




10-1981

## United States v. Lee

Lewis F. Powell, Jr.

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CFR

Dis - ~~un~~ Note

Inclined to Dismiss  
for want of ~~jurisdiction~~ of Jurisdiction.

If Response answers their Jurisdiction,  
perhaps we should ~~note~~

Then ~~it~~ probably ~~not~~ is a  
proper appeal, as ~~no~~ DC ~~did~~  
~~not~~ invalidate the Fed Social  
Security & ~~the~~ FUTA ~~provisions~~  
~~for~~ withholding taxes. ~~Rather,~~  
The DC seems to have construed  
statutes to avoid a perceived  
violation of Free Exercise Clause

PRELIMINARY MEMORANDUM

Thus, we have no "appeal"

March 20  
January 23, 1981 Conference  
List 1, Sheet 1

No. 80-767

UNITED STATES

v.

LEE

Appeal from W.D. Penn.  
(Teitlebaum)

jurisdiction, & if there is not an  
appeal we have no jurisdiction.  
Case should go first to CA3

Federal/Civil Timely  
(exten.)

1. SUMMARY: The question presented is whether the Free  
Exercise Clause prevents the imposition of FICA and FUTA  
employer's taxes upon a member of the Old Order Amish who  
believes the payment of such taxes to be a sin.

2. FACTS AND PROCEEDINGS: Members of the Old Order Amish  
believe it is a sin to accept social security benefits and to pay

CFR + Reply from SC on jurisdiction. If an appeal  
note. I think the DC is wrong.

Note: see back

Response received;  
no change.  
JAB



social security taxes. FICA and FUTA impose excise taxes upon employers to support various aspects of the social security system. Between 1970 and 1977, appe, a member of the OOA, employed several other members of the sect to work on his farm and in his carpentry shop. He did not withhold from their wages FICA and FUTA taxes. Appe was assessed with a deficiency in 1978 (\$27,000). He paid the amount attributable to wages paid during the first quarter of 1973 and instituted this refund proceeding.

The DC held that imposition of the taxes would violate the Free Exercise Clause. In arriving at this conclusion, the DC relied upon IRC § 1402(g) which exempts members of the OOA and other religious sects coming under the limitations of the section from paying self-employment FICA taxes. This exemption is based in part on the self sufficiency of the sect and upon the refusal by members of the sect to accept any social security benefits. The DC reasoned that the rationale behind § 1402(g) was equally applicable here where the FICA and FUTA taxes were used to implement the social security system. "The Congress seems to have concluded that where a group is both religiously opposed to this form of public welfare and has provided its own alternative source of remedial welfare, the governmental interest has been protected and is therefore not required." In light of the burden these taxes place upon the Free Exercise Clause and in light of the "alternate method of achieving the same end," i.e., the OOA's self reliance, § 1402(g)'s exemption should apply beyond the self-employment context. To hold other wise would be a violation of the First Amendment. In Wisconsin v. Yoder, 406 U.S. 205

(1972), the S.Ct. recognized that the GOA's "long standing tradition of providing alternative vocational training within their own community obviated the need for public education, thus overrode the compelling state interest to provide for the general welfare via compulsory public school attendance to age 16." That same rationale applies here.

The Government lodged this direct appeal pursuant to 28 U.S.C. § 1252. That section provides for a direct appeal to this Court when any court of the United States has struck down a federal statute as unconstitutional in an action in which the US is a party.

3. CONTENTIONS: (1) A person is not protected from every incidental burden on the exercise of his religion that results from the implementation of a neutral statutory scheme. Here, unlike in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, supra, the appe has not been prevented in any substantial way from the exercise of his religion. For example, in Sherbert, the appellant was faced with an unacceptable choice between working on Saturdays and violating the tenets of her religion, and foregoing unemployment insurance. Similarly in Yoder, members of the OOA were being asked to "risk losing their children from their faith or violate the law." There is no such choice here. The payment of FICA and FUTA taxes does not prevent appe from caring for his own people as required by his religion, nor does it require him to accept social security benefits. An incidental impact is outweighed by the government's interest in



maintaining the social security system. Cf. Braunfeld v. Brown, 366 U.S. 599 (1961). (2) The DC has misinterpreted § 1402(g) and its interrelationship with the Free Exercise Clause. The exemption is not required, but merely permissible. The exemption granted for self-employed persons is simply a matter of legislative grace and "represents a reasonable compromise between the interest of the government in insuring maximum participation, in, and contribution to, the social security system, on the one hand, and the possibly conflicting beliefs of certain religious groups, on the other."

4. DISCUSSION: First, in order for this to be a proper appeal, the DC must have concluded that an Act of Congress is unconstitutional. The lower court did not clearly do that. Rather, the court appears to have held that the exemption in § 1402(g) would be applicable here even though this case did not involve self-employment FICA taxes. This extension of the exemption was required by the Constitution. Under this view, it was unnecessary for the DC to strike down any statute either on its face or as applied. Of course, the opinion below is susceptible to the interpretation apparently relied upon by the SG, but literally nowhere in the DC opinion does the court hold that any statute is unconstitutional. If this is not a proper appeal under § 1252, there is no provision for cert to the DC and DWJ would be the proper disposition. Second, on the merits, the SG has presented a strong argument that these taxes are a minimal burden upon the practice of the Amish faith and should be upheld.



I agree that Sherbert and Yoder are distinguishable since the intrusion in those cases directly and substantially burdened a central religious tenet. Here, the belief that to pay FICA or FUTA taxes is a sin seems at least peripheral to the core belief that the community should support its own and that members of the sect should not accept any type of social security benefits. Braunfeld v. Brown, which involves an incidental impact upon a religious tenet, provides a more likely model for the immediate situation. In addition, the DC's extention of the § 1402(g) exemption beyond the self-employment context is contrary to both the specific structure of the statute and the legislative history of the section: "The proposed exemption would be limited to the self employment tax under social security since those persons for whom the payment of social security taxes appears to be unreconcilable with their religious convictions also, by reason of their religious beliefs, limit their work almost entirely to farming and to certain other self-employment." H.R. Rep. No. 213, 89th Cong. 1st Sess. (1965). In short, on the merits, CFR with an eye toward Note would be appropriate, assuming this is a proper appeal.

Since I am inclined to read the DC opinion as turning upon a statutory construction which avoids declaring any Act of Congress unconstitutional, I recommend DWJ. The parties could be asked to address this question.

There is no response.

