PEOPLE v DeJONGE (AFTER REMAND)

Docket No. 91479. Argued November 10, 1992 (Calendar No. 4). Decided May 25, 1993.

Mark DeJonge and Chris DeJonge were convicted by a jury in the Ottawa District Court, Richard J. Kloote, J., of violating the compulsory education law by instructing their children at home without the aid of state certified teachers. The Ottawa Circuit Court, Calvin L. Bosman, J., affirmed. The Court of Appeals, DOCTOROFF, P.J., and MAHER and MARILYN J. KELLY, JJ., affirmed in an unpublished opinion (Docket No. 106149). On rehearing, the Court of Appeals reaffirmed the convictions, finding that the certification requirement was constitutional as the least restrictive means to meet the state's interest. The Supreme Court, in lieu of granting leave to appeal, remanded the case to the Court of Appeals for reconsideration in light of *Employment Div, Dep't of Human Resources v Smith*, 494 US 872 (1990), and *Dep't of Social Services v Emmanuel Baptist Preschool*, 434 Mich 380 (1990). Following remand, the Court of Appeals affirmed, finding that because of the defendants' opposition to all state involvement in the education of their children, the alternative individual examinations would impose just as great a burden on their religious beliefs (Docket No. 134296). The defendants appeal.

In an opinion by Justice RILEY, joined by Chief Justice CAVANAGH, and Justice GRIFFIN, and a separate opinion by Justice LEVIN, the Supreme Court *held:*

The state failed to show that the teacher certification requirement is the least restrictive means of discharging its interest in the education of the defendants' children, requiring reversal of their convictions.

Justice RILEY, joined by Chief Justice CAVANAGH and Justice GRIFFIN, additionally stated that the teacher certification requirement is an unconstitutional violation of the Free Exercise Clause of the First Amendment as applied to families whose

REFERENCES

Am Jur 2d, Schools §§ 228, 231, 232.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law. 3 ALR2d 1401.

religious convictions prohibit the use of certified instructors. Such families should be exempt from the dictates of the teacher certification requirement.

The Free Exercise Clause of the First Amendment ensures protection from government interference in the exercise of religion. Such protection is an affirmative duty of the government, mandated by the inherent nature of religious liberty, not one of mere toleration. Religious liberty is a deeply private, fundamental, and inalienable right by which a citizen's beliefs and practices are shielded from the hostile intolerance of society.

When rights under the Free Exercise Clause are combined with the constitutionally protected right of parents to direct the education of their children, requirements such as Michigan's teacher certification requirement must undergo strict scrutiny as manifested in the compelling interest test to survive. The test considers whether a defendant's belief, or conduct motivated by belief, is sincerely held; whether it is religious in nature; whether a state regulation imposes a burden on the exercise of the belief or conduct; whether a compelling state interest justifies the burden imposed; and whether there is a less obtrusive form of regulation available.

In this case, the defendants' belief is both sincerely held and religiously based, the teacher certification requirement directly and heavily burdens the exercise of their religion and is neither essential to nor the least restrictive means of achieving the state's interest, and a less burdensome regulation could be enacted.

Reversed.

Justice MALLETT, joined by Justices BRICKLEY and BOYLE, dissenting, stated that the state has a compelling interest in the universal education of its children and the teacher certification requirement is an effective means of achieving that interest. Because accommodation of the defendants' religious beliefs would unduly interfere with the state's fulfillment of its interest, their convictions and the decision of the Court of Appeals should be affirmed.

188 Mich App 447; 470 NW2d 433 (1991) reversed.

CONSTITUTIONAL LAW — HOME SCHOOLS — FREE EXERCISE OF RELIGION — TEACHER CERTIFICATION.

The requirement that parents who provide home schooling for their children must provide instructors certified by the state is an unconstitutional violation of the Free Exercise Clause of the First Amendment as applied to families whose religious convic-

tions prohibit the use of certified instructors; such families are exempt from the requirement (US Const, Am I; MCL 388.553; MSA 15.1923).

Frank J. Kelley, Attorney General, *Thomas L. Casey,* Solicitor General, *Ronald J. Frantz,* Prosecuting Attorney, and *Gregory J. Babbitt,* Assistant Prosecuting Attorney, for the people.

Kallman & Cropsey (by *David A. Kallman*), *Christopher J. Klicka,* and *Michael P. Farris* for the defendants.

Amici Curiae:

Frank J. Kelley, Attorney General, *Thomas L. Casey,* Solicitor General, *Paul J. Zimmer,* Assistant Attorney General, for the State Board of Education.

Mark Brewer and *Paul Denenfeld,* of counsel, for the ACLU Fund of Michigan.

RILEY, J. At issue is the constitutionality of MCL 388.553; MSA 15.1923, which requires parents who conduct home schooling for their children to provide instructors certified by the state. We hold that the teacher certification requirement is an unconstitutional violation of the Free Exercise Clause of the First Amendment as applied to families whose religious convictions prohibit the use of certified instructors. Such families, therefore, are exempt from the dictates of the teacher certification requirement.

I

Defendants Mark and Chris DeJonge taught

their two school-age children at home in accordance with their religious faith. The DeJonges utilized a program administered by the Church of Christian Liberty and Academy of Arlington Heights, Illinois.

Because the DeJonges taught their children at home without the aid of certified teachers, the Ottawa Area Intermediate School District charged them with violating the compulsory education law, as codified in the School Code, MCL 380.1561(1), (3); MSA 15.41561(1), (3). This act requires parents of children from the age of six to sixteen to send their children to public schools or to state-approved nonpublic schools.[1] To qualify as a state-approved nonpublic school, students must be in-

[1] MCL 380.1561(1); MSA 15.41561(1) mandates:

> Except as provided in subsections (2) and (3), every parent, guardian, or other person in this state having control and charge of a child from the age of 6 to the child's sixteenth birthday, shall send that child to the public schools during the entire school year. The child's attendance shall be continuous and consecutive for the school year fixed by the school district in which the child is enrolled. In a school district which maintains school during the entire calendar year and in which the school year is divided into quarters, a child shall not be compelled to attend public school more than 3 quarters in 1 calendar year, but a child shall not be absent for 2 consecutive quarters.

MCL 380.1561(3); MSA 15.41561(3), however, crafts an exception to the compulsory school attendance law for state-approved nonpublic schools:

> A child shall not be required to attend the public schools in the following cases:
>
> (a) A child who is attending regularly and is being taught in a state approved nonpublic school, which teaches subjects comparable to those taught in the public schools to children of corresponding age and grade, as determined by the course of study for the public schools of the district within which the nonpublic school is located.