

## FAITH BEFORE THE COURT: THE AMISH AND EDUCATION

### Jacob Koniak

The free practice of religion is a concept on which the United States was founded. Freedom of religion became part of the identity of America and was written into the United States Constitution, specifically the First Amendment, by the framers of our government. One cannot question the validity of such a fundamental and deeply rooted principle of government. However, the free exercise of religion can and has become a contested issue in the history of the United States. A prime example of this issue coming to the forefront is the Supreme Court case of *Wisconsin v. Yoder*. The problem in this case was not exactly with the free exercise of religion, but rather its conflict with the law, specifically a state law. When the free practice of religion comes in conflict with a state law, a decision must be made about which has more weight. The case of *Wisconsin v. Yoder* not only provided that precedent but also established that the free exercise of religion can take precedence over a law in specific circumstances. The opinion in this case became a landmark victory for the Amish in America. *Wisconsin v. Yoder* made it known that the Supreme Court would consider the weight of the arguments and, if deemed proper, support the free exercise of religion over the law of a state.

The case of *Wisconsin v. Yoder* was brought before the Supreme Court in 1971. It centered on an argument over the power of the state of Wisconsin to force parents to send children under the age of sixteen to attend a formal school. A Wisconsin law ordered all children under age sixteen to be enrolled in a public or private school. The state law would not be considered unreasonable, as it is and always has been a function of a state to

provide public schooling.<sup>1</sup> However, certain Amish groups disagreed with the necessity of school attendance past the eighth grade. Three men from Green County, Wisconsin were charged, tried, and convicted by the state and ordered to pay a five-dollar fee for refusing to send their children, ages fourteen and fifteen, to public schools, as the men planned on keeping the children at home to learn the Amish lifestyle through work and observation.<sup>2</sup> The men were Jonas Yoder and Wallace Miller of the Old Order Amish religion and Adin Yutzy of the Conservative Amish Mennonite Church. The respondents made an appeal, basing their claim on the First and Fourteenth Amendments to the Constitution, specifically the right to freely exercise religion and the right to equal protection under the law.

The Amish men claimed that their children's attendance in a private or public high school would severely damage the children, as the environment would be extremely contrary to the Amish tradition and way of life. The men not only were worried about the exposure of the children to this environment, but also that it kept the children from home. The men believed that when children passed the eighth grade they had learned the math and reading skills essential to the Amish life. Education after this time pertained to how to live the Amish life, including working with and observing members of the community. The skills and work ethic learned during this period were essential to becoming a contributing member of the Amish community, and the men claimed that denying the right to this form of education could even endanger the salvation of their children. This was upheld in the Supreme Court of Wisconsin. The State required the religious beliefs claimed under the first amendment to be sincere, but ruled that the interests of the respondents passed this criterion. The State of Wisconsin appealed this decision, however, and the case came before the United States Supreme Court in December of 1971. The opinions were written in May of

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<sup>1</sup>Terry Eastland, ed., *Religious Liberty in the Supreme Court* (Lanham: Ethics and Public Policy Center, 1993), 235.

1972, with Justice Burger writing a majority opinion for six members, Justices Stewart and White writing separate concurring opinions, and Justice Douglas writing a dissenting opinion, although it was only a partial dissent.

The case was not the first concerning the free exercise clause presented to the Supreme Court, but it has been one of very few that has come before the court in the last forty years. A precedent on the free exercise clause was established in the 1965 opinion *United States v. Seeger*.<sup>3</sup> The Court ruled that any sincere belief that occupies a person's life similar to the way God occupies the life of an orthodox believer qualifies that person for exemption when considering a conscientious objector law.<sup>4</sup> The idea that theism (belief in a divine being) does not have to be a base for a claim under the free exercise clause made the clause appear to be quite open and broadly interpreted. Another opinion dealing with the free exercise clause, and the only to grant an exemption from a valid law based on religious belief, was that of *Sherbert v. Verner* in 1963.<sup>5</sup> These broad interpretations in former cases might have given the legal team representing Yoder confidence in their case, as they had a very strong and well based theological claim as the basis of their argument. Despite the fact that an opinion pertaining to compulsory school attendance and the free exercise clause was not yet on the books of the Supreme Court, rulings in other cases concerning the free exercise clause gave Yoder's representatives reason for confidence.

Yoder's legal team gave strong support to the claims made by the Amish parents in lower courts. The many reasons presented by the Amish men for keeping their children from attending school past the eighth grade were confirmed and supported by the lawyers representing the men. The lawyers not only confirmed the genuine theological beliefs and lifestyle of

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<sup>3</sup>Robert S. Alley, ed., *The Supreme Court on Church and State* (New York: Oxford University Press, 1988), 423.

