

ORIGINAL

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: WILLIAM A. FRAZEE, Appellant V. ILLINOIS
DEPARTMENT OF EMPLOYMENT SECURITY, ET AL.

CASE NO: 87-1945

PLACE: WASHINGTON, D.C.

DATE: March 1, 1989

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x
3 WILLIAM A. FRAZEE, :

4 Appellant :

5 v. :

No. 87-1945

6 ILLINOIS DEPARTMENT OF EMPLOYMENT :

7 SECURITY, et al. :

8 -----x
9 Washington, D.C.

10 Wednesday, March 1, 1989

11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 11:51 o'clock a.m.

14 APPEARANCES:

15 DAVID A. FRENCH, ESQ., Manassas, Virginia; on behalf of
16 the Appellant.

17 ROBERT J. RUIZ, ESQ., Solicitor General of Illinois;
18 Chicago, Illinois; on behalf of the Appellee.

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P R O C E E D I N G S

(11:51 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument next in No. 87-1945, William A. Frazee v. The Illinois Department of Employment Security.

Mr. French, you may proceed whenever you're ready.

ORAL ARGUMENT OF DAVID A. FRENCH
ON BEHALF OF THE APPELLANT

MR. FRENCH: Thank you. Mr. Chief Justice, and may it please the Court.

Does the Free Exercise Clause extend protection only to persons who are members of established religious organizations and who exercise the beliefs of those organizations? That's the issue this case presents.

William A. Frazee believes it's wrong to perform nonessential work on Sunday. His beliefs are based on his religious convictions as a Christian. Now, nonessential to Mr. Frazee means any work that does not directly relate to the preservation of human life.

In 1984, he worked for the State of Illinois and was laid off, and during that time he remained on call to return to his position. In addition, he performed temporary employment through Kelly Services,

1 Incorporated, and performed all assignments that were
2 given to him until April of 198 --

3 QUESTION: Did he very many?

4 MR. FRENCH: Well, the record shows that he
5 had -- he testified during the hearing that he had one
6 assignment previous to the job that came up in April of
7 1984, and then there was one afterwards. So, in fact,
8 the -- he had two assignments.

9 In -- on April of 1984, he was given a five
10 --an offer of a five-day position beginning, he was
11 told, Wednesday, May 9, and going through Sunday, May
12 13, 1984. The position was a retail clothing position,
13 salesman.

14 When he was informed that the work included
15 Sunday work, he inquired as to whether the work could be
16 limited from Wednesday through Saturday, and was
17 informed that unless the -- he was available for Sunday
18 work, he wouldn't be considered for the position. At
19 that time, he declined the employment, citing his
20 religious belief against Sunday labor.

21 Now, after that, Mr. Frazee attempted to
22 obtain continuing unemployment benefits from the
23 Department of Employment Security. During the
24 proceedings, he at all times acted pro se.

25 The first -- and I should say the Illinois

1 statute that we have before the Court today is very
2 similar to the statutes that this Court considered in
3 the Sherbert and the Thomas cases. In order to remain
4 eligible for unemployment benefits under the Illinois
5 statute, a person must not refuse an offer of suitable
6 work without good cause. It's almost the exact language
7 of the statute in Thomas.

8 QUESTION: Mr. French, I'm afraid we're going
9 to have a very disappointing argument here today. As I
10 read the briefs, I'm not sure your opponent wants to
11 argue about the question as you so well expressed it.
12 You did, indeed, express the question that was presented
13 in the petition for cert at the outset of your brief,
14 whether you have to be a member of an organized religion
15 in order to claim the benefit of these cases.

16 But as I understand the position being --
17 being taken here by -- by the Appellees, they concede
18 that point. And all they want to argue about is whether
19 --whether, indeed, your client adequately established
20 the sincerity of his religious conviction as opposed to
21 whether it was part of an organized religion or not.

22 MR. FRENCH: That's correct, Justice Scalia.
23 I would make two points in response to that.

24 First of all, this was the first time the
25 Department has raised this issue. Throughout the lower

1 court proceedings, they urged the lower courts to take
2 the position that the Illinois appellate court
3 ultimately took, first of all.

4 And secondly, I would say -- and I'd like to
5 address this more completely as I get into the argument,
6 but for now I would say that their position both
7 mischaracterizes the record in this case and confuses
8 the issues of the fact and law that are before this
9 Court for determination. But that's the short answer to
10 your question, and I would like to explore it more fully.

11 QUESTION: I would hate to think we took this
12 case just -- just to decide whether -- whether your
13 client proved with adequate -- with adequate force the
14 sincerity of his conviction. That's really not the kind
15 of --

16 MR. FRENCH: Well --

17 QUESTION: -- we usually take up here, is it?

18 MR. FRENCH: That's right, but I would say
19 that, first of all, there's -- and I'll reach that
20 directly. The fact of the matter is that -- that this
21 Court would not have to overturn any factual
22 determination that was made by the administrative agency
23 in order to overturn the -- the decision of the Illinois
24 appellate court. The courts -- the agency and the --
25 the Illinois appellate court both made clear that Mr.

1 Frazee's belief were -- beliefs were religious in nature
2 and that they were sincere. And I will demonstrate that
3 as we proceed.

4 And that gets directly to the point that
5 throughout the administrative proceedings, Mr. Frazee's
6 sincerity was never questioned in this case. The first
7 person that he presented his claim to under -- under the
8 statute was the claims adjudicator, and that claims
9 adjudicator made this express finding that was the
10 determination he was required to make under the Illinois
11 statute. "On April 30, 1984, the claimant refused an
12 offer of work with Kelly Services, Incorporated, because
13 he did not want to work on Sunday due to his religious
14 conviction." The claims adjudicator didn't have any
15 problem identifying Mr. Frazee's beliefs as being
16 religiously based.

17 And when Mr. Frazee's claim was rejected by
18 the claims adjudicator, he appealed to the referee and
19 had a hearing before the referee. The referee affirmed
20 the decision of the claims adjudicator on all issues.
21 And at that hearing Mr. Frazee responded to the
22 questions of the referee without benefit of counsel.

23 Now, the transcript will show that the referee
24 wasn't concerned about Mr. Frazee's sincerity at all.
25 He was only concerned about two issues: first, whether

1 Mr. Frazee was a member of an established religious
2 organization; and secondly, whether he was exercising
3 the beliefs of an established religious organization.
4 That was the entire focus of the referee's questioning
5 during the hearing about Mr. Frazee's religious beliefs.

6 When that was -- when the -- or excuse me
7 --when the referee upheld the decision of the claims
8 adjudicator, Mr. Frazee appealed to the Board of Review,
9 and once again his sincerity was not at issue. The
10 board specifically ruled that Mr. Frazee's beliefs were
11 not protected no matter how strong or sincerely held.

