No. AMC3-SUP 2016-37-02

FOR THE APPELLATE MOOT COURT COLLEGIATE CHALLENGE

JAMES INCANDENZA

Petitioner,

v.

ENFIELD SCHOOL DISTRICT

Respondent.

On Appeal to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR PETITIONER

Team 243

QUESTION PRESENTED

Whether there is a hybrid rights exception to the general rule that the First Amendment's Free Exercise Clause requires only rational basis review for neutral and generally applicable laws that incidentally burden a particular religion.

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JURISDICTION

The parties agree that as the final court of appeals, the Supreme Court of the United States has jurisdiction over this case. The parties further agree to not raise any jurisdictional issues in either their brief or their oral arguments.

STATEMENT OF THE CASE

The case originated in the United States District Court for the District of Infinity. Petitioner, James Icandenza, brought civil action pursuant to 42 U.S.C. § 1983 for a violation of his rights under the First and Fourteenth Amendments to the United States Constitution as well

as his parental right to guide the education and upbringing of his children. R. at 3, 5. Respondent, Enfield School District, adopted a district-wide ban on the consumption of chocolate and other candy on school campuses which was implemented on March 3, 2008. R. at 2. Incandenza and his sons regularly consume chocolate throughout the day to honor their Sylvanist religion; however, the school ban made it impossible for the children to attend school and practice their religious beliefs. R. at 4, 5. Petitioner submitted a complaint on April 1, 2008 requesting an order compelling Respondent to suspend the candy ban and to once again allow consumption of chocolate on school grounds within the Enfield School District as well as any additional relief that the District Court deemed to be just and proper. R. at 5. Petitioner submitted a motion for summary judgment on May 5, 2008, which was denied on June 19, 2008 by the District Court and the Respondent's cross-motion for summary judgment was granted. R. at 21. On July 18, 2008, Petitioner appealed to the United States Court of Appeals for the Seventeenth Circuit where the District Court decision was affirmed. R. at 22. This appeal by Petitioner was then granted by the United States Court of Appeals for the Seventeenth Circuit on August 12, 2008. This case will address whether there is a hybrid rights exception to the general rule that the First Amendment's Free Exercise Clause requires only rational basis review for neutral and generally applicable laws that incidentally burden a particular religion. R. at 23.

STATEMENT OF FACTS

On March 3, 2008, the Enfield School District (ESD) announced a district-wide candy ban that equated candy to the consumption of tobacco or viewing pornography. R. at 2. This ban was in response to the perceived obesity epidemic being portrayed by many Enfield media outlets. R. at 4. Several local parents formed a group called Parents Against Childhood Obesity (PACO) and forced the school district to take action. R. at 4. James Incandenza's sons Orin,

Mario, and Hal, are students of the ESD and the family members are adherents of the Sylvan Church. The Sylvan Church recognizes the cocoa plant as a sacred gift from Gaia, their principal deity. R. at 4. In accordance with their faith, the most observant Sylvanists consume a small chocolate wafer once an hour from sunrise until sunset to honor this gift. R. at 4. The Incandenzas have long practiced this tradition, and the three boys have been sent to school with a very small bag of chocolate wafers. R. at 4. Immediately after learning of the ban, Mr. Incandenza informed the ESD officials that it greatly jeopardized his sons' faith, but the officials dismissed his concern and would not allow an exception. R. at 4. The ESD admitted not having evidence of the children disturbing class because of their chocolate consumption. R. at 5, 6.

SUMMARY OF THE ARGUMENT

The Petitioner's free exercise and parental rights have been clearly violated by the District's candy ban. While this may be a generally applicable law, the First Amendment can bar application of a neutral, generally applicable law to religiously motivated law action when the Free Exercise Clause claim is presented in combination with a constitutional companion claim, such as a parent's right to direct the education of their children. (*Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990)). The violation of the two fundamental rights in conjunction with one another passes both the colorability and independent viability tests and thus invokes the hybrid rights exception to the rational basis test articulated in *Smith* and followed in *Miller v. Reed*, 176 F.3d 1202 (1999) and *EEOC v. Catholic University of America*, 83 F.3d 455 (1996). When this hybrid rights exception is present, the Courts must employ strict scrutiny to review the state action. Mr. Incandenza's claim is specifically the type of claim to which this exception applies. Under strict scrutiny, the candy ban must fail.

ARGUMENT

I. THIS COURT SHOULD APPLY THE HYBRID RIGHTS EXCEPTION.

When articulated in *Smith,* the hybrid rights exception was intended to provide relief for people whose fundamental rights were violated as well as their free exercise rights. It is valid for the courts to treat multiple rights violated in conjunction with one another with a higher level of scrutiny and therefore acknowledge the hybrid rights exception. Of the appellate courts who have analyzed the hybrid rights exception, only the Second Circuit dismissed the exception as dicta while the rest of the courts accepted the exception as valid, but did not apply it to the individual cases. In this case, the fundamental right to rear one's children is sufficient to activate the hybrid rights exception.