<sup>4</sup>Ibid.

<sup>5</sup>Eastland, *Religious Liberty in the Supreme Court*, 235.

the respondents, but also attempted to explain their actions under these beliefs. The many faceted defense of Yoder was presented in a very in-depth and well supported manner.

First of all, lawyers representing Yoder presented many expert witnesses in support of their opinions in areas ranging from religion to education. All confirmed the relation of the Amish belief concerning compulsory high school attendance to the basic tenets of the Amish religion. In addition, the history of the Amish was presented to the Court, going as far back as the Swiss Anabaptists of the sixteenth century, in order to give the Court a basis for understanding the tenets of the Amish faith. Scholars speaking on behalf of the Yoder legal team explained that the Amish believed in a life in harmony with the earth and apart from the world and its influence. Such a life was important to an individual's salvation. This central principle of the Amish faith flew in the face of the Wisconsin law compelling high school attendance to the age of sixteen, stated the scholars before the Court. Lawyers representing Yoder stressed that the complete avoidance of society and its ways is not only intentional but essential to the Amish community. Separation from, not integration with, modern society is the goal of the Amish.

Another point made by the lawyers representing Yoder was the formerly mentioned "Amish education" the children were receiving at home while not attending a formal school. It was argued that this system of learning through work and modeling more thoroughly prepared the children for the communities they would enter than a formal high school education would prepare a child for the larger society. Dr. Donald Erickson, writing on behalf of the respondents as an expert witness on education, claimed that the Amish system of learning through work and observation at home effectively prepares high school aged children to be productive members of the Amish society.<sup>6</sup> In addition, the physical absence of the child from home in this formative period would also put the child at a severe

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<sup>6</sup>*Wisconsin v. Yoder* 406 U.S. 205 (1972), 22.

disadvantage, as an Amish work ethic and attitude are developed during this time of work and modeling at home, stated Yoder's lawyers.<sup>7</sup> Also, the fact that the Amish families in this case did not oppose but supported the idea of a traditional education up to the eighth grade was presented.<sup>8</sup> The lawyers representing Yoder presented in great detail the argument the Amish were not opposed to education in principle, but simply supported a form of it other than public schooling.

These sound, logical assertions combined to create the argument for Yoder. Considering the sum of such claims, one Dr. Hostetler, supporting the respondents, wrote that compulsory high school attendance could ultimately result in the destruction of the Old Order Amish community in the United States.<sup>9</sup> Yoder's counsel presented the case in such a way that it attempted to prove that the Amish had a valid, sensible reason for violating the law mandating attendance. Strong, deeply rooted, and genuine religious belief and practice lay at the heart of their argument, and the lawyers representing Yoder claimed that the Amish had a valid constitutional claim.

The State of Wisconsin presented an equally in-depth argument before the Court. The first major point the state presented was one traceable back to a forefather of our nation, Thomas Jefferson, who asserted that a certain amount of formal education is necessary in order to create well equipped and adequate participants in the United States political system, therefore preserving both liberty and independence.<sup>10</sup> The state also stressed that formal education at the level the Amish were failing to attend prepared children to grow to be self-sufficient and independent members of society.<sup>11</sup> These points are very valid and could stand alone, but lawyers representing Wisconsin had further reasons for enforcing the compulsory high school attendance law.

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<sup>7</sup>Ibid., 22.

<sup>8</sup>Ibid., 23.

<sup>9</sup>Ibid.

<sup>10</sup>Ibid., 29.

<sup>11</sup>Ibid.

Lawyers for Wisconsin stated that the position of the Amish created a certain ignorance, and argued that the state was acting in the best interest of the children involved by protecting these children from this state of ignorance.<sup>12</sup> Lack of knowledge about American society and its ways could indeed be said to be promoted in the Amish culture, and the lack of formal education until the age of sixteen could foster such an unawareness. It is a fact that a state is at all times expected to operate in the best interests of its citizens. The lawyers for the state of Wisconsin simply attempted to show that acting in the best interest of both society and the children involved was far more important than protecting the religious freedom of a particular group.

Yet another point made by the state of Wisconsin's legal team was the idea that if the law of compulsory attendance was not enforced in this situation, Amish children would be denied a right to formal secondary education.<sup>13</sup> This argument looked at children in an independent legal manner, as it claimed they had their own rights despite the wishes of their parents. This argument was unique in this respect.