12 And I'd emphasize here that what the board had
13 in front of it at the time it made its determination was
14 more than just the testimony that Mr. Frazee presented
15 at the -- at the hearing. It had two written statements
16 that Mr. Frazee presented during the course of the
17 administrative proceedings. And contrary to the claims
18 of the Department here, what that evidence showed is a
19 lot more than Mr. Frazee just saying I'm a Christian and
20 -- and I can't work on Sunday. In fact, the two written
21 statements showed that his beliefs were derived from his
22 own personal reading of the Bible, relying first on the
23 Commandments contained in the Decalogue and secondly on
24 the actions of Christ in the New Testament. There is no
25 --

1 QUESTION: But, Mr. French, it -- it is true
2 that the Board of Review ended up its opinion saying,
3 "However, other than his own self-serving testimony, the
4 claimant has presented no corroborative evidence to
5 establish that working on a Sunday was unsuitable for
6 him."

7 MR. FRENCH: That's correct, Justice Stevens.
8 And actually that's kind of a puzzling statement. Until
9 -- I think when you read it in context, what it's
10 referring to when they're saying there he didn't produce
11 any evidence corroborating his beliefs, it's referring
12 -- the corroboration that they were asking for and were
13 looking for was that -- the corroboration of the -- of a
14 established religious organization that that tenet was
15 found in an established organization didn't refer
16 specifically to the evidence he was presenting in my
17 -- in my judgment. I think that's the fair reading of --
18 of the decision.

19 Or, otherwise, if in fact that was the basis
20 of the board's decision, there would have been no need
21 for the board to -- to say whatsoever that in order to
22 -- for a claimant to get the protection of the First
23 Amendment, that you have to show that you're a member of
24 -- of a denomination or church organization. And they
25 made that ruling specifically and expressly that when a

1 refusal to work is based on religious convictions, it
2 must be based solely on the fact that the person is
3 exercising the beliefs of an established religious
4 organization.

5 So, I think when -- when read properly in
6 context, what that statement by the board is referring
7 to is the fact that Mr. Frazee didn't establish that he
8 was exercising the belief of an established religious
9 organization.

10 But this was the evidence, the evidence that
11 I've mentioned, the evidence contained in the transcript
12 and the two written statements of Mr. Frazee is what the
13 board had in front of it when it passed on Mr. Frazee's
14 beliefs. And certainly the Board of Review didn't have
15 any problem identifying the religious basis of Mr.
16 Frazee's beliefs. It termed them "religious
17 convictions."

18 The sole ground for denial, as I mentioned,
19 was that Mr. Frazee did not show that he was exercising
20 a belief of an established religious organization.

21 QUESTION: We'll resume there at 1:00 o'clock,
22 Mr. French.

23 MR. FRENCH: Thank you.

24 (A lunch recess was taken.)

25 QUESTION: Mr. French, you may resume your

1 argument.

2 MR. FRENCH: Thank you, Mr. Chief Justice.

3 Justice Scalia -- excuse me -- I'd like to
4 just respond a little more fully to your question about
5 what the issue in this case is. I'm not so sure that
6 the Department here has conceded for the purpose of this
7 oral argument that the position of the Illinois
8 appellate court was wrong.

9 In their motion to dismiss and -- dismiss or
10 affirm, the Department took the position on the question
11 presented as follows: whether a state agency violates
12 the Free Exercise Clause of the First Amendment by
13 denying an -- an individual unemployment benefits due to
14 his refusal to work on a Sunday when that refusal is not
15 based upon any specific religious or church tenet, but
16 rather upon his allegation of a personal feeling that as
17 a Christian it was wrong for him to work on Sundays.

18 Now, the first time that the -- the Department
19 had changed the focus of its argument at all in this
20 case was after we submitted our brief on the merits.
21 But I'm not so sure even in their brief on the merits
22 that they've taken the position that the -- that they've
23 conceded that the test adopted by the Illinois appellate
24 court is wrong.

25 On page 20 of their brief they say, "Congress

1 cannot know and the courts cannot measure a statute's
2 impact on religion unless the salient points of the
3 religion are objectively measurable. The need to
4 identify some tangible evidence of a religion and its
5 beliefs leads both courts and legislative bodies into
6 invoking 'dogma and tenets' as a shorthand way to
7 measure the breadth and scope of religious beliefs."

8 I'd like to know myself from the Department
9 whether they are defending, in fact, the test adopted by
10 the Illinois and if so, what the -- what the basis of
11 that is because I don't think it's contained in their
12 brief.

13 QUESTION: Let me ask about your position.
14 You would not have any problem with a state saying one
15 of the indicia of sincerity is that you belong to a
16 religious group which, as a whole, supports this
17 position dogmatically.

18 MR. FRENCH: That's correct. The only
19 position that we're taking in this Court is that that
20 factor by itself is not a necessary --

21 QUESTION: Necessary.

22 MR. FRENCH: -- condition, but it may be, in
23 fact, a relevant factor in determining whether a belief
24 is religious under the Free Exercise Clause.

25 QUESTION: Mr. French, how far does your

1 theory take you? Suppose someone had a sincere
2 religious belief that he shouldn't work at all, Monday
3 through Friday.

4 MR. FRENCH: Well, I think that that would
5 certainly --

6 QUESTION: Are there any limits?

7 MR. FRENCH: -- be different from -- there
8 would certainly be differences from -- in that, in the
9 example that you've posed, from our case first -- firstly.

10 But, secondly, I would note that the Court
11 --this Court itself in Sherbert indicated that the
12 denial in that case -- or that there was no indication
13 that by granting unemployment benefits, the claimant
14 would be made an unproductive member of society.

15 And I would submit that that's certainly an
16 appropriate factor in determining whether there are in
17 fact limits here. And that would -- that would come in,
18 however, not in defining whether the belief is religious
19 under the First Amendment, but rather in the government
20 interest in denying the benefit in this particular case.
21 And they have -- they have not --

22 QUESTION: The extent to which the state has a
23 compelling interest?

24 MR. FRENCH: That's correct. But the state in
25 this case has not advanced such -- such an argument as

1 the justification for denying the benefits here to Mr.
2 Frazee.

3 QUESTION: You -- suppose the Department gets
4 up and say, no, we don't defend the decision below. We
5 just want to support it on another ground. Wouldn't we
6 -- we wouldn't necessarily have to agree with -- with
7 either one of you that the court below erred. We would
8 still have to decide that it did.

9 MR. FRENCH: That's correct, but I would
10 --would submit that the grounds offered by the
11 Department in this case are not sufficient to sustain
12 either the determination of the Board of Review or the
13 Illinois appellate court. I think in either instance,
14 the -- the decision of that court, based on the findings
15 that the agency itself made and the court made,
16 necessarily must be overturned as -- as a matter of
17 construction under the Free Exercise Clause. What
18 beliefs are protected under that -- under that clause
19 and what beliefs are not? That's a constitutional
20 question.

21 QUESTION: But the -- but the stipulation or
22 agreement of the parties doesn't conclude this Court on
23 a question at law.

