thomas should control. To allow the agent of change to become a defense would in effect deny a person at any time from converting to new religious beliefs and practices, and of course that right of conversion, that

right to adopt a new religion, is fundamental and central to the free exercise clause.

QUESTION: Mr. Carson, on that point can I ask you a question? Supposing that instead of being converted to a new religion she had acquired some physical disability that made it impossible for her to continue her work. Would she then have received unemployment compensation or not under the Florida scheme?

MR. CARSON: Your Honor, it would be my impression that she would be entitled to benefits for a physical disability, and it is ironic that the state would award benefits to a person for a physical disability but not for a religious disability, if you will.

QUESTION: Are there Florida cases that make that clear, because I couldn't really tell from the briefs, and the language of the statute seems to say she has to be ready, willing, and able to work. But you think it is clear she would have been entitled to benefits if it were a physical disability.

MR. CARSON: Yes, Your Honor. That's correct, Justice Stevens. There is one state supreme court decision, Key State Bank versus Adams, where the Supreme Court of the State of Michigan had an opportunity to

consider the agent of change. I would merely suggest that the Court might find it of interest that court rejected the agent of change argument.

QUESTION: Mr. Carson, could we go back a minute to Justice Stevens' -- are there cases in Florida that support your view of Florida law on that point?

MR. CARSON: Your Honor, I believe that there are cases that would suggest that individuals for personal reasons have been denied -- or have been granted unemployment compensation whereas Paula Hobbie, because of her religious reasons, was denied unemployment compensation, and there are three cases that appeared in Footnote 14 of the Solicitor General's brief.

In those three cases, again, it was the misconduct standard that was before the courts in those three cases. The cases found that an individual, for example, who was absent from work because he was in jail did not -- that that absence did not constitute misconduct, and that that person was entitled to unemployment compensation; another individual who was absent to attend a funeral, that that kind of absence did not constitute misconduct.

QUESTION: So you deduce from that type of case your answer to Justice Stevens' case about someone

who developed a handicap in the course of employment?

MR. CARSON: Yes, sir, that's correct.

In terms of the Sherbert and Thomas standard, we believe that that should be applied and should be controlling in this case, and that the agent of change defense is not a valid one. Rather, the focus should be on the conduct of the state and here the state denied unemployment compensation benefits to Paula Hobbie.

If Paula Hobbie loses her appeal to this Court we think that the effects would be far-reaching and perhaps even devastating in terms of the free exercise clause of the First Amendment. Obviously, if this case is reversed it would have the effect of reversing Sherbert and Thomas, putting into question this Court's decision in Yoder versus Wisconsin as well.

It will generate, we believe, a generation of litigation as courts across the country try to work out and sort out what has basically been 25 years of established law in this area.

QUESTION: Mr. Carson, the Solicitor General also suggested, as I recall, that regardless of the test the Court ends up applying, that this case should be remanded to develop the facts on the effect and operation of Florida's statute here, that we shouldn't decide it alone on the ground that Mrs. Hobbie was

denied benefits.

Would you care to comment on that suggestion?

MR. CARSON: Yes, Justice O'Connor, I would. I think all of the relevant constitutional facts are before the Court and it would serve no useful purpose to send this case back for additional hearings. The comparison to the Sherbert and Thomas cases are self-evident. Again, the state denied unemployment compensation to an individual because of her religious beliefs. She was put to that choice between the exercise of those beliefs and the benefits that were available. Clearly, we think nothing more can be generated that would add any additional light or assist this Court further in applying that compelling state interest standard.

QUESTION: Do you find any tension at all between the Thomas case and Estate of Thornton which the Court decided more recently?

MR. CARSON: No, Your Honor.

QUESTION: In Estate of Thornton, of course, the Court found that a state law providing Sabbath worshippers an absolute right not to work on the Sabbath violated the establishment clause, so it is rather ironic that the very same provision if compelled by the state is unconstitutional, and yet to deny the

benefits --

MR. CARSON: I think, Your Honor, that --

QUESTION: -- would also be unconstitutional in your view?