1/13/81

Ides

Opn in statement





Reviewed 9/23

Appellee, Lee, is an Amish farmer who employs labor. The Q is whether in view of his religious beliefs the Govt lawfully may require him to pay Social Security taxes [both Unemployment (FUTA) and old age benefits (FICA)].

df1 10/21/81

SG considers that (i) Amish do not accept benefits under either, & (ii) it is a "sin" for them to pay these taxes.

DC held, on a balancing analysis, that the "free exercise" clause would be violated if Amish were compelled to sin in this way.

There is tension - almost irreconcilable - between the Establishment & Free Exercise Clauses.

Govt does not make the Establishment Clause argument. It meets head-on the line of free exercise cases that have applied a balancing test, with Govt to show a compelling interest.

BENCH MEMORANDUM

To: Mr. Justice Powell October 21, 1981

From: David Levi David agrees there is a burden on free exercise but thinks the general interest in a neutral tax system is compelling. See especially pp 13-18

No. 80-767, United States v. Lee

Question Presented

Whether the free exercise clause is violated by the imposition of social security taxes on an employer--a member of the Amish faith--who believes that the payment of these taxes is a religious sin.

I. Facts and Decision Below



Edwin D. Lee, a farmer and carpenter, is a member of the Old Order Amish religion. The Amish believe that each member of the faith must provide for the other members of the community who are in need. They believe it is a sin to fail to provide for your own or to permit others to assume this responsibility: "But if any provide not . . . for those of his own house, he hath denied the faith and is worse than an infidel." (I Timothy 5:8). Because the Amish take care of one another, they do not need any social welfare benefits from outside. Because they believe in taking care of their own as an article of their faith, "[n]ot only is it considered a sin to accept," social security benefits "it is also considered a sin to pay," social security taxes, "for to pay is to deny their faith." The government does not contest that these articles of faith are genuine and sincerely held.

The social security system is supported by various taxes including 1) a tax imposed by the Federal Insurance Contributions Act (FICA) on employees with respect to their wages; 2) an excise tax imposed by FICA on employers with respect to wages paid their employees; and 3) a second excise tax imposed by the Federal Unemployment Tax Act (FUTA) on employers with respect to wages paid to employees.

In 1950, Congress extended the social security system to cover self-employed persons, and a self-employment tax was levied to support this extension of benefits. In 1965, however, and with the "Amish particularly in mind," the

*With  
Amish  
in  
mind*

Congress enacted an "exemption" from the self-employment tax for <sup>Amish and</sup> any self-employed person who "is a member of a recognized <sup>exempted</sup> religious sect . . . and is an adherent of established tenets <sup>from</sup> or teachings of such sect . . . by reason of which he is <sup>the</sup> conscientiously opposed to acceptance of the benefits of any <sup>self-employment</sup> private or public insurance" providing death, disability, old <sup>tax</sup> age, retirement or medical benefits. 26 U.S.C. § 1402(g). Before the exemption may be claimed, the objector must waive all right to any social security benefits, while the Secretary of HHS must find that the sect has been in existence since December 31, 1950, and that it is the practice of the sect "for members of such sect ...to make provision for their dependent members."

But the exemption from social security taxes is only <sup>But</sup> available to the self-employed. Believing that those who <sup>exemption</sup> opposed these taxes on religious grounds were also people who <sup>does</sup> by reason of their religious beliefs "limit their work almost <sup>not</sup> entirely to farming and to certain other self-employment," <sup>extend</sup> H.R. Rep. No. 213, 89th Cong., 1st Sess. 101-102 (1965), the <sup>beyond</sup> Congress did not see fit to extend the exemption to employers <sup>self-</sup> and employees who also opposed the taxes on religious grounds. <sup>employed</sup> Herein lies the origin of this litigation.

During 1970-1977, Lee employed several other <sup>Facts</sup> Amishmen who worked on his farm and in his carpentry shop. He <sup>as to Lee</sup> did not withhold the employee share of FICA taxes from their wages as required by 26 U.S.C. § 3102(a), nor did he pay FUTA



taxes or the employer's share of FICA taxes. In 1978, the IRS assessed Lee for a deficiency of some \$27,000. Lee paid \$91 in taxes attributable to wages paid to his employees for the first quarter of 1973. He then began suit for a refund in the USDC for the Western District of Pennsylvania and for injunctive relief against the Commissioner with respect to the unpaid balance. Lee argued that the collection of FUTA and FICA taxes violated his and his employees rights under the free exercise clause. The district court (Teitelbaum) agreed.

The court found that in cases of this sort where the right to free exercise clashes with equally valued governmental interests, a balancing test must be applied to determine which interest will yield. On the one hand, and as the government conceded, there was no question that the Amish objection to the tax was genuine and grounded in religious belief. On the other hand, it did not appear to the court that the burden on the government's interests would be significant were it forced to exempt religious objectors to the taxes. The group seeking the exemption was "clearly defined, long-recognized, and unquestionably sincere." There was no danger of "an open-ended category capable of uncontrolled expansion." The Amish and groups like them are small groups; their labor generates only a small amount of wages and taxes, and "[t]he loss of revenue from granting the exemption would be negligible." AC

Moreover, the government had already granted an exemption from the tax for the self-employed. By granting the exemption, Congress appeared to have concluded that when a group is religiously opposed to the tax and has a commitment to providing for the care of its members, the government's interests are sufficiently protected. Just as in Yoder v. Wisconsin, 406 U.S. 205 (1972), in which the Court reasoned that the government interest in the education of children was being satisfied by the Amish themselves, here the government's interest in the economic welfare of the aged and infirm was satisfied by the Amish themselves. Concluding that the government had failed to show a compelling interest, that the burden on Lee and others like him was severe, and that the risk of abuse of an exemption could be controlled, the court ordered that the exemption for self-employed persons be extended to employers as well: "plaintiff Lee, and employers who fall within the carefully circumscribed definition provided in 1402(g), are releived from paying the employer's share of FICA and FUTA as it is an unconstitutional infringement upon the free exercise of their religion." Appx. at 8a. <sup>1</sup>

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<sup>1</sup>The court did not grant Lee injunctive relief because of the bar of the Anti-Injunction Act. Note that there is an ambiguity in the court's order. The court ordered a refund of the full \$91, including that portion of the employee's FICA tax that should have been withheld. However, the statement of the Footnote continued on next page.