24 MR. FRENCH: That's correct. That's correct.
25 Now, just getting back briefly to what

1 transpired in this case, as I mentioned, the Board of
2 Review did, in fact, pass on a broad range of evidence
3 that was before it, not just the transcript that was
4 presented by Mr. Frazee. They had the two statements
5 and on the basis of that testimony, determined that his
6 belief was not protected because he was not exercising a
7 belief or tenet of a -- of a church or denomination.
8 That was the sole ground given for the decision.

9 When Mr. Frazee -- when that decision was
10 given, he filed a complaint then for administrative
11 review in the Illinois circuit court and that court
12 affirmed the decision of the Board of Review.

13 Mr. Frazee then appealed to the Illinois
14 appellate court and once again, that court had no
15 problem determining either the sincerity of Mr. Frazee's
16 belief or the religious nature of that belief. First of
17 all, the court specifically stated: "We do not question
18 the sincerity of plaintiff."

19 Secondly, the court also discussed in detail
20 the historic Christian practice against Sunday labor.
21 So, there's no question they were understanding that
22 this was a -- a belief based on religious conviction.
23 And, in fact, they termed Mr. Frazee's belief a personal
24 professed religious belief.

25 The sole ground for the rejection of Mr.

1 Frazee's claim that the Illinois appellate court gave
2 was that that court believed that the Constitution
3 extended protection to individuals only, number one,
4 when they're a member of an established religious
5 organization and, number two, when they're exercising a
6 tenet of that organization. That was the sole ground
7 given by that court.

8 Now, it must be emphasized that the Illinois
9 court's understanding of the scope of the Free Exercise
10 Clause is not isolated. Recently four state courts in
11 Vermont, New Jersey, Arkansas and Indiana have rejected
12 Free Exercise Clause claims on very similar grounds to
13 that advanced by the Illinois appellate court. But that
14 court's understanding of the scope of the Free Exercise
15 Clause is inconsistent with important principles of the
16 First Amendment.

17 Firstly, on its face, the test grants an
18 unconstitutional preference to established religious
19 organizations and disadvantages religious dissenters and
20 adherence of emerging new sects. The court's test by
21 its own terms makes protection for individual belief
22 dependent on the acceptance of that belief by others.
23 That's precisely what this Court said in Thomas the Free
24 Exercise Clause did not require.

25 In addition, that -- the test would operate to

1 create a de facto preference to certain religions that
2 are highly organized in credo. For instance, a Buddhist
3 or a Hindu would not qualify for protection under this
4 test no matter what their beliefs they advance because
5 neither Buddhism nor Hinduism, as a matter of fact,
6 maintain a uniform body or practices of beliefs -- a
7 uniform body of practices or beliefs. So, none of those
8 claim -- adherence to those religions would qualify for
9 protection under this test.

10 In addition, the test requires the court to
11 scrutinize both the individual religious belief and
12 compare it to the tenets of an established religious
13 organization, and that would involve courts in questions
14 of religious doctrine which is what the -- what the
15 First Amendment also does not permit.

16 The test by its own terms requires courts to
17 determine who members of established religious sects are
18 and also what is the relevant established religious
19 organization. Both of those questions often involve
20 issues of religious doctrine and would present the
21 problem of excessive -- courts' excessive entanglement
22 in religion.

23 It appears that the Illinois appellate court
24 believed that Sherbert, Thomas and Hobbie required that
25 an individual be a member of an established sect in

1 order to obtain the protection of the First Amendment.
2 But that goes far beyond what this Court's holdings in
3 -- in those cases and other cases have required for a
4 belief to qualify for protection under the First
5 Amendment.

6 Instead of requiring an individual to be a
7 member of such a sect, what this Court has said in those
8 cases is the only thing is required that the individual
9 have an honest conviction that the work is forbidden by
10 his religion. So, in short, we have two requirements:
11 first, that the belief is sincerely held by the
12 individual and, secondly, that the belief must be rooted
13 in religion as opposed to purely philosophical or
14 secular concerns.

15 QUESTION: On -- on this record, once it was
16 established that he was sincere, did the state -- could
17 the state legitimately have probed further into the
18 nature of the religious beliefs? Or should it -- must
19 it as a matter of law simply have accepted his excuse as
20 valid based on the testimony that's in this record?

21 MR. FRENCH: Well, I think it depends, Justice
22 Kennedy, on what you mean by probe. They certainly
23 could ascertain what -- could have ascertained properly
24 what the basis of those beliefs are and what the beliefs
25 themselves were. I think there's -- there's no problem

1 with the court inquiring in that regard.

2 QUESTION: They could have supplemented and
3 amplified the record in that regard?

4 MR. FRENCH: That's correct.

5 QUESTION: Even -- even once it was
6 established or conceded that he was sincere?

7 MR. FRENCH: That's correct because I think
8 there's a -- you can distinguish for -- for the purposes
9 of the Free Exercise Clause sincerity, number one, and
10 secondly, the religious nature of a person's belief. I
11 think they are --

12 QUESTION: Well, he said -- he said it's
13 because I'm a Christian. Isn't that enough?

14 MR. FRENCH: I think it's enough in this case,
15 yes.

16 QUESTION: Well, what purpose would be served
17 by further probing?

18 MR. FRENCH: Well, they could have -- If they
19 wanted to find out where he got the belief, for
20 instance, to determine whether it's -- really was an
21 honest religious belief. I guess if they made the
22 initial determination that he was sincere and then in
23 this case he said I'm a Christian and am against Sunday
24 labor, and they believed that he was sincere in that
25 assertion, I think that would be sufficient on this

1 record for -- for --

2 QUESTION: I know it's sufficient. Would
3 there be any further justification under your view for
4 inquiry?

5 MR. FRENCH: Well, I don't think that a court
6 or an agency would be precluded by the First Amendment
7 to go -- from going further. But, on the other hand, I
8 don't think there would be any -- any need to.

9 I -- the only point in going further -- there
10 are only two relevant questions: first, the sincerity
11 of the individual and, secondly, whether the belief
12 itself is religious. If they asked just two or three
13 questions and they -- from those questions, they can
14 ascertain that the belief is -- is religious and the
15 individual sincere, I don't think they need to go
16 further.

17 QUESTION: But what if he said he was not a
18 Christian. He just said I don't believe in Sunday work.
19 I think it's wrong. I've always felt that way since I
20 was a child.

21 MR. FRENCH: Well, I don't think that would --

22 QUESTION: (Inaudible).

23 MR. FRENCH: -- be sufficient. I mean,
24 admittedly we have here a record just based on the
25 testimony. I mean, there is more than -- more than that

1 in -- on this record, but if you have just a record
2 where someone says I'm against Sunday work, I wouldn't
3 say that that's sufficient in and of itself to determine
4 whether the belief was based on --

5 QUESTION: What if you just added to that that
6 when he was a child his -- his guardian or one of his
7 parents read him a passage from the Bible that said
8 something about not working on the seventh day or
9 something like that.