MR. CARSON: I don't see a tension, quite frankly, in this case. Calder, of course, was very specific in its legislative provisions. It mandated that the employer had to accommodate the religious practices of the individual. It created a situation where there might be hardship on other employees and other individuals who would be affected by that mandatory law. This is not that type of a mandatory law.

It is not an individual employer who is being affected. Rather, it is a state benefits program, benefits that are being paid to all citizens in the state of Florida. There is none of this injury to third parties, nor is there in any sense an obligatory obligation placed on the employer that the employer must accommodate the religious beliefs and practices of Paula Hobbie.

Basically, Paula Hobbie is asking to be treated like all other individuals in the state of Florida.

As I indicated, the reversal of Hobbie, the

loss of Hobbie's case before this Court would unsettle what we believe to be established law, law that has been established for some 25 years, and if this, if you will, more relaxed standard that has been suggested to the Court were adopted, tragically, we would be confronted with a situation where the individual always loses in free exercise cases, the state always wins, and there would be serious questions as to the viability of the free exercise clause itself.

I would touch next, Your Honors, on the misconduct standard used by the state of Florida to deny benefits to Paula Hobbie. I would -- in my argument I would suggest that the misconduct standard is not unlike the good cause standard that Members of the Court have found persuasive creating a situation or a mechanism, if you will, for individualized exemptions under the state law.

Misconduct, of course, has a negative sense or meaning to it, and as I have mentioned already there are cases that were cited in the Solicitor General's brief that I have mentioned to the Court that would suggest that misconduct has been applied against Paula Hobbie in terms of her religious beliefs and practices, but that same standard has been rejected by the courts in Florida in a situation where an individual was in jail and

missed work and yet his jail absence did not constitute misconduct.

QUESTION: Mr. Carson, do you think our decision and opinion in the Thomas case went further than the decision and opinion in the Sherbert case?

MR. CARSON: I think the Thomas decision, Your Honor, was a natural evolution, if you will, of the principles that were first articulated in Sherbert and were further refined and developed in the Yoder v. Wisconsin case, and ultimately found their fruition in Thomas.

QUESTION: What if it were to turn out upon an examination of Florida law in this case that actually Florida is quite strict about the sort of thing that your client engaged in, and for anything like that or similar to it, being in jail or something for nonreligious reasons very strictly dealt with, it is either misconduct, unavailable, whatever, do you think Sherbert and Thomas would govern that situation?

MR. CARSON: Your Honor, I would look to Sherbert and Thomas first and foremost as protecting the free exercise of religion under the compelling state interest test.

QUESTION: But under my hypothesis do you think the result there is foreordained by the opinions

In Sherbert and Thomas?

MR. CARSON: Yes, sir, I do.

QUESTION: May I ask this question?

MR. CARSON: Yes.

QUESTION: Let's assume that your client had applied to this particular employer for a job. Could the employer have declined to give her employment, assuming she was qualified in every respect except to work Friday evenings and Saturday?

MR. CARSON: Your Honor, I believe that that would be an issue that might come up under Title 7 --

QUESTION: Yes.

MR. CARSON: -- of the civil rights law, and the standard that the legislature has established there that an employer must accommodate a person's religious beliefs unless to do so would create an undue hardship on the operation of that particular business, and so to answer your question, the employer could deny her a job if her religious beliefs and limitations would create an undue hardship on the operation of his business.

QUESTION: Employing one person who couldn't work perhaps would create no hardship, but when the second and third Seventh Day Adventists sought employment with a small jewelry company I suppose the hardship would be evident.

MR. CARSON: That could create a hardship but those are not the facts here.

QUESTION: I understand.

MR. CARSON: All right, sir.