The State of Wisconsin's legal team also argued that while the First Amendment protects religious beliefs, it does not cover "actions" such as those the Amish families were being charged with.<sup>14</sup> The state suggested that the activity of withholding the children from school, despite being religiously grounded, was subject to the broad police power of the state. The lawyers attempted to draw a line between belief and action, and claimed that the Amish parents in consideration crossed that line.

All of the ideas presented by the state could be summed up into one idea: The interests of the state in enforcing the compulsory attendance law outweighed the claim being made by the Amish. Contrary to the legal team representing Yoder, Wisconsin's lawyers believed that the scale of importance should

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<sup>12</sup>Ibid.

<sup>13</sup>Ibid., 33.

<sup>14</sup>Ibid.

tip towards the state law, not the religious interest, in this situation.

The Supreme Court would not have heard *Wisconsin v. Yoder* if a constitutional issue did not lie at its heart. The reason the Supreme Court agreed to hear the case was its association with the First Amendment, specifically the free exercise clause. This clause states that “congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>15</sup> If the constitutional basis ended here, however, no valid claim could be made. The First Amendment did not allow Congress to make a law prohibiting the free exercise of religion. The law in question in *Wisconsin v. Yoder*, however, was a state law rather than an act of Congress. The law only applied to citizens of the state of Wisconsin. However, another amendment to the Constitution allowed Yoder to bring the case before the Supreme Court.

The Fourteenth Amendment, ratified in 1868, states that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”<sup>16</sup> The amendment also states that no state can act “to deny any person within its jurisdiction the equal protection of the laws.” This amendment opened the door for a claim against the state of Wisconsin. Yoder’s lawyers made their case on the basis of the Fourteenth Amendment. If one examines the wording, it is obvious that while Yoder and the other Amish families involved were citizens of Wisconsin and subject to its laws, as citizens of the United States they were protected from state laws abridging their privileges. The state law requiring formal education until the age of sixteen is said to be in conflict with the Amish families’ rights included in the First Amendment, specifically the right to the free exercise of religion. To require the children to attend high school would not allow them to practice their professed religion in the eyes of the Amish parents. If the

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<sup>15</sup>“U.S Constitution, amend. 1,” in Waldrep et. al., eds., *The U.S. Constitution and the Nation* (New York: Forbes Custom Publishing, 1998), 98.

<sup>16</sup>“U.S. Constitution, amend. 14, sec 1,” *Ibid.*, 315.

Fourteenth Amendment is interpreted as preserving the rights of all individuals, as it eventually would be over time, then a claim by the Amish in these circumstances would be valid. In addition, the Amish believed that repressing their religion by requiring their children to attend school until the age of sixteen did not protect them equally under the law.<sup>17</sup> These questions about Wisconsin’s compulsory high school education law combined to make *Wisconsin v. Yoder* a case with very strong constitutional considerations.

The opinion of the justices of the Supreme Court would carry important constitutional implications. If the justices sided with the respondents, a broad interpretation of the Fourteenth Amendment would be upheld, making a statement about the claim of free exercise of religion in contrast to state laws. The idea that the Supreme Court could place the personal situation of a religious group over the concerns of a state would be established. If the justices sided with the State of Wisconsin, however, a narrower interpretation of the Fourteenth Amendment would be adopted. The Court would support the interests of a state over those of an individual claiming free exercise of religion. Regardless of the outcome, therefore, the decision made by the Supreme Court would have significant constitutional consequences. In May, 1972 the Supreme Court published a majority opinion, two concurring opinions, and a partial dissent. The constitutional interpretations were revealed.

Chief Justice Warren Burger wrote the majority opinion expressing the views of himself and six other members of the Court. That opinion addressed each of the issues brought up by both Yoder and the State of Wisconsin’s legal teams. Burger started out by affirming the power of a state to provide and control basic education.<sup>18</sup> However, Burger went on to explain that a state’s interest in education is not free from a balancing process when the state impinges on fundamental rights, such as

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<sup>17</sup>*Wisconsin v. Yoder* 406 U.S. 205 (1972), 28.