10 MR. FRENCH: Well, it would depend on how he
11 viewed the Bible I would suppose.

12 QUESTION: He -- that's the only thing.
13 That's the only -- that's the only tenet he has, but he
14 believes it very deeply that working on Sunday is
15 wrong. He has always felt that way throughout his
16 life. Never done any work on Sunday just because he
17 thinks that is something of some fundamental
18 importance. Would that be --

19 MR. FRENCH: I think that's a close question.
20 If the Court were to adopt a functional test of religion
21 in short, like in the Seeger case, it probably would be
22 enough that -- if the belief was important enough to an
23 individual that it occupied a place of central
24 importance in his or her life --

25 QUESTION: No, it was important enough so he

1 never worked on Sunday. That's --

2 MR. FRENCH: Pardon?

3 QUESTION: It was important enough so that he
4 never worked on Sunday.

5 MR. FRENCH: Well, that I think would just
6 depend on how religion is defined.

7 QUESTION: We don't know anything really more
8 about this -- this person's belief than that.

9 MR. FRENCH: Yes, we do. We know, first of
10 all, that he's relying on the fact that he is a
11 Christian, number one. And, number two, we know that
12 he's basing it on his belief and his own personal
13 reading of the Bible in relying on specific passages in
14 the Decalogue and in Christ's example in the New
15 Testament. Plus, what we have as -- as corroborative
16 evidence is the long history of Christian belief and
17 practice which the Illinois appellate court itself took
18 note of. I think all those factors are more than
19 sufficient to meet what I would consider a low threshold
20 that's -- that's required.

21 QUESTION: Well, you're suggesting that it was
22 a tenet of his religion not to work on Sunday.

23 MR. FRENCH: No, I'm not suggesting --

24 QUESTION: (Inaudible).

25 QUESTION: Well, not in the sense that the

1 Illinois appellate court used the word "tenet". The
2 Illinois appellate court was using the -- employed the
3 term "tenet" in a formal sense, something formally
4 adopted by a religious organization. In that sense,
5 clearly it wasn't a tenet. And a tenet, if you use the
6 -- define the word "tenet" in just an informal sense as
7 -- as a belief that a person possesses, then yes, it was
8 a tenet of -- of his religious belief. And I think that
9 is sufficient on this record what we have before the
10 Court to -- to determine that his belief was in fact
11 religious.

12 QUESTION: Do you have to have the word
13 "Christian" there?

14 MR. FRENCH: Excuse me, Justice --

15 QUESTION: Do you have to have "Christian"?

16 MR. FRENCH: Well, Justice Marshall, I would
17 say that --

18 QUESTION: A man says I'm a religious man, and
19 I don't believe in working on Sunday. And that's the
20 only -- that's all I give you. Is that enough?

21 MR. FRENCH: Well, that's a close case. I
22 would say that probably not unless you determined that --

23 QUESTION: Well --

24 MR. FRENCH: He discusses -- he discusses
25 further and talks about what he means.

1 QUESTION: No, no. In mine, that's all he
2 says.

3 MR. FRENCH: Well, I don't think from that --

4 QUESTION: Now --

5 MR. FRENCH: On that statement alone, I
6 wouldn't say that you would be able to determine either
7 the place of the -- of the belief in the individual's
8 life or where it was derived from.

9 QUESTION: Well, the next one is he says that
10 and he says also I'm a Christian and nothing else. Is
11 that enough?

12 MR. FRENCH: I -- I'm religious and don't
13 believe in work on Sunday and I'm a Christian?

14 QUESTION: Yes.

15 MR. FRENCH: Yes. In this --

16 QUESTION: So that the word "Christian" is the
17 key word.

18 MR. FRENCH: In this case, yes, it would be.
19 I'm not saying that's --

20 QUESTION: Well, that --

21 MR. FRENCH: -- a test across the board. If
22 he says --

23 QUESTION: That doesn't give you --

24 MR. FRENCH: If he said I'm a Christian and I
25 want to --

1 QUESTION: That doesn't give you any problem
2 with the other religions, does it?

3 MR. FRENCH: No, not -- not -- well, it would
4 depend.

5 QUESTION: Well, it does to some people.

6 MR. FRENCH: It would depend on -- on the
7 facts, Justice Marshall. I would suggest if he said I'm
8 a Christian and therefore I believe in playing golf on
9 Wednesday, I would say that by itself would not be
10 sufficient because there's no -- there's no
11 corroboration that has ever been a religious belief that
12 has been held by anyone in the history of Christianity.
13 But we have much more than that here.

14 QUESTION: Conversely, if he had said, I'm a
15 Jew and I don't believe in working on Saturday, that
16 would be sufficient --

17 MR. FRENCH: That's correct.

18 QUESTION: -- would it not?

19 MR. FRENCH: That's -- that would be clearly
20 analogous to -- to the case we have before us. But if
21 someone says I'm a Wiccan, for instance, one of the
22 cases cited by the -- by the Department here and -- and
23 therefore I don't -- I have to twiddle my thumbs, well,
24 then I would suggest that we would need more. But what
25 we have here is a belief that has been recognized by

1 this Court in the McGowan case in 1961 as a -- as a
2 religious belief. It's not -- it's not something that
3 anyone common -- who has common knowledge on religion
4 would question as a religious belief unless -- unless
5 the sincerity of the claimant is being questioned. Then
6 you would have an issue, but we don't have that case.

7 QUESTION: Because it's a -- it's a fairly
8 standard religious belief for many people.

9 What -- what if he -- what if he did say,
10 though, you know, God has appeared to me and told me to
11 play golf on Wednesdays and I can't take any job that
12 won't let me play golf on Wednesdays.

13 MR. FRENCH: Well --

14 QUESTION: And I'm persuaded that this fellow
15 is very sincere about it. Does the state have to set up
16 its system so it would allow him to play golf on
17 Wednesdays?

18 MR. FRENCH: I would say not on these facts
19 --or not on -- on that statement alone. He would have
20 to show more to show that -- that --

21 QUESTION: He sincerely believes it. Put in
22 whatever additional information you need to establish
23 that he is sincere about that.

24 MR. FRENCH: All right. It -- well, it
25 depends on what you mean by sincere. I mean, as -- if

1 you mean by sincere that he truly believes it to be a
2 religious belief --

3 QUESTION: Uh-hum.

4 MR. FRENCH: -- that's one question.

5 QUESTION: Yes.

6 MR. FRENCH: Well, I think in that sense that
7 conflates the -- the issue of what is a religious belief
8 with what is sincerity. And I -- I would say that under
9 the cases, although they're -- they're related, I think
10 they're distinct. But if you -- if you employ it in the
11 sense that -- that you're using it, I would say that he
12 then would probably still have to have more, although
13 maybe not a lot more. The reason I -- I say that is
14 that --

15 QUESTION: Now, well, listen. What I'm
16 getting at is -- you know, I agree with you totally.
17 Indeed, I think the other side may agree with you
18 totally that --that you can't require that the person be
19 a member of an organized religion. But I wonder whether
20 the kind of --the kind of excuses that you allow the
21 person to put forward do not have to be excuses that are
22 within the range of things that not any particular
23 organized religion, but at least some organized religion
24 have --have used in the past.