The final point that I would like to raise in my argument is based upon this Court's decision in the Lynch case. The Court articulated this statement. "The First Amendment affirmatively mandates accommodation, not merely tolerance, of all religions and forbids hostility towards any," and of course that was an extension of the position that the Court had taken in Zorach v. Clauson. The Court has often spoken of America, of our people being a religious people, where God has a role and plays an important factor in the lives of many Americans.

We believe that the free exercise clause mandates this accommodation, mandates, if you will, that wherever possible a person's religious beliefs and practices be accommodated, and such an accommodation is not inconsistent, we believe, with either the free exercise clause or the establishment clause, that those two clauses when read together amply support the relief that Paula Hobbie is seeking before this Court.

In conclusion, Paula Hobbie asks from this Court only that the promise of the free exercise clause

be kept. Her request is not only for herself but countless others who also treasure religious freedom in this country.

With the Court's permission I would reserve the balance of my time.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Carson.

We will hear now from you, Mr. Maher.

ORAL ARGUMENT OF JOHN D. MAHER, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. MAHER: Mr. Chief Justice, may it please the Court, the state of Florida disagrees that Sherbert and Thomas are controlling in this case, at least to the extent that there is a difference between those cases and this case, a difference which would mean if those precedents were followed here it would be an expansion of the principle of law announced in those cases.

To briefly describe these differences, the Sherbert case dealt with a slightly different kind of penalty. Under the unemployment compensation laws there are ineligibility penalties which a person must meet certain standards, and in this case her standard was the availability for work. She wasn't available for work because of her religious status and the nature of the job market where she had traditionally worked made her

unavailable as construed by the South Carolina Supreme Court.

Hobbie, on the other hand, was found disqualified. This penalty would be removed after she becomes reemployed and earns a certain amount of money. The next time she filed a claim for benefits unless she became unemployed under similar circumstances she would be qualified. It is not a status situation like -- in Sherbert's case every time she filed her claim, as long as she held that religion and lived in that community she would have been ineligible.

The distinction between the Thomas case and the Hobbie case was described as the agent of change. It was -- Thomas's employer changed the conditions of his employment, causing a conflict with his religious beliefs. No such change was done by Lawton and Company in Hobbie's case. Hobbie changed her religion, and then expected her employer to change its employment practices to accommodate her religion. Those --

QUESTION: I am not entirely sure, Mr. Maher, that I see what difference that should make insofar as unemployment compensation benefits is concerned.

MR. MAHER: Justice O'Connor, Hobbie would have been awarded -- I'm sorry. Thomas would have been awarded benefits had he applied in Florida, because

Florida recognizes that a worker can have good cause for quitting provided it is attributable to the employer, and in this case it was attributable to the employer.

I don't really understand why. I believe it was the state -- Wisconsin, I believe, did not pay benefits under their law because they have a very similar provision, but we would say that the employer gave Thomas good cause for quitting had that claim arisen in Florida.

QUESTION: Does it really make any difference under the Constitutional standards, do you think, that this particular woman, Mrs. Hobbie, was a recent convert instead of holding her beliefs over a longer period of time?

MR. MAHER: I believe it does, because as Hobbie conceded, it would be unfair for a person to accept employment that is in conflict with their religious beliefs and then expect the employer to make adjustments. I would submit that once a person adopts a new religion, then they have to accept whatever consequences exist in society --

QUESTION: Well, that seems to allow the state to put a special burden on religious conversion, and it just struck me as a very strange argument.

MR. MAHER: It is not so much a burden as I

would see it as it is just the recognition of the realities that in our society there are going to be certain, if not conflicts, then certain impacts between religious beliefs or free exercise of religious beliefs and society, and the only way that we could accommodate these changes in religion would be to make special accommodation.

Now, it has been submitted that those accommodations may be made by the states to religions but we would submit that it is not required that they be made. And that is what Hobbie seeks in this case, is to force the state of Florida into paying benefits and thereby subsidizing economically her change in religion or her free exercise of religious beliefs.

QUESTION: And the only distinction between here and Sherbert is that you say this employee is not disabled from, what, obtaining employment which will later entitle her to unemployment compensation with any employer?