## II. Analysis

### A. Sherbert v. Verner and the Free Exercise Clause

This is another free exercise challenge in a modern line of cases attacking facially neutral government programs and regulations. In Braunfeld v. Brown, 366 U.S. 599 (1961), the Court rejected the free exercise challenge of orthodox Jewish merchants who claimed that their ability to earn a livelihood was impaired by Sunday closing laws. The Court found that "if the State regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the State's secular goals, the statute is valid despite its indirect burden on religious observance ..." Id. at 607. When Braunfeld was examined in light of Everson v. Board of Education, 330 U.S. 1 (1947)--in which the Court held that it was not a violation of the Establishment Clause for the state to pay the bus fares of parochial school pupils as a part of a general program under which it paid the fares of pupils attending public and other schools--a single coherent theory of the establishment and free exercise clauses seemed to be emerging:

"The freedom and separation clauses should be read as stating a single precept: that government cannot utilize religion as a standard for action or inaction because these clauses, read together as

Everson  
←

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holding applied only to the employer's share of FICA and FUTA

they should be, prohibit classification in terms of religion either to confer a benefit or to impose a burden." Kurland, Of Church and State and the Supreme Court, 29 U.Chi.L.Rev. 1, 96 (1961).<sup>2</sup>

In Sherbert v. Verner, 374 U.S. 398 (1963), however, the Court shattered the 'neutrality approach'. In Sherbert, a Seventh-day Adventist was discharged by her employer because she would not work on Saturdays, the Sabbath of her faith. She was unable to find other work permitting her to observe her Sabbath, and she applied for state unemployment compensation. South Carolina denied her claim because state law barred benefits to workers who failed, without good cause, to accept suitable work when offered. The Court found that despite the law's apparent neutrality, it burdened the right of free exercise: Sherbert was forced to choose between following her faith and forfeiting the benefits on the one hand, or abandoning her faith in order to accept work on the other. Such a burden could only be justified by "some compelling state interest." Not surprisingly, the Court found none. More surprisingly, the Court found that its holding "plainly" did not run afoul of the establishment clause.

Sherbert and its offspring have come into their fair

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<sup>2</sup>See Welsh v. United States, 393 U.S. 333 (1970) (Harlan, J., concurring); Weiss, Privilege, Posture and Protection: "Religion" in the Law, 73 Yale L.J. 593 (1964).



share of criticism. The principal criticism has been that these "free exercise cases" are in outright conflict with the Court's decisions under the establishment clause. <sup>cases</sup> Thus, Professor Kurland suggests: "It becomes immediately apparent how the labeling of a case [e.g. as a "free exercise" or "establishment" case] may be determinative of its outcome. There is no doubt . . . that the exemption granted exclusively to the Amish in Wisconsin v. Yoder would fall afoul of the establishment clause standards announced by the Court. . . ." Similarly, Professor Ely intones that Sherbert is "supremely suspect" under the establishment clause and that "it should not be followed."<sup>3</sup> !

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<sup>3</sup>See Ely, Legislative and Administrative Motivation in Constitutional Law, 79 Yale L.J. 1205, 1319-1322. Ely suggests that the only way in which to cure the establishment clause problem in Sherbert would be to require the government to extend an exemption to anyone who had a good faith moral objection--not simply a religious objection--to the particular government program. But to require the government to do so would be to cause "substantial disruption of state and federal regulatory programs." Id at 1320.

Justice Rehnquist's dissent in the most recent free exercise case, Thomas v. Review Board, \_\_\_ U.S. \_\_\_ (1981), also points to the tension between Sherbert and the Court's establishment clause cases. He argues that the Court should return to something like the neutrality theory of old. He suggests that the Court should abandon Sherbert--neutral regulations indirectly burdening religious activity should not be held to restrict the right of free exercise--but should also adopt a less rigorous interpretation of the establishment clause as well--the state should be permitted, not forced, to make the sort of exceptions the Court required in Sherbert and Thomas. Note that under the Kurland/Ely formulation of the neutrality approach the exemptions in Sherbert and Thomas would not be permissible because such exemptions favor religious objections

Footnote continued on next page.

Whatever the merit of these criticisms of Sherbert, the fact of the matter is that the Court has not been prepared to abandon it. In Yoder v. Wisconsin, 406 U.S. 205 (1972), the Court found that a state's compulsory education laws must yield to the religious requirements of the Amish faith. And just the past term in Thomas v. Review Board, \_\_\_ U.S. \_\_\_ (1981), the Court reaffirmed Sherbert finding that unemployment compensation could not be withheld from a Jehovah's Witness who quit his job because his religious beliefs forbade him from participating in the production of armaments.

*Court has not abandoned Sherbert*

In all three of these cases--Sherbert, Yoder, and Thomas--the Court required the state to come forward with an "overriding" if not "compelling" interest.<sup>4</sup> And in all three

over objections based upon conscience.

<sup>4</sup>In Yoder the Court appeared to be applying a balancing test of the sort suggested by Professor Gianella in his important article Religious Liberty, Nonestablishment, and Doctrinal Development, 80 Harv. L. Rev. 1381, 1390 (1967):

A thoroughgoing balancing test would measure three elements of the competing governmental interest: first, the importance of the secular value underlying the governmental regulation; second, the degree of proximity and necessity that the chosen regulatory means bears to the underlying value; and third, the impact that an exemption for religious reasons would have on the overall regulatory program. This assessment of the state's interest would then have to be balanced against the claim for religious liberty, which would require calculation of two factors: first, the sincerity and importance of the religious practice for which special protection is claimed; and second,

Footnote continued on next page.



of the cases the state's interests were found wanting. Only when the power "to raise and support armies" has been thrown into the balance has the Court been prepared to uphold a general regulatory scheme placing a serious burden on free exercise. See Gillette v. United States, 401 U.S. 437 (1971); Johnson v. Robison, 415 U.S. 360.

In short, unless the Court wishes to take this opportunity to overrule Sherbert,<sup>5</sup> the Court's analysis in the case at bar should follow that of Sherbert, Yoder, and Thomas: the relative interests of the state and the individual must be weighed and only a "compelling" or "overriding" government interest will suffice to justify a serious intrusion on the

the degree to which the governmental regulation interferes with that practice."

The Court in Yoder never once makes use of the "compelling" interest language. I believe at that time the Chief Justice was opposed to the "compelling" interest test entirely. But in Thomas, he did return to this formulation: "The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest." I doubt it matters much how the test is stated. Even under the gentler scrutiny of a balancing test, the state's powerful interest in compulsory education was found wanting in Yoder.

<sup>5</sup>This would be a poor case in which to overrule Sherbert since the establishment clause problem is not argued. Normally the government would make such an argument. But since the government has granted an exemption to self-employed persons, and since that exemption would also be condemned if the establishment clause argument were made and accepted, the government has avoided the argument entirely.

