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Church of the Lukumi Babalu Aye v. City of Hialeah

Paul L. Bader

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I. INTRODUCTION

In *Church of the Lukumi Babalu Aye v. City of Hialeah*,[1] a Florida district court has gone further than any other federal court in proscribing a church's right to exercise its religious beliefs. The district court found that the city's interests in public health, child welfare, and animal welfare were sufficient to override the protection provided under the free exercise clause of the First Amendment.[2] After the Eleventh Circuit Court of Appeals affirmed in an unpublished opinion the Supreme Court granted certiorari to decide whether the First Amendment[3] protects a religion's practice of animal sacrifice.

The Supreme Court has consistently recognized that while an individual's right to believe is absolute, his right to act according to those beliefs may be circumscribed by the government when there is a sufficiently strong interest.[4] This case presents the Court with an opportunity to clarify the test for government action that restricts a religious practice, and perhaps to establish a fundamental minimum of activity that a religion is entitled to practice unfettered by government regulation.

II. FACTUAL STATEMENT

The city of Hialeah, Florida ("the city") enacted certain ordinances restricting the practice of animal sacrifice as part of a religious ceremony. Plaintiffs, the Church of the Lukumi Babalu Aye, Inc. ("the Church"), and its spiritual leader, Ernesto Pichardo ("Pichardo"), sued under 42 U.S.C. § 1983[5] alleging that the laws violated plaintiff's constitutional right to the free exercise of religion.[6]

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1. 723 F. Supp. 1467, 1469 (S.D. Fla. 1989), *aff'd*, 936 F.2d 586 (11th Cir. 1990), *cert. granted*, 494 U.S. 889 (1992).
2. 723 F. Supp. at 1487.
3. U.S. CONST. amend. I.
4. *See* JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 17.6 at 1206 (4th ed. 1991).
5. 42 U.S.C. § 1983 (1981).
6. 723 F. Supp at 1469.

The Church practices the Lukumin religion, known commonly in Southern Florida as Santeria. The religion, as practiced by African slaves, came to the United States from Africa by way of Cuba. Approximately 50,000 to 60,000 people practice Santeria in South Florida. Despite the large number of practitioners and the religion's dilution among people of different races, the majority of the Cuban-American people in America still view the religion as backward, primitive, and socially unacceptable. The consequences of this social stigma are that the religion is practiced underground, involves little group activity, has little uniform authority for the practice of rituals and rites, and few members know or are aware of each other.[7] Despite his position as an "Italero," the second highest ranking level of priest in the religion, and his role as plaintiffs' foremost authority on the history, structure, beliefs and practices of Santeria, Pichardo was unable to provide the court with many details regarding the current state of Santeria in South Florida. [8]

The sacrifice of animals including chickens, pigeons, doves, ducks, guinea fowl, goats, sheep, and turtles is fundamental to the practice of Santeria.[9] The details of the killing process were significant in the court's analysis of this case. The priest, trained through apprenticeship in the methods of sacrifice, punctures, without severing completely, the neck of the live animal with one or more strokes of a short bladed knife. If done properly, this will sever the carotid arteries and kill the animal instantly.[10] However, the court adopted the conclusions of the defendant's expert witness, Dr. Michael Fox of the United States Humane Society, and found that this was not a reliable or painless method of killing an animal.[11] Further testimony revealed that prior to sacrifice, and often for periods of days, the animals are kept in close confinement with animals other than their own species, and that such a situation causes great stress and anxiety for the animals.[12]

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7. *Id.* at 1469-70.

8. *Id.* at 1470. Specifically, Pichardo was unable to give the identity, or number, of other church officials or practitioners, and was unable to provide any details regarding the disposal of animal carcasses following sacrifice. Pichardo testified that the Church is without a centralized authority or written code, or a distinctive tradition. *Id.* at 1470-71.

9. *Id.* at 1471.

10. *Id.* at 1472.