MR. MAHER: It is a more coercive penalty in Sherbert's case than it would be in this case because it would continue with her so long as she maintained those religious beliefs, whereas in this case unless Hobbie takes employment in conflict with her religion there won't be a future disqualification. The choice will be

hers.

QUESTION: May I ask the same question really I asked your opponent, I guess, but she was, in this case she was found guilty of misconduct for refusing to work, and as I understand the Administrative Law Judge's opinion or whatever the proper title is, it had to be an intentional act of misconduct, namely, refusing to work. That suggested to me that if she had had a physical accident of some kind that made it impossible for her to work, that would not constitute misconduct and she would have gotten benefits. Is that right?

MR. MAHER: To an extent, Justice Stevens. The unemployment compensation laws are somewhat a cross between an insurance statute and a tax code, and they've got numerous little nuances to them that sometimes have to be explained in detail. To answer your question, she would not -- a person who becomes disabled and can't work would not be disqualified under the misconduct provision, okay, obviously, because there wouldn't be an intentional act. Your premise there was very accurate.

However, as a matter of fact there is another provision of the statute that says a person who leaves employment for disability is not subject to disqualification for quitting either. The problem with that is, the statute requires an individual to be able

and available to work in order to collect benefits, so unless the person recovered --

QUESTION: But that, being able to work, to collect benefits applies to the period in which benefits are claimed rather than the time of the discharge.

MR. MAHER: That's correct.

QUESTION: So it would be conceivable to me -- now, maybe this isn't a fair thing under Florida law, conceivable to me that she would meet that standard because she would be able to work at a lot of other jobs and she could very well work at jobs that don't require them to be there on Saturday and therefore not violate that provision.

MR. MAHER: Right. Because there is a --

QUESTION: And if that is true then it seems to me the net result of it is that she would get benefits if instead of having this burden, this obstacle to working, namely a religious obstacle, if she had a physical obstacle.

MR. MAHER: That's correct, because there is a specific provision covering disability, illness or disability. There is no similar provision. Hobbie is trying to add one --

QUESTION: So then isn't -- can one argue that this is a special burden on a religious, you might call

it a handicap in effect. If she is a person of conscience, she simply can't work, and why should that be different from someone with a broken leg?

MR. MAHER: I would style it just the opposite of that. It is that we haven't carved out one for religion. There is one for illness but there isn't one for religion. There isn't one for all the other personal reasons that might cause a person to commit misconduct or to quit their job. Hobbie wants us to carve out a special exception.

QUESTION: But it is only a special exception if you are willing to say that it is misconduct when your reason for not being able to work is a religious reason as opposed to a physical reason.

MR. MAHER: Right. Well, let me address that --

QUESTION: Both people are simply unable to work.

MR. MAHER: Let me -- for different reasons. Let me address that misconduct question because it was discussed earlier. We are not talking about misconduct in the moral sense that she did anything that was bad. We are talking about it in the employment relationship, something that was inconsistent with her employment, an intentional disregard of her employment, not something

that you could say that she should be faulted for morally.

QUESTION: But is it really any more intentional if there is this religious obstacle than the consequence of a physical inability to work? Either one would like to work, presumably, but there is something that they cannot overcome. Why is one intentional and the other not intentional?

MR. MAHER: Well, obviously, an illness is completely unintentional. Depending on your religious beliefs, you could believe that religion is or is not. I think that gets into a very philosophical discussion, but I would have to assume that Hobbie's conversion was something that she did wilfully, and that she would have certain consequences that she should be expected to -- that she would be expected to deal with as a result of that conversion, and it would be just like someone walking in off the street carrying religious beliefs and taking work that knew that they had requirements that would conflict but expecting the employer to make adjustments to it. We see it as no different.

QUESTION: What about a woman who becomes pregnant? Would she be disqualified in the same way?

MR. MAHER: We had this case yesterday.

QUESTION: Say she deliberately became

pregnant and so forth, and therefore couldn't work for a certain period. What happens to her in Florida?