<sup>18</sup>*Ibid.*, 24.

the right to free exercise of religion.<sup>19</sup> In other words, a state's interest must be in the highest order to overbalance a legitimate claim made under the free exercise clause. Justice Burger then described what sort of claims can be made under the free exercise clause, ruling out those of a secular nature.<sup>20</sup> He believed that the Amish do have a claim under this clause. The Amish way of life is deeply rooted in religion and tradition, Burger stated, and being separate from the rest of the world is fundamental to the Amish faith.<sup>21</sup> He believed that exposing Amish children to the public high school system would not only sharply contrast with the Amish system of belief but also harm the children by altering their setting at a crucial time in their development.<sup>22</sup> Burger clearly sided with the Amish on this issue.<sup>23</sup> He also addressed Wisconsin's claim that actions such as those taken by the Amish are not protected under the free exercise clause, as only beliefs are protected. Burger stated that it is the history of the Court to consider religiously grounded conduct to also be protected by the free exercise clause.<sup>24</sup> Justice Burger also addressed the Amish claims of a violation of equal protection under the laws as listed in the Fourteenth Amendment. On this issue also he sided with the Amish, saying that the compulsory education law is not neutral if it "unduly burdens the free exercise of religion."<sup>25</sup>

Burger went on to address the state of Wisconsin's claims that its interest in compulsory education is greater than the claims of the Amish, siding against the state on this matter. The large claim made by the state is in error when considering a fundamental religious claim, he stated. Burger then explained that, while the state had valid points in its requirements for education to the age of sixteen, these points did not apply to the

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<sup>19</sup>Ibid.

<sup>20</sup>Ibid., 25.

<sup>21</sup>Ibid.

<sup>22</sup>Ibid., 26.

<sup>23</sup>Ibid.

<sup>24</sup>Ibid., 27.

<sup>25</sup>Ibid.

Amish, because the extra two to three years of schooling provided past the eighth grade would do the children little good when considering the life they will enter.<sup>26</sup> As for the state's claim that compulsory high school education would save the children from certain ignorance, Burger dismissed it on the grounds that the schooling the Amish received in their vocation, as opposed to the high school education they were missing, was an ideal education for children their age.<sup>27</sup> The Justice even brought out the point that compulsory secondary education is a recent development in the history of our country, and if one considers this, it would take a very special reason for the state to interfere with the free practice of religion on these grounds.<sup>28</sup> The law mandating compulsory education would have to be intended for purposes such as preventing child labor, says Burger, and as the agricultural endeavors pursued by the Amish do not qualify as unhealthy or harmful child labor, the state has no claim against the Amish.

Burger then addressed Wisconsin's claim that not allowing the Amish children to attend school to the age of sixteen denied the children the right to a secondary education. Chief Justice Burger wrote that despite the precedent set in *Prince v. Massachusetts* concerning a state's role as *parens patriae*, other precedents such as *Sherbert v. Verner* limited the scope of that precedent.<sup>29</sup> He also stated that the position of the Amish differs from the position that the precedent of *Prince v. Massachusetts* would cover, as the labor performed by the Amish children would be not only in the company of an adult but also would not be harmful to the child or the public.<sup>30</sup> As his last point, Burger refuted the idea that the children were being forced not to attend school against their will, citing the fact that the parents are in legal control of their children as well as the legal entities

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<sup>26</sup>Ibid., 30.

<sup>27</sup>Ibid., 29.

<sup>28</sup>Ibid., 31.

<sup>29</sup>Ibid., 33.

<sup>30</sup>Ibid.

being charged and dealt with in this case, not the children.<sup>31</sup> He summed up by stating that the religious claim made by the Amish, while it was one that few other groups could provide, was a valid claim against the compulsory high school education law and that the state did not present enough support for the idea that the state's strong interest in compulsory education would suffer if the Court granted the Amish an exception.<sup>32</sup> Burger's opinion, written on behalf of six other Justices, is the most widely known and cited of the majority opinions, but the concurring opinions of Justices Stewart and White shared his views.<sup>33</sup>

Justice Douglas, however, wrote a partial dissent on a very interesting and controversial idea brought before the Court. Douglas' dissent focused on the rights and opinions of the children in the case, not the parents. He was not opposed to the decision made for Jonas Yoder, as his daughter Frieda professed before the court her opposition to high school education.<sup>34</sup> He had a problem with the cases of Adin Yutzy and Wallace Miller, as their views about their own education were never heard before the court.<sup>35</sup> Wisconsin's practice of looking at the child as an independent legal entity whose right to secondary education could be infringed upon by a parent was supported by Justice Douglas. Douglas mentioned many Supreme Court opinions, including *Haley v. Ohio*, *In re Gault*, and *Tinker v. Des Moines School District* in which children of ages similar to those in consideration in the Yoder case were granted both Fourteenth Amendment rights and First Amendment rights.<sup>36</sup> The fact that the opinions of the children of both Yutzy and Wallace were not heard by the Court was the breaking point to Douglas, and he could not support a claim for their exercise of free religion when he did not know if the rights of the children themselves were

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<sup>31</sup>Ibid., 34.