25 MR. FRENCH: Well, I think there are many -- I

1 think that's correct. I wouldn't disagree with that at
2 all. I think there are many factors that a court can
3 --can look at to determine whether a belief is
4 religious, and one of the best -- one of the best
5 factors or one of a number of factors could be whether
6 specific religious denominations have formalized that
7 religious belief in a -- in a formal creed of some sort.

8 QUESTION: So, you say even if it doesn't go
9 to sincerity, it can go to whether it's a religious
10 belief --

11 MR. FRENCH: That's correct. That's correct.

12 But here what we have in this case, the -- the
13 only question that we have is whether Mr. Frazee's
14 belief was not so bizarre as to be clearly non-religious
15 in motivation. And I would submit on this record he
16 clearly -- his belief clearly satisfies that standard.

17 And I think I would like to reserve the rest
18 of my time for rebuttal.

19 QUESTION: Very well, Mr. French.

20 Mr. Ruiz?

21 ORAL ARGUMENT OF ROBERT J. RUIZ

22 ON BEHALF OF THE APPELLEES

23 MR. RUIZ: Mr. Chief Justice, and may it
24 please the Court.

25 In response to an issue raised by counsel, I

1 would like to point out that it has been the consistent
2 position of the state that this is a matter that relates
3 strictly to the factual determination made by the courts
4 below as well as by the Board of Review throughout its
5 administrative proceeding. The case does not involve
6 the constitutional issue raised, but simply involves the
7 issue of whether Mr. Frazee was properly denied his
8 unemployment insurance benefits based on his refusal to
9 accept suitable work and whether that refusal was based
10 on a personal desire not to work on Sunday or as part of
11 a religious tenet that he held.

12 The simple statement that he asserts, that I
13 am a Christian, we assert is insufficient as a matter of
14 --of religious belief, as we understand it, and
15 insufficient to trigger the protections of the Free
16 Exercise Clause.

17 QUESTION: Are you defending the opinion below
18 or just the judgment?

19 MR. RUIZ: We assert that what the court held
20 below is correct and proper, and that is that based on
21 the record and administrative review that it had, it had
22 to uphold the decision below unless it found it against
23 the manifest weight of the evidence.

24 QUESTION: Well, didn't it say that -- didn't
25 it say that this was a religious belief?

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MR. RUIZ: The administrative body?

QUESTION: No.

MR. RUIZ: No, it did not.

QUESTION: The court. The court.

MR. RUIZ: The court did not at any time say that this was a religious belief. It did not question Mr. Frazee's sincerity, but I think it upheld the board's determination and the hearing referee's determination that his refusal to work was a matter of personal preference and not religious belief.

QUESTION: You don't think it decided on the basis that this was a religious belief, but that it wasn't shown to be a part of any ritual of a church?

MR. RUIZ: It's our position that what the court did in talking about tenets and dogma was simply a way of dealing with the fact that it was dealing with a very scant record concerning Mr. Frazee's --

QUESTION: Well, if -- if we think the decision turned on -- on the fact that it wasn't shown that this was part -- was a formal part of some church dogma, if we think the -- the case turned on that, you would agree we should reverse I guess.

MR. RUIZ: No, that would not be our -- our position.

QUESTION: Well, what is your position about

1 that?

2 MR. RUIZ: Our -- our position is, first of
3 all, that we don't agree that that's what the --

4 QUESTION: Well, I know that.

5 MR. RUIZ: -- holding below is.

6 QUESTION: I know that.

7 MR. RUIZ: Secondly, that this Court, if it
8 were to determine that this were, in fact, a matter of
9 law and not of fact, could under its de novo powers
10 review the entire record and make its own determination
11 as to whether or not there was a denial of
12 constitutional right.

13 QUESTION: Well --

14 MR. RUIZ: However, we would submit that even
15 under that de novo review standard -- first of all,
16 there are not sufficient facts here to support the
17 contention that the Free Exercise Clause has been
18 violated.

19 QUESTION: Well, do you think it's a -- do you
20 think it's the rule in cases like this that the asserted
21 religious belief be shown to be a formal dogma of a
22 particular church?

23 MR. RUIZ: No, we do not. I don't think that
24 is a proper statement of the law.

25 QUESTION: Well, isn't that what the court

1 below held? I'm looking at its opinion and it says,
2 "the injunction against Sunday labor must be found in a
3 tenet or a dogma of an establish religious sect. The
4 plaintiff in this case does not profess to be a member
5 of any such sect. Affirmed." I mean, it -- it looks
6 pretty clear, doesn't it?

7 MR. RUIZ: Well, our reading of that -- of
8 that language is simply dicta in the case because it was
9 not determinative of the record that the court had
10 before it. And I think --

11 QUESTION: Suppose that's not our reading of
12 the case. Then do we reverse?

13 MR. RUIZ: No, I don't think you -- you need
14 to reverse. You may still uphold the finding.

15 QUESTION: In other words, we -- we affirm a
16 decision which is based on a patently erroneous
17 statement of constitutional law.

18 MR. RUIZ: Well, it's not our position that
19 --that the decision is patently in error --

20 QUESTION: Suppose -- suppose -- suppose we
21 conclude that the decision is based on the sentence that
22 Justice O'Connor read. And suppose further we conclude
23 it's wrong. Then we must reverse.

24 MR. RUIZ: No, I think you can still uphold
25 the determination that Mr. Frazee --

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QUESTION: Well, I'd like to hear why.

MR. RUIZ: Pardon me?

QUESTION: I'd like to hear why.

MR. RUIZ: That Mr. Frazee was not entitled to benefits given the -- the factual presentation he made to support his claim of religious belief.

QUESTION: Well, you want us to redetermine the facts.

MR. RUIZ: I don't think you need to redetermine the facts. If you determine that -- that the decision was wrongly decided by the appellate court, you may review the facts and make your own determination of what those --

QUESTION: Well, why should we do that? We normally don't. We took it to decide an issue of law, the issue presented in the cert petition. And you apparently don't even want to talk about that issue.

MR. RUIZ: Well, it has been our position consistently that that's not the issue that these facts present. We did it throughout the course --

QUESTION: (Inaudible) whether you think that that statement that Justice O'Connor read is a correct statement of constitutional law.

MR. RUIZ: That you need to be a member of an organized religion and --

1 QUESTION: Yes.

2 MR. RUIZ: -- have tenets and dogma?

3 QUESTION: Do you think that's a correct
4 statement of the law?

5 MR. RUIZ: In order to get constitutional
6 protection? Absolutely not. Absolutely not.

7 QUESTION: Well, so you --

8 MR. RUIZ: And I don't think the appellate
9 court --

10 QUESTION: So, you do not defend that -- that
11 statement in the opinion.

12 MR. RUIZ: No. We do not believe that that's
13 what the court said.

14 QUESTION: You just say -- you just say that
15 wasn't the basis for -- for the decision, or even if it
16 was, we can decide it another way.