MR. MAHER: If she is --

QUESTION: Were you here yesterday?

MR. MAHER: Yes, I was.

(General laughter.)

QUESTION: I am just wondering whether --

MR. MAHER: I was. She -- once she becomes disabled, not just by virtue of pregnancy, but when she can no longer work, then the disability provision would apply.

QUESTION: It would?

MR. MAHER: And she would not be guilty of misconduct. Otherwise it would be unconstitutional to hold otherwise.

The position that we have taken is to definitely not expand the Sherbert and Thomas rationale because it works an inequity, if you will, on the states in that it requires them to do more than should be required.

For example, the state of Florida is not required to have an unemployment compensation program. It adopted that program voluntarily with some financial incentives from the federal government. And we would submit that states should only be required to administer

that program in a neutral, evenhanded fashion with respect to the religion clauses. We should not be -- and we cannot discriminate on the basis of religion but then again we should not be forced to discriminate on behalf of religion to promote religion, and recent decisions of this Court suggest there is some sympathy for the position taken by the state of Florida.

The cases dealing with abortion, for example, wherein this Court says that an individual has a constitutional right to seek an abortion, that a state cannot prohibit that, but the United States nor the states are compelled to provide pay for the abortion, at least under certain circumstances.

QUESTION: Of course the freedom of religion clause doesn't apply there. You really have to not like Sherbert versus Verner to not apply it here. Isn't that right?

MR. MAHER: They are so close that I would say that you have to draw a very fine definition.

QUESTION: Yes, a line so fine that you would really only do it if you didn't like Sherbert versus Verner to begin with. That is fair to say, isn't it?

MR. MAHER: I am sorry, I didn't hear the last part.

QUESTION: A line that is so fine that one

would only draw it if one did not like Sherbert versus Verner to begin with.

MR. MAHER: Probably so. Probably so. One example that does involve the religion clause, the parochial schools, the courts held that we cannot abolish or interfere with the operation of parochial schools, but then again we are not allowed to provide incentives to promote parochial schools, and that cases like Meek v. Pettinger and Woolman v. Walter have tried to basically keep the government away from religious schools and religion away from public schools.

Probably the best example of a parallel between the situation here and a case decided by this Court was that of Johnson v. Robison or Robeson in which a veteran, while he wasn't a veteran, he was a conscientious objector who did not serve during the war, applied for Veterans Administration benefits, which he would have been entitled to had he participated in the war, and the courts -- the Court held that such benefits were inappropriate, that the government could provide benefits only to certain persons who met certain requirements, and that the religion, even though he did this solely based upon his religious convictions, he could not use that to force the Veterans Administration to pay benefits.

Similarly in the Bob Jones University case where a tax exemption was denied on the basis of racial discrimination, the Court denied awarding that exemption solely because this was a religious institution.

Finally, perhaps the most well-known example of this Court's refusal to deny a government the opportunity to uniformly apply a law was the Sunday closing cases of Brunfield v. Brown and McGowan v. Maryland, also, we would submit, the United States v. Lee on Social Security benefits. All of these cases indicate that the government can do certain things which have impact on religion and not have to carve out a specific exception.

QUESTION: What about the Amish case, the Amish education case?

MR. MAHER: Wisconsin v. Yoder?

QUESTION: Yoder.

MR. MAHER: Wisconsin v. Yoder I think is the example of where the line should be drawn, where there is a very strong coercive impact between the government regulation and the religious practices. Yoder would have required these school children to attend school daily, in conflict with their religious teaching, a very coercive thing to go through.

The alternative to that was to commit a crime

under the local ordinance. The impact here is not nearly related to that -- nearly that strong. This statute does not regulate working on Sundays or Saturdays. It doesn't regulate -- such as Estate of Thurston v. Caldwell. It doesn't regulate directly like that. It is just a uniform unemployment compensation law that does not carve out an exception for people like Hobbie.