*Follow  
analysis  
in  
recent  
cases*

Unless  
←

right of free exercise. This is also the approach that the district court used below; whether or not the district court properly analyzed or weighed the competing interests is the question the Court must now answer.

B. Balancing the Interests

1. the burden on free exercise

There is no question that the required tax places some degree of burden on the right to free exercise. The district court found, and the government did not contest, that the Amish believe that the very payment of the taxes is a sin. The government argues, however, that the infringement on free exercise is "far less" severe in this case than in any of Sherbert, Yoder, or Thomas. In Sherbert and Thomas the state forced the individual to choose between his or her beliefs and economic survival. In Yoder the choice facing Amish parents was either to risk losing their children from the fold or to violate the law. By contrast, the government argues that forcing Amish employers to pay social security does not "threaten the integrity" of their faith. Lee is not prevented from "providing for his own people, nor are he or any of his employees forced to accept social security benefits."

*David doubts →* But I doubt that that the "choice" in this case is any less burdensome than the choices condemned in Sherbert, Yoder, and Thomas. The choice here would seem to be



significant: an Amishman may either follow the dictates of his faith but not hire anyone, or he may hire employees and sin. Indeed, in one respect this choice seems more burdensome than the choice in Sherbert or Yoder. In neither of those cases did the government affirmatively require a violation of conscience: the government did not order Sherbert to work on a Saturday nor compel the Amish children to leave the faith. In this case, if an Amishman decides to hire an employee, the government affirmatively will require him to commit a sin. I would not make too much of this last observation, and surely the important point is that any distinction between the burden imposed in these free exercise cases is not significant.

Further, to the extent that the government is now suggesting that payment of these taxes is not a "real" sin, and that the real sin would be to accept benefits or fail to aid community members in need, I do not think that the Court should credit the suggestion. The government did not contest in the district court that payment of the taxes was a sin and should not be permitted to do so now. To the extent that the government is arguing that the sin of payment is not a serious one in the hierarchy of Amish values, I think the government puts the Court in a most uncomfortable position of interpreting and weighting the various canons of the Amish faith. Such a position would be difficult to fill even if there were evidence in the record from which to make such judgments. Here there is simply no evidence from which to

*Gov't did not deny in DC that payment of tax is a "sin"*

*David concludes  
as to free  
exercise*

conclude, as the government asserts, that "[a]lthough appellee claims that the payment of the tax would be a sin, it does not . . . threaten the integrity of his religious beliefs."

In short, since the trial court found that payment of the taxes would be a sin, and since the government never contested this fact, I do not think that the Court should now pay heed to attempts to refine or dispute this conclusion. There is a "burden on free exercise" and it is a "significant one." More the Court need not, indeed cannot on this record, determine.

## 2. the burden on the government

Far more impressive is the government's argument that it has a fundamental interest in maintaining broad participation in the social security system and indeed in the tax system as a whole. The government makes the point that the social security system, although nominally an insurance system, is no different from any other government program. As with any program there will be those taxpayers who do not approve of it or who do not need it. Yet disapproval or lack of need are not legitimate grounds for avoiding taxes; if they were, the tax system would collapse.

*Yes!*

Thus, the Court long ago rejected the claim that those taxpayers who do not benefit from a tax need not pay it. See Carmichael v. Southern Coal Co., 301 U.S. 495, 521 (1937) (social security taxes may be levied on taxpayers who do not benefit from the social security system). Similarly, the



courts of appeal have consistently rejected the refusal of religious groups to pay that proportion of their taxes going to military expenditures. In the leading case of Autenrieth v. Cullen, 418 F.2d 586, 588-89 (CA9 1969) (Duniway), the CA9 rejected the claim to a refund of taxpayers opposed to the Vietnam War: "The Income Tax Act does not 'aid one religion, aid all religions, or prefer one religion over another.' ... On matters religious, it is neutral. If every citizen could refuse to pay all or part of his taxes because he disapproved of the government's use of the money, on religious grounds, the ability of the government to function could be impaired or even destroyed.... There are few, if any, governmental activities to which some person or group might not object on religious grounds." (emphasis added). See Lull v. Commissioner, 602 F.2d 1166 (4th Cir. 1979); Graves v. CIR, 579 F.2d 392 (6 Cir. 1978) (Quakers may not claim a "war tax credit" because they oppose paying taxes to support the Vietnam war). Cf. U.S. v. American Friends Service Comm. 419 U.S. 7 (1974) (Anti-Injunction Act bars district court order enjoining government from requiring employer to withhold taxes of Quaker employees opposed to Vietnam War).

I think that there is considerable strength to the government's position that if an exemption is required here similar exemptions may be required elsewhere. On what basis could the Court find that an exemption must be made in this case but not in cases in which, for example, Quakers refuse to

pay that portion of their taxes going to national defense? Surely, the fact that the Amish are a small religion whereas the Quakers are not cannot be the distinguishing factor-- although one suspects that this was the critical factor in Yoder. Even acknowledging that larger religions are better able to take care of themselves, it would seem odd to permit a "freer" exercise of religion by small religions than by larger denominations. And if no distinction can be made between the Amish objection to social security tax and other religious objections to other government taxes, then I think that the government has come forward with an interest that the Court may feel comfortable in terming "compelling" or "overriding." Consider further that if the free exercise clause requires that religious objections to taxes be respected, the establishment clause may then require that all who hold a moral objection to certain taxes be treated in the same fashion. Like the interest in procuring the manpower necessary for military purposes, the interest in preserving the ability of the government to raise revenues will justify any burden imposed by a general tax on the free exercise of religion.

The strongest argument against the government is that it has already granted an exemption to self-employed Amish who oppose social security. The existence of the exemption casts doubt on the government's claim that the tax system will collapse if exemptions are granted. It may also

| yes



cast doubt on the government's claim that social security is a tax like any other; the fact of the exemption implies both that the government's major interest is the provision of welfare, and that the government acknowledges that this interest can be satisfied when a religious community is committed to taking care of its members.

The government makes a number of responses to this argument. The strongest of these arguments is that while the system is not damaged by the extension--as a matter of grace--of a limited exemption, the system would be irreparably harmed were this exemption constitutionalized. Were the Court to find that exemptions from social security taxes are required under the free exercise clause, a powerful precedent would be established for exempting religious objectors from a whole host of taxes. No court has ever found the exemption for self-employed taxpayers to be a constitutional requirement. Indeed, it is doubtful that the exemption with its fairly arbitrary requirements--i.e. existence of the religion since 1950--could survive were it deemed to be a requirement of the free exercise clause. The exemption is simply an effort to accommodate religious views while not unduly sacrificing the goal of maximum participation in the social security system. Perhaps one might draw a comparison to the draft cases. The Congress provides an exemption for those who oppose all wars. But the free exercise clause neither requires that the exemption be made nor, that once made, the exemption be

*The exemption for  
self-employed is an  
'economic classification'*

extended to those who oppose some wars but not all wars. See Gillette, supra.