17 MR. RUIZ: Yes.

18 QUESTION: Uh-hum.

19 QUESTION: The court below also said, in
20 addition to what Justice O'Connor quoted, "we do not
21 question the sincerity of the plaintiff." You want us
22 to decide this case on the basis of the fact that
23 sincerity was not demonstrated when -- when the court
24 below was satisfied about sincerity?

25 MR. RUIZ: We have I think conceded the point

1 that this gentleman may have had some sincere beliefs.
2 What we are unwilling to concede is whether he presented
3 sufficient evidence to support his claim that on the
4 basis of the record that he made, he could support a
5 claim of -- of religious exemption.

6 QUESTION: And you want us to do that for the
7 first time even though the state court didn't even do it.

8 MR. RUIZ: I think the state court did do it
9 by affirming the holding below that he was not entitled
10 --

11 QUESTION: No. The state court said we don't
12 question the sincerity of the plaintiff.

13 MR. RUIZ: We have conceded that -- that
14 nowhere along the line has his sincerity been
15 questioned. Our contention is that there are not enough
16 facts in this scant record to support the fact that he
17 put forth a religious claim.

18 QUESTION: So, your -- your position really is
19 although his belief was sincere, it was not religiously
20 based?

21 MR. RUIZ: That's correct.

22 QUESTION: Because? And the reason being?

23 MR. RUIZ: Oh, the reason is because I think
24 that under any sort of constitutional analysis to
25 determine whether or not you have the protection of the

1 Equal Protection Clause attaching, you need to look at
2 what the assertions are of the plaintiff.

3 QUESTION: What has constitutional analysis
4 got to do with right or wrong, yes or no?

5 MR. RUIZ: The --

6 QUESTION: It doesn't have anything to do with
7 it.

8 MR. RUIZ: No, it does not. It does not.

9 QUESTION: Are you -- are you saying there was
10 a failure of proof?

11 MR. RUIZ: I think in this instance he failed
12 to prove that he had anything other than a personal
13 belief, a personal preference. It could have been as
14 sincere as the courts have pointed out that he was
15 perhaps sincere. But the issue is that you cannot raise
16 the claims even though he asserts them as being
17 religious simply on the basis of his representations.

18 QUESTION: Even though he's sincere, he's not
19 so.

20 MR. RUIZ: He has not shown that what he has
21 presented is a sincere religious belief.

22 QUESTION: What could he show?

23 MR. RUIZ: What could he have shown?

24 QUESTION: Yes.

25 MR. RUIZ: I think --

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QUESTION: If anything.

MR. RUIZ: I think that he could have done any number of things to provide additional information to --

QUESTION: I warn you in advance my next question would be did you show anything to the contrary. So, go right ahead.

MR. RUIZ: The things that he could have done -- he was offered enough of an opportunity. If his particular religious orientation was not of the institutional variety, as has been indicated, then he could have taken the opportunity to expound more on where he got the religious direction for his life, how long he has had it, what kinds of practices does he do --

QUESTION: Could you have asked him that question?

MR. RUIZ: Pardon me, Your Honor?

QUESTION: Could you have asked him those questions on cross?

MR. RUIZ: I -- I think --

QUESTION: Well, of course, you could.

MR. RUIZ: Well, this was not --

QUESTION: And you didn't.

MR. RUIZ: -- an adversarial proceeding.

QUESTION: And you didn't.

MR. RUIZ: This was not an adversarial

1 proceeding, Your Honor, at -- at the hearing level where
2 the record was made. He was brought in to respond to
3 the fact that his benefits were going to be
4 discontinued. And he was asked for the reason for his
5 refusal to work --

6 QUESTION: Well, could that person who asked
7 ask these other questions?

8 QUESTION: Well, he did --

9 MR. RUIZ: I think -- pardon me.

10 QUESTION: He did say -- in answer to one of
11 those questions what's the basis, he said my personal
12 Christian faith in the Lord.

13 MR. RUIZ: I think that was his response
14 exactly.

15 QUESTION: And isn't that sufficient?

16 MR. RUIZ: It is our position that it is not
17 simply --

18 QUESTION: What more does one need than faith
19 in the Lord and being a Christian and therefore thinking
20 Sunday work is wrong?

21 QUESTION: And you don't question the
22 sincerity of that either.

23 MR. RUIZ: We do not question his sincerity
24 simply because the -- the record doesn't show that he
25 was in any way insincere about it.

1 Our -- our position is that simply saying that
2 I have these personal preferences or I have these
3 preferences and --

4 QUESTION: Based on a faith in the Lord.

5 MR. RUIZ: -- (inaudible) religious --

6 QUESTION: Let him answer the question.

7 QUESTION: I'm sorry.

8 MR. RUIZ: That -- that they are religious
9 doesn't make them so, that the person seeking the
10 exemption, seeking the protection of the First Amendment
11 bears the responsibility of illustrating that what he
12 holds and believes as his own is, in fact, what would be
13 recognized under the Free Exercise Clause.

14 The -- the fact of the matter is, the reality
15 is that the farther one gets away from what could easily
16 be recognized as an identifiable religion, I think as a
17 practical matter requires that the individual illustrate
18 more how those beliefs, that body of beliefs, not a
19 single one, somehow is the controlling factor in his
20 life and holds the same position as an orthodox belief
21 in God would hold in someone else.

22 QUESTION: Mr. Ruiz, was this the argument
23 that was made by the state to the Illinois appellate
24 court, the argument you're making to us today? Or did
25 the state simply argue that the board's decision should

1 be affirmed?

2 MR. RUIZ: The argument made at the state
3 level was that the decision below should have been
4 affirmed.

5 QUESTION: So, we're hearing this entirely for
6 the first time. It's something that wasn't presented
7 below.

8 MR. RUIZ: No, it was not.

9 QUESTION: I guess I'm still not sure what
10 you're -- what you're asking us to hold, Mr. Ruiz. If I
11 understand what you're saying, a person can say God does
12 not want -- I -- I am a religious person. God does not
13 want me to work on Sunday. And I can -- I can say, yes,
14 you think that, and I'm sure you're sincere. And yet,
15 I'm still not sure that that's a religious belief.
16 Right? Is that what you're asking us to -- to believe?

17 MR. RUIZ: I think that you can make the --
18 the assumption that simply because someone says I don't
19 want to work on Sunday and attaches a religious label to
20 it, that that immediately means that -- that the fact
21 finder --

22 QUESTION: Yes, but I don't question his
23 sincerity. I acknowledge. Yes, I understand that you
24 believe that God does not want you to work on Sunday.
25 That's what this court means when it says it doesn't

1 question his sincerity. He says God does not want me to
2 work on Sunday. And the court says, yes, I believe you
3 believe that, but that's not a religious belief.

4 Well, what more -- what more do you possibly
5 have to prove to show it's a religious belief except
6 that you think that God commands it and you sincerely
7 believe that? Once you've shown those two things, it
8 seems to me you've established your religious belief,
9 haven't you?