And Florida has taken the position that it doesn't need to, that it shouldn't be required to. The question here that was asked earlier about would we apply this to other secular situations, I submit that if a person refused on work on Saturday, not one Saturday but all Saturdays, it would be held to be misconduct.

The cases that were cited suggesting remand were those dealing with one-time situations that were related to personal reasons. In Langley a cook didn't comply with the chef's instructions because his father had had a heart attack, one occasion. The commission had held, and affirmed by the courts, that this was not misconduct.

But this was not to say he was going to refuse to work all future Saturdays or whatever, just one occasion. In Parker, the man was incarcerated but not convicted of anything, and that is what the state court

held, that there was no showing that he did anything wrong, so no culpability. And in Hartenstein, the third case that was cited, the man merely requested time off to attend a funeral. I mean, these were all very short-lived.

To show other secular examples of state court opinions, in Slusher v. State, 354 Southern 2nd 450, the state of Florida held that a woman whose husband's job is transferred out of state and who quits to relocate with him is disqualified. That is obviously a compelling personal reason who would be disqualified under Florida law.

Another case, Beard, which is cited in the state's brief on the merits, a woman who quit employment because of a shift change, which she initially agreed to, conflicted with her ability to care for two teenage dependents held disqualified.

And in City of Riviera Beach v. Department of Commerce, 372 Southern 2nd 1000, a woman who took time off from work without permission to spend more time adjusting to her newly adopted child was held disqualified. So we are not singling out religion here. These are all personal reasons of a compelling nature that Florida has decided, unlike some states, to exclude, not exclude, but fail to include personal

reasons as good cause for either quitting or conflict with employment.

Now, the probably most recent examples of the courts looking at this issue came up in the Bowen v. Roy, dealing with the Social Security program, in which an Indian objected to having their infant daughter assigned and ultimately the use of a number, Social Security number, and this Court refused to force the administration to make special accommodations to changes in its procedures in order to make an exception for Little Bird in the Snow.

A similar refusal to make an exception occurred in Goldman v. Weinberger, in which an Air Force captain wished to have the Air Force give an exception that would permit him to wear a yarmulke while on duty in unfair, and this Court refused to compel the Air Force to make an exception in his case. And that is what this case boils down to, is whether Hobbie is entitled to an exception that would force the state of Florida to change its unemployment compensation program to basically accommodate her religion.

The state submits that that does not in some of the more recent opinions of the Court constitute a violation of the establishment clause but it certainly closes the distance leading to a collision between those

clauses. Respecting an establishment of religion and carving out statutory exceptions to accommodate religion are getting very close, and we would submit that if the Court were to expand Sherbert and Thomas to encompass this case, then it would be moving in that direction of a collision with the establishment clause, a direction which we do not feel is well advised.

QUESTION: Of course, depending on how we are interpreting the establishment clause you might like a collision. I mean, whether a collision is good or bad depends upon --

MR. MAHER: It is something that needs to be resolved. I see what you mean, Justice Scalia. That is true. But if that is the case, then the need is for the collision to be resolved somehow, and I submit it wasn't done in Sherbert, and that was a criticism in one of the concurring or dissenting opinions, that -- where do you draw the line? And I think it is going to become a reconstruction or a retreat of the establishment clause, if that is to be the case, which it may be.

Thank you.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Maher.

Mr. Carson, do you have something more? You have 12 minutes remaining.

MR. CARSON: Your Honor, I believe that Paula Hobbie would rest on the submission. Thank you.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Carson. The case is submitted.

(Whereupon, at 11:48 o'clock a.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

lderson Reporting Company, Inc., hereby certifies that the ttached pages represents an accurate transcription of lectronic sound recording of the oral argument before the upreme Court of The United States in the Matter of:

85-993 - PAULA A. HOBBIE, Petitioner v. UNEMPLOYMENT APPEALS COMMISSION OF FLORIDA AND LAWTON & COMPANY

nd that these attached pages constitutes the original anscript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)