If this response is convincing, and I think it is, then I think that there is little difficulty in justifying the limited nature of the self-employed exemption. The distinction the exemption draws is not based on religious belief but on economic classifications--"those involved in an employment relationship and those who are self-employed." }

This is precisely the sort of distinction that the tax system repeatedly makes and must be able to make. And there is good reason to distinguish between those who are self employed and those who are not. The self-employed, typically subsistence, worker does not generally compete in the market economy. Thus the grant of the exemption does not create an unfair competitive edge. Moreover, the self-employed are most likely to possess the economic resources to provide for themselves in the event the religious community fails to perform its duty. By contrast, Amish employees may decide to leave the faith or become ineligible for aid from their community and find themselves without the resources to survive.

### III. Conclusion

In sum, I think the government makes a telling argument against finding any constitutionally required exemptions from the tax system. Of course, it is hard to say that any interest is a "compelling" interest, and the Court does require a compelling interest to justify a burden on free



exercise. See Thomas. But the Court also approaches the question as one of balancing, see Yoder. I think that the <sup>the</sup> integrity of the tax system is probably compelling but most certainly outweighs the burden on free exercise however severe. I would add that as in all of these free exercise cases the tension with the establishment clause strikes me as quite unbearable. Indeed, I think that the exemption the government now provides violates the establishment clause. But the establishment clause question is not before the Court, and, as Sherbert indicates, the Court is willing to live with tension between the free exercise and establishment clauses.

*Probably*

October 23, 1981

LFP/vde

Re: 80-767 - UNITED STATES v. LEE

Memorandum to file

The purpose of this memorandum is to emphasize some of the points in David's excellent bench memo.

1. Partial exemption Since 1965, the Amish who are self-employed (i.e. who employ no other persons) are exempted from both types of social security taxes. There is no exemption when an Amish employs other persons, as in this case.

2. A Free Exercise Case. There is tension between the free exercise and the Establishment Clauses. The Court's cases have not been consistent. In Everson v. Board of Education (1947), the Court found no violation of the Establishment Clause for the state to pay bus fare of parochial school pupils as part of a general program. It announced as a single coherent theory that where government action is strictly neutral, and neither "confers a benefit or imposes a burden" on religion, there is no violation of either clause.



But three subsequent cases have abandoned the neutrality approach. In Sherbert v. Verner (1963), the Court found a violation of the Free Exercise Clause when a Seventh Day Adventist was discharged because she would not work on Saturdays. In Wisconsin v. Yoder (1972), it was held that a state's compulsory education law must yield to the Amish belief that they must educate their own children. And last Term in Thomas v. Review Board, we reaffirmed Sherbert, and held that a Jehovah's Witness could not be denied unemployment compensation who had quit his job because his religious beliefs forbade to work on armaments.

In all three of these cases, the Court applied a balancing test, requiring the showing of a compelling State interest.

Although much can be said for the desirability of returning to the "neutrality" test of Everson, no argument is made here - or below - that the government would aid an establishment of religion if it exempted the Amish. Rather, *This is solely a "free exercise" case* this case has been presented only on the question whether the governmental interest in uniform tax collection outweighed the unquestioned burden on Amish free exercise.

3. Is the government's interest compelling? It argues that the social security system is no different from any other general government program. There will be tax payers who object - on religious or other persuasive



personal grounds - on any form of taxation or governmental action. For example:

(a) Right to life adherents think it immoral to fund abortions.

(b) Quakers think it <sup>m</sup>imoral to fund national defense.

(c) Religious groups that do not celebrate Sunday disapprove of now obselete Sunday closing laws, and groups that disapprove of working on Sunday favor such laws.

Judge Duniway, in the leading case of Autenreith v. Cullen (C.A. 9 1969), rejected the claim of tax payers opposed to the Vietnam War. He wrote:

"The Income Tax Act does not 'aid one religion, aid all religions, or prefer one religion over another.' ... On matters religious, it is neutral. If every citizen could refuse to pay all or part of his taxes because he disapproved of the government's use of the money, on religious grounds, the ability of the government to function could be impaired or even destroyed.... There are few, if any, governmental activities to which some person or group might not object on religious grounds. (emphasis added)."

*no  
establish-  
ment  
effect*

4. The Partial Exemption Argument. The strongest argument against the government is that it already has exempted self-employed Amish who oppose social security.



The government answers this by saying the Constitution does not require the exemption. It is a matter of legislative grace. Moreover, classifying self-employed from employer of others is a legitimate economic classification.

80-767 U. S. V. LEE

Argued 11/2/81



## Wallace (SG)

~~WJB~~

Responding to WJB, Wallace agreed that findings below are that it would be a "sin" to pay the tax.

The "test" is a balancing ~~one~~ one. Wallace declined to say the standard is "compelling interest."

→ America can pay tax ~~with~~ with no obligation to accept benefits..

WJB. noted this is ~~not~~ distinction between Sherbert + Hodes and this case

"Gov't need not show compelling interest"

Wallace emphasized that Social Security Taxes are not "insured" - it is a general tax.

See p 28 of SG's Brief. with quote from Carmichael v U.S. 301 U.S. 522-523.

→ Taxer protect the welfare & defense of Country, including the freedom of religion

Fleming v Nestor 360 U.S. makes clear this is a general tax - ~~not~~ no vested interest.

Amish

Carayza (Appellee)

Amish believe issue is "saving of their souls". Book of Timothy.

The C.G. noted that rather than "taking care" on individual basis, our system is to pool funds then taxes for benefit of all who need.

Income tax is "compelling".