10 MR. RUIZ: I think you've established a
11 religious belief in Your Honor's example, but I don't
12 think that's the set of facts we had here. I think that
13 he was asked to identify either an organized religion,
14 which he said there was none, or to identify something
15 that we could look at and say, okay, this is comparable
16 to what we would identify as a religious belief.

17 I think the state in this instance has the
18 right to make the determination as to the sincerity and
19 also as to whether or not it is dealing with something
20 religious, and simply having it labeled as a religion
21 does not make it so. I think you need a lot more.

22 That runs contrary to our notion that anyone
23 can simply set up a set of standards and expect that
24 society will know what those standards are, under the
25 label of Christianity in this case, and then ask society

1 to abide by one's wishes as to the exercise of that
2 whether or not it means society has to bestow benefits
3 on it. I think that our notion of -- of ordered liberty
4 says that you can't do that, and that this Court can't
5 be asked to simply, on the basis of this record, provide
6 a protection of the First Amendment.

7 QUESTION: But under your theory -- and I'm
8 still not quite sure how to articulate it, but under
9 your theory, was the state required to deny the
10 employment exemption?

11 MR. RUIZ: Was the state?

12 QUESTION: Based on this record, was the state
13 required to deny the application for benefits?

14 MR. RUIZ: Simply on the basis of his
15 religious beliefs? No.

16 QUESTION: On the basis of what's -- all
17 that's in this record. If the hearing officer had
18 granted the exemption, could you have taken him to your
19 state court and had a reversal as a matter of law?

20 MR. RUIZ: I think we probably could have done
21 that if -- because we would contend that it neither
22 approves nor diminishes his -- his record. He does not
23 illustrate any sort of religious belief. And if the
24 hearing officer had so found, I think that that could
25 have been reversed as well.

1 It's our position that the history and purpose
2 and intent of the Free Exercise Clause, if it is to be
3 preserved, then we must undertake the rather delicate
4 task of distinguishing between those things that are
5 religious and those that are non-religious.

6 The receipt of unemployment insurance benefits
7 in Illinois is a constitutional -- or pardon me -- a
8 conditional right and not an absolute right. The right
9 to receive those is dependent upon the claimant, in this
10 case Mr. Frazee, showing his initial eligibility for
11 those benefits and a continuing eligibility. That
12 burden was his from the beginning and it continued to be
13 his throughout the process. It never shifted.

14 His decision to decline Sunday employment and
15 thereby claim a religious exemption was dependent on his
16 ability to demonstrate that the refusal was more than a
17 sincere personal belief, that it was, in fact,
18 religious. Simply labeling his preference as religious
19 didn't make it so.

20 At the hearing, as I have illustrated before,
21 he had made -- there were a number of attempts made to
22 draw out the nature of his beliefs with very little
23 information gathered. He was asked what his faith was.
24 He simply said it was Christian. He asked what church
25 he belonged to, to which he didn't respond. He asked if

1 there were tenets of the church that prohibited it. He
2 said, no, that just as a Christian, I feel it's wrong.
3 When asked to add his own thoughts about the record --
4 to add anything before the hearing was closed, he
5 declined and simply left.

6 I think that based on the evidence, there was
7 nothing else that the hearing officer could do but to
8 deny him his claim of benefits because he had simply
9 declined an offer of suitable employment and that he had
10 failed to show that for either a religious reason or any
11 other reason that the job was unsuitable for him.

12 QUESTION: Well, all that sounds very good to
13 me, but -- but I think what you're questioning with that
14 is his sincerity. I think what you're saying is this
15 fellow -- he didn't really even belong to an organized
16 religion. He didn't show he ever goes to church, but he
17 comes in here and says I've always felt it's wrong to go
18 -- you know, to work on Sunday because I'm a Christian.

19 If you want to question his sincerity, that's
20 fine. But here you have a court that says, oh, no, I
21 believe he's sincere that he really believes that God
22 doesn't want him to work on Sunday, but nonetheless
23 that's not a religious belief.

24 I think once you admit he sincerely believes
25 that God does not want him to work on Sunday, you have a

1 religious belief. I don't know what -- what more you
2 have to prove.

3 MR. RUIZ: Well, I think -- I think the
4 attempt here that was made to try and point out whether
5 he was a member of a religious organization -- I think
6 membership in an organization not only would point to
7 the religious nature of the beliefs, but also to the
8 sincerity. So, I think it's -- it's a two-part thing.

9 And I think that you can say simply because
10 someone sincerely holds a belief doesn't make it
11 religious, and simply labeling the belief as religious
12 also doesn't make it religious.

13 QUESTION: And -- and that the belief is -- is
14 -- is thought by the individual holding it to be imposed
15 by God, that does not necessarily make it religious.

16 MR. RUIZ: If that is a religious belief
17 beyond simply saying that it's -- it's a religious
18 belief, then you then look to the sincerity. Here we
19 have a claim that -- that was sincere. What we don't
20 have is why was he told that. Where does this
21 particular belief hold a place in his life? What
22 activities would be proper? Religion is sort of measured
23 against the standards of -- of either beliefs, certain
24 tenets that say certain conduct is proper, other is
25 prohibited, other is better and worse or whatever.

1 There is no explanation here of his declining
2 to work on Sunday other than his single statement, I
3 think it's wrong. Much of an explanation as to why he
4 believes that. What -- what place does he hold? How
5 long has he held it? All these go to point to whether
6 or not we're dealing with something that is really
7 religious or whether it's something else.

8 QUESTION: I think they go to sincerity. I'm
9 sorry. I guess I just cannot understand you. I think
10 -- it seems to me you're questioning whether he's
11 sincere.

12 MR. RUIZ: I would apologize to Justice
13 Scalia, but I think that the -- the record here
14 illustrates --

15 QUESTION: Well, let's put it another way.
16 What do you mean other than sincere? Other than sincere.

17 MR. RUIZ: Another way to measure sincerity?
18 Or --

19 QUESTION: What are you arguing other than
20 that he was not sincere?

21 MR. RUIZ: Our argument is basically that
22 whether or not one accepts the notion that he was
23 sincere, which has not been brought into question, that
24 this record fails to establish that there was a
25 religious belief.

1 QUESTION: (Inaudible) not important. Are you
2 saying sincerity is not important?

3 MR. RUIZ: In measuring a religious belief?
4 No, it is very important. I'm just saying that under
5 these facts, sincerity wasn't questioned. But the
6 sincerity of a personal belief is not the same as the
7 sincerity of a religiously held belief, and that the
8 courts below have not determined that on the record here
9 we have sufficient evidence to support his claim of a
10 religious belief.

11 QUESTION: (Inaudible) first raised the
12 sincerity point?

13 MR. RUIZ: The sincerity point?

14 QUESTION: When was it first raised?

15 MR. RUIZ: I think there was a determination
16 at the Board of Review level saying while we don't
17 question his sincerity --

18 QUESTION: That was when it was first raised.
19 And it was raised continually.

20 MR. RUIZ: His sincerity?

21 QUESTION: Yes.

22 MR. RUIZ: I think the -- Mr. Frazee claims
23 his sincerity.

24 QUESTION: And -- and every place you lost.

25 MR. RUIZ: Sincerity?

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QUESTION: The sincerity point.