A. The Establishment of Hybrid Rights.

The Supreme Court established the hybrid rights exception in *Smith* as a way to acknowledge there will still be cases when strict scrutiny is the more appropriate test than rational basis. In *Smith,* the Court found that if one is fired because of the use of peyote, even if it was for religious purposes, then that person is ineligible for unemployment benefits. The majority in this case decided to have an alternative to strict scrutiny, known as the hybrid rights exception, which required a person to have a fundamental and constitutional right violated in order to receive an exception. However, in *Smith,* the Court ruled that other than a possible free exercise right violation, there was not a fundamental right violated, and thus, hybrid rights did not apply. Applying the hybrid rights exception does not mean any one right violation is of lesser value if not paired. Rather, when two fundamental rights can be combined, it creates a new type

of right violation. In *Abrams v. Johnson*, 521 U.S. 74 (1997), the Court struck down Georgia's redistricting plan because it was not just gerrymandering, but rather racially driven gerrymandering. The Court evaluated this violation with strict scrutiny because it violated both the petitioner's Fourteenth and Fifteenth Amendment rights. Similarly, the Incandenza family had not just their First Amendment right to free exercise violated but also their Fourteenth Amendment right to raise their children. A violation of both fundamental rights demands that the Court apply the hybrid rights exception and evaluate the candy ban with the highest level of scrutiny confirmed in *Church of Lukumi Bablu Aye v. City of Hialeah*, 508 U.S. 520 (1993).

B. Hybrid Rights Exception Should Not Be Dismissed As Dicta.

The District Court sided with the Second Circuit in claiming that the hybrid rights exception is obiter dicta. This view, however, was refuted by First, Ninth, Tenth, and D.C. Circuit Courts who have all held that the hybrid rights exception is not mere dicta. Further, the Supreme Court can be construed as supporting the hybrid rights exception because they had the opportunity to declare it as such during their ruling in *Church of Lukumi Babalu Aye*, but conspicuously chose not do so. The exception is only mentioned in Justice David Souter's concurring opinion. The fact that the Supreme Court created the ruling in a majority opinion and has never denounced it except in an individual justice's concurring opinion is clear evidence that the Supreme Court stands by its holding in *Smith* and hybrid rights are not dicta.

In *Smith*, the Supreme Court held that the state could ban the use of peyote and withhold unemployment benefits from employees fired for using the substance. The Court did so because the complaint was only to the free exercise of religion, but had no other fundamental right infringement. The Court went on to say that had the *Smith* case provided a hybrid situation, it

may have held for the plaintiffs. When a free exercise claim and a constitutional companion claim, specifically the right to guide a child's upbringing, are combined they create a new right. ESD would like you to believe the combination of these rights to create a hybrid right exception is illogical. *Smith* was not the only case where the Court used the hybrid rights exception, in *Abrams*, the Court established that when redistricting, a form of neutrally applicable law, is violated by gerrymandering based on race, it warrants a higher level of protection than either claim would have individually. The hybrid rights exception is based on the same premise. Essentially, the Court is holding free exercise claims in such a high regard that they deem additional protection through the form of a new right as appropriate. Thus, hybrid rights are logical, a necessary part of *Smith*, and clearly not dicta.

C. The Hybrid Rights Exception Is Applicable To This Case.

In this case, however, the circumstances are specifically the type that triggers the hybrid rights exception. This case differs from *EEOC* because in that case the free exercise claim and counter claim were ruled to not be independently viable. This established a test known as independent viability test which made it impossible to access strict scrutiny by simply stacking unmerited claims together. The Incandenza's case, however, passes the independent viability test from *EEOC* because the free exercise and parental rights claims are independently viable. By creating a policy which restricts the religion of Mr. Incandenza's sons while simultaneously stripping him of his right to parent, the ESD violated both his free exercise rights and his fundamental right to control his child's destiny as held in *Pierce v. Society of the Sisters*, 45 S. Ct. 571 (1925) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

This case is further distinguished from *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004) and *Reed,* because the exception was upheld, but not applied because the companion claims were deemed inadequate as they were not fundamental rights. This case differs from both *Reed* and *City of Morgan Hill* because the constitutional companion claim in question is the type which would trigger the hybrid rights exception. This can be seen because the right the ESD has violated is the right of a parent to control his child's destiny which was upheld in *Pierce* as a fundamental right. Further, *Smith* mentions this right by name as a suitable companion claim to trigger strict scrutiny. Also, the Court established the colorability test in *Reed* which meant that in order to access strict scrutiny the case must show a strong but not certain chance of success on the merits. This case passes the colorability test as the facts of the case and the nature of the rights being violated gives this case a fair chance of success because this family's free exercise right and Mr. Incandenza's right to parent have truly been violated.