Conceder test is balancing one of Sherbert

see  
note 11  
of SG's  
Brief,  
p 23

What if S/Secumly is funded out of income tax revenue? Counsel answered ~~Amish~~ Amish would it want to pay income tax. (He later qualified this)

Some Amish do leave faith. But counsel referred us to what was said in Yoder



The Chief Justice

Reverne

Thomas went a long way but was compelled  
by Sherbert

Amish can't mitigate effect by not  
receiving benefits or giving them to needy Amish  
~~But~~ no principled way to exempt  
Amish from these taxes

Justice Brennan

Reverne

Government interest here "overrides"  
the Amish interest affected here;  
This is not inconsistent with  
Sherbert or Thomas. In each of  
those cases the TTS were required  
to give up something - job, unemployment  
insurance. Here, Amish only give up what  
everyone else gives up - taxes

Justice White

Reverne

Agree with C J & W J B



Memorandum

80-767 U.S. v Lee (Amish -  
Social Security Tax)

1. Free Exercise Case - Argued  
only that taxer burden F/Exercise

Fed Govt doesn't justify  
~~tax~~ failing to exempt by  
arguing - as it might - that  
allowing exemption would  
further "Establishment" of  
Amish religion.

2. Compelling State Interest.  
Govt. - accepting "balancing  
test of Sherbert, Yoder &  
last Term's Review Board -  
argue the compelling interest  
in the uniform integrity  
of the S/Security system.

Though there is some  
burden on Free Exercise,  
the interest of a neutral  
tax system is compelling.



Justice Marshall Reverse

TM had  
"tongue  
in cheek".

{ Father Divine's "flock" accepted no  
fed. or state benefits. (He "got rich")  
Thus, Amish are not alone.  
Agrees with C & W & B.

Justice Blackmun

Amish care for their own - but  
not others.

Govt interest is not compelling  
but is substantial enough to prevail  
on balancing test.

Justice Powell Reverse

The ~~tax~~ certain burden free exercise;  
But ~~it~~ <sup>taxes</sup> are neutral, and Govt interests  
are - exceptionally strong.

Nature of govt. interest is fundamental  
to an organized society.

Prior cases not easy to distinguish  
but they are different.

Probably apply ~~the~~ "balancing" analysis

Justice Rehnquist

Reverse

Start with Stone's language  
in Carmichael

~~That~~ Reversal is "totally" inconsistent  
with Sherbert, Yoder & Thomas -  
but they are wrong

Would not "balance". Wrong  
way to decide these cases.

Justice Stevens

Reverse

Easy case

Justice O'Connor

Reverse

Would not join a "balancing"  
analysis.

But govt interest is "compelling"



U.S. v. Lee - Querrant  
ask SG

Is Self-employed Amish  
are exempt. Does this  
further Establishment?

~~Why a difference~~  
If so, is exemption  
invalid?

Are we to view this  
as Free Exercise case only.

Apply balancing  
test of Sherbert & Yoder?

Must Govt show  
compelling interest

Does SG agree  
the ~~tax~~ tax imposes  
some burden?



To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: The Chief Justice

Circulated: DEC 5 1981

Recirculated: \_\_\_\_\_

1st DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 80-767

UNITED STATES, APPELLANT v. EDWIN D. LEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA

[December —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We noted probable jurisdiction to determine whether imposition of social security taxes is unconstitutional as applied to persons who object on religious grounds to receipt of public insurance benefits and to payment of taxes to support public insurance funds. — U. S. — (1981). The District Court concluded that the Free Exercise Clause prohibits forced payment of social security taxes when payment of taxes and receipt of benefits violates the taxpayer's religion. We reverse.

## I

Appellee, a member of the Old Order Amish, is a self-employed farmer and carpenter. From 1970 to 1977, appellee employed several other Amishmen to work on his farm and in his carpentry shop. He did not file the quarterly social security tax returns required of employers, withhold social security tax from his employees or pay the employer's share of social security taxes.<sup>1</sup>

<sup>1</sup>The Social Security Act and its subsequent amendments provide a system of old age and unemployment benefits. 26 U. S. C. § 3101 *et seq.* These benefits are supported by various taxes, including, relevant to this appeal, the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) tax. FICA is an tax paid in part by employees through withholding, 26 U. S. C. § 3101, and in part by employers through an excise tax. 26 U. S. C. § 3111. FUTA is an excise tax imposed only on employers. 26 U. S. C. § 3301. Both taxes are based on

Renewal  
join  
LFP

See  
my  
letter  
to C. J.



In 1978, the Internal Revenue Service assessed appellee in excess of \$27,000 for unpaid employment taxes; he paid \$91—the amount owed for the first quarter of 1973—and then sued in the United States District Court for the Western District of Pennsylvania for a refund, claiming that imposition of the social security taxes violated his First Amendment Free Exercise rights and those of his Amish employees.<sup>2</sup>

The District Court held the statutes requiring appellee to pay social security and unemployment insurance taxes unconstitutional as applied. The court noted that the Amish believe it sinful not to provide for their own elderly and needy and therefore are religiously opposed to the national social security system.<sup>3</sup> The court also found that the Amish religion not only prohibits the acceptance of social security benefits, but also bars all contributions by Amish to the social security system. The District Court observed that in light of their beliefs, Congress has accommodated self-employed Amish and self-employed members of other religious groups

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the wages paid to employees, and the recordkeeping and transmittal of funds are obligations of the employer. Only FICA is collected from self-employed individuals.

In this case appellee failed to pay the employer's portion of FICA and FUTA taxes and failed to withhold his employee's contributions to FICA. An employer is liable for payment of the employee's share of FICA whether or not he withholds the required amount of the employee's contribution. 26 U. S. C. § 3102(b).

<sup>2</sup> Appellee also requested injunctive relief to prevent the Commissioner of Internal Revenue from attempting to collect the unpaid balance of the assessments. Under the Internal Revenue Code, injunctive relief is to be granted sparingly and only in exceptional circumstances. 26 U. S. C. § 7421(a). The District Court therefore denied injunctive relief, but noted that should the government attempt to collect the remaining payments "further Court relief could be requested." District Court Op., Reprinted in Petition for Certiorari p. 8a.

<sup>3</sup> Appellee indicates that his scriptural basis for this belief was: "But if any provide not . . . for those of his own house, he hath denied the faith, and is worse than an infidel." (I Timothy 5:8)

with similar beliefs by providing exemptions from social security taxes. 26 U. S. C. § 1402(g).<sup>4</sup> The court's holding was based on both the exemption statute for the self-employed and the First Amendment: appellee and others "who fall within the carefully circumscribed definition provided in 1402(g) are relieved from paying the employer's share of [social security taxes] as it is an unconstitutional infringement upon the free exercise of their religion."<sup>5</sup>

Direct appeal from the judgment of the District Court was taken pursuant to 28 U. S. C. § 1252.

## II

The exemption provided by § 1402(g) is available only to self-employed individuals and does not apply to employers or

---

<sup>4</sup>26 U. S. C. § 1402(g) provides, in part:

"(1) *Exemptions*.—Any individual may file an application . . . for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act)."