<sup>32</sup>Ibid., 37.

<sup>33</sup>Eastland, *Religious Liberty in the Supreme Court*, 235.

<sup>34</sup>*Wisconsin v. Yoder* 406 U.S. 205 (1972), 41.

<sup>35</sup>Ibid.

<sup>36</sup>Ibid.

being violated. He also wrote that the history of faith, work ethic, and lawfulness of the Amish are not applicable in this case, as a religion should be seen as a religion no matter what its roots or history of providing good citizens.<sup>37</sup> Douglas also disagreed that requests for rights of free exercise of religion must not be made on a secular basis, as this was contrary to the precedent established in *United States v. Seeger*.<sup>38</sup> Douglas used the example of Henry David Thoreau to clarify his point Thoreau's refusal to pay taxes to support a war, Douglas asserted, would indeed have been a valid claim, despite his lack of belief in a power or being, because the precedent set in *United States v. Seeger* did not limit the definition of a "belief" to only those grounded in a divine power.<sup>39</sup> Douglas ended by saying that his view of religion was set up by prior Supreme Court decisions, and that he saw this as most important in our present time in which many religions and sects existed together.<sup>40</sup> While Douglas agreed in principle to much of what Burger wrote in his majority opinion, the exclusion of the views of the Yutzy and Wallace children regarding their own education, combined with Douglas' limited view of what can be claimed under the free exercise clause, gave him grounds to write a partial dissent.

The decision made in *Wisconsin v. Yoder* created a precedent with much historical significance. Few cases addressing the free exercise clause had been heard outside of those concerning conscientious objectors to war service. The decision made in this case, therefore, was both unique and important. The first precedent established was the balancing scale to determine the validity of a claim made under the free exercise clause. No real instances of a religious interest making a successful claim against a valid state law had existed before this case.<sup>41</sup> Justice Burger therefore was able to set up his own method of reviewing the arguments of each side. The result was the consideration of the

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<sup>37</sup>Ibid., 43.

<sup>38</sup>Ibid.

<sup>39</sup>Ibid., 44.

<sup>40</sup>Ibid.

<sup>41</sup>Eastland, *Religious Liberty in the Supreme Court*, 235.

strengths of each interest on a sort of “scale of justice,” with the side showing the strongest support for its claim being deemed the victor.<sup>42</sup> This method of evaluating claims based on the free exercise of religion allowed future cases to be heard on the matter and established the framework in which the court would make its decisions. Potential claimers of free exercise rights could look at Burger’s method of deciding the Yoder case to evaluate the validity of their own claims and decide if they were worthy of pursuance in court. The historical significance of the “balancing of interests” set up by Justice Douglas in *Wisconsin v. Yoder* is not only great, but far reaching.

The fact that a religious interest was granted an exception to a valid state law using the free exercise of religion was a historical first.<sup>43</sup> The precedent that a religious group, albeit one with a very strong claim, could make a case against a valid state law it deemed to be in contrast with the free exercise of religion, and then win that claim, was a very significant one. While some argue that the precedent was too narrow in its scope, dealing strictly with the validity of the argument of the Amish, it still carried a definite importance.<sup>44</sup> The Supreme Court made it known that it would indeed support the free exercise of religion against a state law if a strong enough case were made. The Fourteenth Amendment maintained its broad interpretation, and the federal government continued its position as protector of its citizens’ rights.

Religion has been present since the birth of our nation. In fact, many have said we are a nation based on Christian principles. Sometimes religion becomes a contested issue, however. At some point, religion is bound to get in the way of the operation of government, as religious beliefs often outweigh belief in the state. In *Wisconsin v. Yoder*, just such a problem arose. The conflict between the free exercise and practice of a

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<sup>42</sup>Ibid.

<sup>43</sup>Ibid.

<sup>44</sup>Shawn Francis Peters, *The Yoder Case: Religious Freedom, Education, and Parental Rights* (Lawrence: University Press of Kansas, 2003), 153.

religion and the powers of a state came to a head and ended up before the highest court in our nation. The Supreme Court set new precedents in dealing with religion in the courts. Through the decision in the case, the Court established not only the way it would consider religious claims, but also whether those claims could prevail. The decision strengthened both the free exercise clause and the Fourteenth Amendment to the Constitution. *Wisconsin v. Yoder* was truly a landmark case in the history of the United States Supreme Court.