Finally, in *Swanson v. Guthrie Independent School District*, 135 F.3d 694 (1998), the Tenth Circuit Court ruled that the right to parent one's child was not a constitutional companion claim when it conflicted with a school's choice of classes or curriculum. The distinction is that this ruling is narrowly tailored to only apply to situations of these exact specifications. The Court's ruling in *Swanson* does not apply to this case, because the rights of parents in regards to school curriculum, is the only parental right effected there. This case does not concern a school's curriculum, but rather a school policy which equates candy and chocolate to tobacco and pornography. This distinction between public health and a school's curriculum places this case outside the scope of *Swanson*'s ruling. Moreover, this case passes both tests and is therefore distinguished from *Swanson,* creating the application theory of the hybrid rights exception. Due

to the specific circumstances, this case warrants the hybrid rights exception, because Mr. Incandenza has two constitutional violations, the right to free exercise, and a fundamental right violation, the right for a parent to rear their children; which constitutes strict scrutiny and makes this case different from previous cases where the Court rejected the application of the hybrid rights exception.

II. THIS COURT SHOULD HOLD THAT THE CANDY BAN VIOLATES THE FIRST AND FOURTEENTH AMENDMENT RIGHTS OF THE INCANDENZA CHILDREN.

The Court should apply the hybrid rights exception in this case. The District Court of Infinity sided with the Second Circuit in deciding that the case was dicta. However, this finding is flawed because the hybrid rights exception is supported by multiple other circuits and not only is this exception established by a Supreme Court ruling, *Smith*, but is also a necessary part of that ruling. Further, since the hybrid rights exception is not dicta, this case should apply the exception because the claims have a colorable chance of success.

A. The candy ban violates the First Amendment free exercise right of the Incandenza children.

The Court established in *Church of Lukumi Babalu Aye*, 508 U.S. 520 (1993) that a law is not "neutral or of general application…must undergo the most rigorous of strict scrutiny." *Id* at 2220. This candy ban is not generally applicable to all students when the burden of one religious group far outweighs that of other students. As held in *Church of Lukumi Babalu Aye*, regardless of whether the ban by definition seems to apply to a substantial amount of nonreligious conduct and not to be overbroad, when it greatly suppresses the rights of a particular religious group to

worship as their faith commands them to, the ban must be overturned. *Id* at 2220. This act is also not the interest of the school and rather the interest of a parent group who heard non-substantiated claims from the media that there was suddenly a severe rise in childhood obesity in their area. The parent group pressured the school into adopting a candy ban that is not effective in accomplishing their goal and suppresses much more religious conduct than is constitutionally permissible according to *Church of Lukumi Babalu Aye. Id* at 2220. Restricting chocolate and candy is not the most effective way to improve the health of the students in the Enfield School District. The schools could accomplish this goal by increasing the time students spend engaged in physical activity or by offering healthier food options for the students to eat each day. The ESD's candy ban's overwhelming result is not a reduction in childhood obesity and rather will just restrict the Petitioner's free exercise rights. "Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law" *Cantwell v. Connecticut*, 310 U.S. 296 (1940). *Id* at 303. For these reasons, the Court must hold that the Petitioner's free exercise rights, as protected by the First Amendment, have been violated and this candy ban must be overturned.

B. The candy ban inhibits the Petitioner from exercising his fundamental right to parent his children.

The Court held in *Yoder* that a school's compelling interest in compulsory education does not outweigh a parent's fundamental right to raise their children in their faith, and the same is true for a school's interest in the health of their students. *Barksy v. Board of Regent's University*, 347 U.S. 442 (1954) recognized that a state had broad power in protecting public health. *Id* at 449. However, they specified that this extended only to health professions. The ESD's primary focus is the education of the students. Their interest in the health of their students is second to

providing a quality education. In *Pierce*, the Supreme Court affirmed that it is not the school but rather the responsibility of the parent to nurture and direct the destiny of their children, and thus they solely "have the right, coupled with the high duty, to recognize and prepare [them] for additional obligations." When a secondary interest of the school comes into conflict with the fundamental right of a parent to direct the religious upbringing of their child, it is the court's responsibility and constitutional obligation to invalidate that law.

CONCLUSION

The Court should find that hybrid rights exists because of its establishment in *Smith,* its recognition in *Reed, Swanson,* and *City of Morgan Hill,* and because only the Second Circuit Court declares it dicta. In *Pierce* and *Yoder* the right of parents to raise their children in the way they see fit was established as a fundamental right. Additionally, the First Amendment establishes that the right of a person to freely express their religion is a fundamental right. The combination of both rights is enough for this court to apply the hybrid rights exception. Also, this is not a generally applicable ban, because it requires one group to bear a religious burden that no one else has to bear. Thus, under *Church of Lukumi Babalu Aye,* it is susceptible to a strict scrutiny test such as hybrid rights. In review of these facts, the Court should accept and apply the hybrid rights exceptions as well as lift the candy ban.

Respectfully Submitted,

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