In order to qualify for the exemption, the applicant must waive his right to all Social Security benefits and the Secretary of Health and Human Services must find that the particular religious group makes sufficient provision for its dependent members.

<sup>5</sup>The precise basis of the District Court opinion is not clear. The court recognized that on its face § 1402(g) does not apply to appellee because he is not a self-employed individual. The District Court nonetheless used the language of § 1402(g) to provide an exemption for appellee. The court's decision to grant appellee an exemption, however, appears to be based on its view that the statute was unconstitutional as applied. Consequently, this Court has jurisdiction under 28 U. S. C. § 1252 to hear the appeal. See also *United States v. American Friends Service Committee*, 419 U. S. 7, 9 n. 4 (1974).



employees. Consequently, appellee and his employees are not within the express provisions of § 1402(g). Thus any exemption from payment of the employer's share of social security taxes must come from a constitutionally-required exemption.

## A

The preliminary inquiry in determining the existence of a constitutionally-required exemption is whether the payment of social security taxes and the receipt of benefits interferes with the Free Exercise rights of the Amish. The Amish believe that there is a religiously based obligation to provide for their fellow members the kind of assistance contemplated by the social security system. Although the government does not challenge the sincerity of this belief, the government does challenge the District Court finding that members of the Old Order Amish believe it is a sin to *pay* the taxes levied to support the social security system. The government argues that although the receipt of social security benefits would violate the religious teaching of the Amish, payment of social security taxes will not threaten the integrity of the Amish religious belief or observance.

It is not within "the judicial function and judicial competence," however, to determine whether appellee or the government has the proper interpretation of the Amish faith, for "[c]ourts are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Indiana Employment Sec.*, 101 S. Ct. 1425, 1431 (1981).<sup>6</sup> We therefore accept appellee's allegations and the District Court's findings that both pay-

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<sup>6</sup>This is not an instance in which the asserted claim is "so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause." *Thomas v. Review Bd. of Indiana Employment Sec.*, 101 S. Ct. 1425, 1431 (1981). See also *Henson v. Com'r of Internal Revenue*, 66 U. S. T. C. 835 (1976) (member of Sai Baba denied exemption under § 1402(h) because although ~~religiously~~ opposed to insurance on religious grounds, the faith did not provide for its dependent members).

ment and receipt of social security benefits is forbidden by the Amish faith. Because the payment of the taxes or receipt of benefits violates Amish religious beliefs, compulsory participation in the social security system interferes with their Free Exercise rights.

The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. *See, e. g., Prince v. Massachusetts*, 321 U. S. 158 (1944); *Reynolds v. United States*, 98 U. S. 145 (1879). The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. *Thomas, supra*; *Wisconsin v. Yoder*, 406 U. S. 205 (1972); *Sherbert v. Verner*, 374 U. S. 398 (1963).

## B

Because the social security system is nationwide, the governmental interest is apparent. The social security system in the United States serves the national interest by providing a comprehensive insurance system with a variety of benefits available to all participants, and with costs shared by employers and employees.<sup>7</sup> The social security system is by far the largest domestic governmental program in the United States today, distributing approximately \$3.6 million each day to 36 million Americans—\$11 billion monthly.<sup>8</sup> The design of the

---

<sup>7</sup>The Social Security Act was enacted in 1935 to provide supplementary retirement benefits. Over the following 45 years coverage has broadened and the cost of the system has increased dramatically. *See* A. Abraham, et al., *Federal Social Security* (1979). In 1939 the Act was amended to provide insurance benefits for retired workers, auxiliaries of retired workers and survivors of deceased workers. In 1950 coverage was extended to self-employed workers and to select other employees previously excluded. In 1954 and 1956 disability benefits were added and in 1965 Medicare benefits were made available to participants in the System.

<sup>8</sup>National Commission on Social Security, *Social Security in America's*



system requires support by mandatory contributions from covered employers and employees. This mandatory participation is indispensable to the fiscal vitality of the social security system. "[W]idespread individual voluntary coverage under social security . . . would undermine the soundness of the social security program." S. Resp. No. 404, 89th Cong., 1st Sess., Pt. III, U. S. Code Cong. & Admin. News (1965), pp. 1943, 2056. Moreover, a comprehensive national social security system providing for voluntary participation would be almost a contradiction in terms and difficult, if not impossible, to administer. Thus, the government's interest in assuring mandatory and continuous participation in and contribution to the social security system is very high.<sup>9</sup>

## C

The remaining inquiry is whether accommodating the Amish belief will unduly interfere with fulfillment of the governmental interest. In *Braunfeld v. Brown*, 366 U. S. 599, 605 (1961), this Court noted that "to make accommodation between the religious action and an exercise of state authority is a particularly delicate task . . . because resolution in favor of the State results in the choice to the individual of either abandoning his religious principle or facing . . . prosecution." The difficulty in attempting to accommodate religious beliefs in the area of taxation is that "we are a cosmopolitan nation made up of people of almost every conceivable religious preference." *Braunfeld*, 366 U. S. at 606. The Court has long recognized that balance must be struck between the values of the comprehensive social system, which rests on a complex of actuarial factors, and the consequences of allowing religiously

---

Future 5 (1981).

<sup>9</sup>The fiscal soundness of the Social Security System has been the subject of several studies and of congressional concern. See, e. g., Congressional Budget Office, *Paying for Social Security: Funding Options for the Near Future* (1981).

based exemptions. To maintain an organized society that guarantees religious freedom to a great variety of faiths requires that some religious practices yield to the common good. Religious beliefs can be accommodated, *see, e. g., Thomas, supra; Sherbert, supra*, but there is a point at which accommodation would “radically restrict the operating latitude of the legislature.” *Braunfield, supra* at 606.<sup>10</sup>

Unlike the situation presented in *Wisconsin v. Yoder, supra*, it would be difficult to accommodate the comprehensive social security system with myriad exceptions flowing from a wide variety of religious beliefs. The obligation to pay the social security tax initially is not fundamentally different from the obligation to pay income taxes; the difference—in theory at least—is that the social security tax revenues are segregated for use only in furtherance of the statutory program. There is no principled way, however, to draw a line between the social security tax and general tax revenues. For example, if a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. The tax system could not function if denominations were allowed to challenge the tax system because a portion of their monies were spent in a manner that violates their religious belief. Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax. *See, e. g., Lull v. Commissioner*, 602 F. 2d 1166 (CA4 1979), *cert. denied*, 444 U. S. 1014 (1980); *Autenrieth v. Cullen*, 418 F. 2d 586 (CA9 1969), *cert. denied*, 397 U. S. 1036 1970).