MR. RUIZ: I think it was conceded throughout

--

QUESTION: You lost in every step, didn't you?
And now you want to get it here.

MR. RUIZ: We have not raised the sincerity
issue. We have illustrated --

QUESTION: Well, why did the court below say
that we don't doubt his sincerity?

MR. RUIZ: The court below did say that they
didn't doubt his sincerity.

QUESTION: So, you didn't raise it.

MR. RUIZ: We did not raise it, no.

QUESTION: They just reached out in the air
and grabbed it.

MR. RUIZ: I think the court was making
comments about his sincerity just in the same way that
the court delved into the -- the sort of historical
evolution of the place that Sunday has historically. We
are trying not to delve into that for the purpose of
this argument.

We would like to sort of take a moment and ask
the Court to consider the fact that this and other
courts have in a variety of contexts undertaken the task
of determining whether or not given a particular set of

1 facts they were looking at a religious claim, whether it
2 was --

3 QUESTION: Well, this Court rarely does
4 something like that when the lower courts have not
5 tackled it. It seems to me that in your position you
6 would have confessed error on the point of law and asked
7 that the case be remanded to the appellate court so that
8 you could make this argument where it belongs, not here.
9 I -- I don't understand why you're making this argument
10 to us, frankly.

11 MR. RUIZ: Well, we -- we raise before this
12 Court in our motion to dismiss the notion that given
13 this set of facts, there was not a constitutional
14 question that was -- that was raised. And we still
15 believe that this Court can support the holding below
16 and, if it wishes, make a determination that the court
17 erred in the way that it arrived at its determine as to
18 constitutional question. I think that would be a -- an
19 appropriate holding if the Court so wishes.

20 We would suggest that applying several of the
21 tests that this Court and other courts have used to
22 determine the presence or the existence of a religious
23 belief, that it can be determined that in this
24 particular set of facts, Mr. Frazee did not raise a
25 claim that implicates the First Amendment. If the

1 belief must be stated in a manner that can be
2 objectively understood to be religious, what we have in
3 this instance is Mr. Frazee claiming a mantle of
4 Christianity and simply saying that he expects the
5 finder of fact to make a determination that the certain
6 body of beliefs associated with that and that his
7 sincerity as to those beliefs should go unquestioned.

8 It's incumbent upon the fact finder in that
9 instance to be presumed to have a certain body of
10 knowledge as to what all of the -- the rights,
11 responsibilities and duties of an adherent to
12 Christianity are and, number one, what this particular
13 individual holds as his own.

14 Secondly, that the belief must be relevant to
15 the purpose that it is invoked. All that we would
16 suggest is that one recognizes that there are a variety
17 of beliefs that may be suggested under the term
18 "Christianity." Not all sects to Christianity hold the
19 sabbath or the Sunday sacred. We must look to see
20 whether or not this particular individual claims to have
21 that as his important tenet of religion.

22 Thirdly, and this is in response perhaps to
23 something raised earlier, that if you don't have
24 something that is identifiable as a religious
25 organization familiar to the Judeo-Christian ethic, that

1 you look at what place this body of beliefs holds in the
2 life of this individual, whether it occupies a place
3 that would be similar to the belief in God in someone
4 else, and make a determination that there is a religious
5 belief even though it does not look like the familiar
6 religions that we may be accustomed to seeing, thereby
7 allowing minority religions to have the same evenhanded
8 treatment as majority religions.

9 If the Free Exercise Clause is to be
10 preserved, then one must accept the notion that it is
11 not self-executing. Those seeking free exercise
12 protection are not burdened, nor their rights diminished
13 if they are asked that they assert those rights in terms
14 that are sufficiently clear and in a context consistent
15 with their established purpose.

16 What Frazee would like the fact finder to do
17 in this instance on the basis of an insufficient record
18 is to infer facts, assume beliefs and then apply his
19 subjective understanding to the terms "I am a
20 Christian." This result should be avoided. To do so
21 would mean that it would deprive individuals who are
22 entitled to First Amendment protection of that
23 protection and wrongfully bestow it on others who would
24 not qualify for it.

25 Thank you.

1 QUESTION: Thank you, Mr. Ruiz.

2 Mr. French, do you have rebuttal? You have
3 two minutes remaining.

4 REBUTTAL ARGUMENT OF DAVID A. FRENCH

5 MR. FRENCH: Yes. Thank you, Mr. Chief
6 Justice.

7 Just briefly, first of all, the Department's
8 statement that the Illinois appellate court couldn't
9 identify Mr. Frazee's beliefs as religious is just
10 flatly erroneous. On page 790 of 512 Northeastern
11 Reporter, the -- the court specifically stated we have
12 presented for determination in this appeal the question
13 of whether the plaintiff's personal, professed religious
14 belief that he could not work on Sundays constituted
15 good cause for his refusal of work.

16 All they were doing was accepting the finding
17 that began in the administrative agency, the very first
18 finding that was made by the claims adjudicator that
19 said Mr. Frazee would not accept work because of his
20 religious convictions. This Court doesn't need to make
21 an independent review of the record to determine --

22 QUESTION: Did the -- did the board or agency
23 -- did they argue in the appellate court to the effect
24 that it -- that his belief must be -- represent a dogma
25 of a particular church?

1 MR. FRENCH: Yes, in fact, they did. In their
2 -- in their brief, they cited the decision out of
3 Arkansas that -- that accorded in --

4 QUESTION: which now -- which they now say is
5 an erroneous statement of constitutional law.

6 MR. FRENCH: That's correct. And I would just
7 say that what -- the question of what is a religious
8 belief is a hard question. But the Court does not have
9 to define what is a religious belief in this case on
10 this record. We're not presented with an issue on the
11 periphery. On this record we clearly have a religious
12 belief. The Illinois appellate court made that
13 determination. So did the agency.

14 Therefore, all the Court has to determine is
15 whether under the Free Exercise Clause, the -- the -- an
16 individual has to have a belief of an established
17 religious organization that's held as a tenet by that
18 organization. And I would submit clearly under the Free
19 Exercise Clause, that's not required and clearly the
20 decision of the Illinois appellate court should be
21 reversed and the case remanded to the Illinois circuit
22 court for a determination of the amount of benefits
23 owing to Mr. Frazee in this case.

24 Thank you.

25 CHIEF JUSTICE REHNQUIST: Thank you, Mr.

1 French.

2 The -- the case is submitted.

3 (Whereupon, at 1:46 o'clock p.m., the case in
4 the above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

No. 87-1945 - WILLIAM A. FRAZEE, Appellant V. ILLINOIS DEPARTMENT OF
EMPLOYMENT SECURITY, ET AL.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Judy Freilicher
(REPORTER)

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