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<sup>10</sup> *See, e. g., Follett v. Town of McCormick*, 321 U. S. 573 (1944) (preacher not entitled to be free from taxes); *Murdock v. Pennsylvania*, 319 U. S. 105, 112 (1943) (same).



## III

Congress has accommodated, to the extent compatible with a comprehensive national program, the practices of those who believe it a violation of their faith to participate in the social security system. In § 1402(g) Congress granted an exemption, on religious grounds, to self-employed Amish and others.<sup>11</sup> Confining the § 1402(g) exemption to the self-employed provided for a narrow category which was readily identifiable. Self-employed persons in a religious community having its own "welfare" system are distinguishable from the generality of wage earners employed by others. Congress and the courts have been sensitive to the needs flowing from the Free Exercise Clause, but every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice religious beliefs.

When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes binding on others in that activity. Congress drew a line in § 1402(g), exempting the self-employed Amish but not all persons working for an Amish employer. The tax imposed on employers to support the social security system must be uniformly applicable to all, except as Congress provides explicitly otherwise.<sup>12</sup>

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<sup>11</sup> The District Court read this as extending to the present claims. We need not decide whether the Free Exercise Clause compelled such an exemption; Congress' grant of the exemption was an effort toward accommodation. Nor do we need to decide whether, if Congress had, as the District Court believe, intended § 1402(g) to reach this case, conflicts with the Establishment Clause would arise.

<sup>12</sup> We note that here the statute compels contributions to the system by way of taxes; it does not compel anyone to accept benefits. Indeed, it would be possible for an Amish member, upon qualifying for social security benefits, to receive and pass them along to an Amish fund having parallel objections. It is not for us to speculate whether this would ease or mitigate the perceived sin of participation.

80-767—OPINION

UNITED STATES *v.* LEE

9

Accordingly, the judgment of the District Court is reversed and the case remanded for proceedings consistent with this opinion.

*Reversed and remanded.*



12/7/81

This looks good to me.

My only question concerns the Chief's statement at page 4, that "[i]t is not within the judicial function and judicial competence ... to determine" whether it is a "sin" for the Amish to pay these taxes.

1. The district court did make a finding that the Amish believe it a sin to pay. Presumably it was within the district court's judicial competence to do so.
2. Further, the government does not challenge the fact that the Amish believe it to be a sin to pay. Rather, they argue that it is not a very great sin, in the sense that "payment of social security taxes will not threaten the integrity of the Amish religious belief or observance." p.4.

I think it would have been more precise to say in this part of the opinion that since the District Court found payment to be a sin, since the government does not challenge that finding, the Court will not undertake to determine whether the sin is only a little sin or a great one, or whether the sin threatens the structure of Amish beliefs or not. If it is a sin, then there is a free exercise problem.

df1

*Good suggestion*

December 8, 1981

80-767 United States v. Lee

Dear Chief:

Please join me in your opinion.

I do, however, make one suggestion. On page 4 the opinion states that "[i]t is not within the judicial function and judicial competence . . . to determine" whether it is a "sin" for the Amish to pay these taxes.

The difficulty with putting it this way is that the District Court did make a finding that the Amish believe it to be a sin to pay, and this was urged by the Amish in brief and in oral argument. Moreover, I do not understand that the government challenges the fact that the Amish believe it to be a sin. The government argues, rather, that the "payment of Social Security taxes will not threaten the integrity of the Amish religious belief or observance".

I should think it necessary for us to say only that the District Court found payment to be a sin, and the government does not challenge that finding.

Sincerely,

The Chief Justice

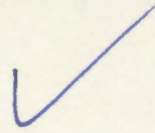
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cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE



December 8, 1981

Re: No. 80-767 - United States v. Lee

Dear Lewis:

Regarding your December 8 memo, what I was aiming at was that judges cannot evaluate "sin" in this context. All the District Judge did was state a fact, that the Amish consider payment of the tax a sin. However, I can and will clarify this point with a slight change.

Regards,

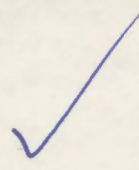
A handwritten signature, likely of Justice Powell, is written in dark ink. It consists of stylized, cursive letters that appear to read 'W. J. P.' followed by a long, sweeping flourish.

Justice Powell

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR



December 10, 1981

No. 80-767 United States v. Edwin D. Lee

Dear Chief,

Please join me in your opinion in the referenced case.

Sincerely,

*Sandra*

The Chief Justice

Copies to the Conference

*P.S. A fine, clear, direct  
opinion!*



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

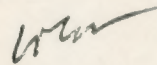
December 10, 1981

Re: No. 80-767 United States v. Lee

Dear Chief:

Please join me.

Sincerely,



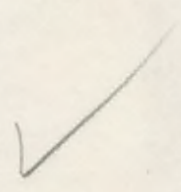
The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 14, 1981

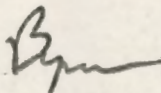


RE: 80-767 - U.S. v. Lee

Dear Chief:

I agree.

Sincerely yours,



The Chief Justice

Copies to the Conference


bkh



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 30, 1981

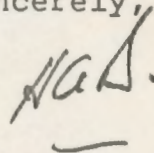


Re: No. 80-767 - United States v. Lee

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 30, 1981



RE: No. 80-767 United States v. Lee

Dear Chief:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written below the word "Sincerely,".

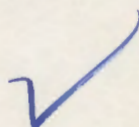
The Chief Justice

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS



January 7, 1982

Re: 80-767 - United States v. Lee

Dear Chief:

With apologies for being so slow, I can now say that I have decided to write a separate concurrence. I will try not to hold you up too long.

Respectfully,

A handwritten signature in dark ink, appearing to be 'JP Stevens', is written below the word 'Respectfully,'.

The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

✓  
January 29, 1982

Re: No. 80-767 - United States v. Lee

Dear Chief:

Please join me.

Sincerely,

T.M.  
T.M.

The Chief Justice

cc: The Conference



THE C. J.

18/7/19

1st draft

$$\frac{13}{5} \sim 2$$

2nd draft

12/22/81

W. J. B.

Journal

12/30/81

H

Join c g

18/01/21

B. R. W.

join C D

18/11/21

IV.

June 29

129/82

H. A. B.

join c9

12/30/81

L. F. P.

Join CG

18/8/21

W. H. R.

Join Cg

18/21/21

11.

well

Conc

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