11. *Id.* at 1472-73. For a variety of reasons this method does not ensure that the animal's death will be instantaneous. First, puncturing the neck does not ensure that both carotid arteries will be severed simultaneously. Second, this method will not always prevent the lining of the severed artery from constricting, delaying, albeit briefly, the death of the animal. Finally, in chickens and goats, it is virtually impossible to sever all four carotid arteries with one stroke of the knife. *Id.*

12. *Id.* at 1473. Such a combination of stress and fear in chickens creates an even more fundamental problem in those rites that involve the consumption of animals after the sacrifice. Such a situation affects the chicken's immune system, leading to the increased growth

As an example of a Santerian ritual, the court heard extended testimony about the initiation rite. This rite is repeated approximately 600 times per year in South Florida, and on each occasion involves the sacrifice of twenty-five to fifty-five animals over an eight day period. The court took particular notice of the fact that the Church sometimes initiates children although it is not the normal practice, and that the Church often allows children to watch the sacrifices.[13] Although Santeria principles adopt the governing municipal laws as controlling in the disposition of animal carcasses,[14] Pichardo nevertheless conceded that many of the animal carcasses found in public places are probably the result of religious practices utilizing animal sacrifice, including, but not limited to, Santeria.[15]

Perhaps the most important body of testimony concerned the effect that witnessing such sacrifices has on children. Despite the testimony of plaintiff's expert witnesses that there was little or no adverse affect on children, the court, in its discretion, adopted the testimony of defendant's expert that there is a correlation between the observation of violence by children, especially when conducted by persons of perceived high status, and the likelihood of the development of violent and aggressive behavior.[16]

In June 1987 the Church began organizing, and preparing to open, a church building that would function as the religious and cultural center for practitioners of Santeria.[17] Soon after, the Hialeah City Council enacted the ordinances to which the Church objects.[18] Specifically the City Council adopted the language of the state anti-cruelty statute,[19] prohibited the possession of animals intended for sacrifice or slaughter except where properly zoned,[20] authorized registered groups to investigate animal cruelty complaints,[21] and prohibited the slaughtering of any animals on premises not properly zoned for that purpose.[22]

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of bacteria such as salmonella. Salmonella cannot be detected visually, and is very harmful to humans who eat the chickens. *Id.*

13. *Id.* at 1473-74.

14. *Id.* at 1471 n.14.

15. *Id.* at 1474.

16. *Id.* at 1475. Dr. Raul Huesman, defendant's expert, has done extensive research on the development of aggressive and violent behavior in children and adults. Dr. Huesman testified that witnessing the sacrifices would be likely to produce "psychological processes that promote greater tolerance of aggressive and violent behavior and might even increase the possibility of aggressive and violent behavior by the child himself." *Id.*

17. *Id.* at 1476.

18. *Id.*

19. HIALEAH, FLA., ORDINANCE 87-40 (June 9, 1987).

20. HIALEAH, FLA., ORDINANCE 87-52 (Sept. 8, 1987).

21. HIALEAH, FLA., ORDINANCE 87-71 (Sept. 22, 1987).

22. HIALEAH, FLA., ORDINANCE 87-72 (Sept. 22, 1987).

The Church further alleged that the city had discriminated against it during the Church's attempt to get the necessary licensing and permits for the new building.[23] However, the court found that the city's actions were not discriminatory for three reasons: first, any delays caused by the city's actions were minimal, second, the Church did eventually receive all the necessary permits, and third, considering the circumstances, the city's actions were all reasonable and non-discriminatory.[24]

III. DETAILS OF THE COURT'S OPINION

The court first addressed some preliminary standing and preemption issues, finding that plaintiffs had standing to sue[25] and that Florida's ritual slaughter statute of animals did not preempt the city's ordinances and regulations.[26]

Turning to the First Amendment challenge, the court began by discussing the philosophical history of the freedoms guaranteed by the Bill of Rights, specifically the First Amendment. The court noted that, although these rights are entitled to the fullest protection under the Constitution, this blanket of protection is not without limits.[27]

The district court noted that the Eleventh Circuit Court of Appeals has articulated a two-tiered framework for determining whether the government has violated the Constitution by actions that allegedly violate a person's freedom of religion.[28] At the first level there are two threshold re-

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23. 723 F. Supp. at 1477.

24. *Id.* at 1477-79.

25. *Id.* at 1479.

26. *Id.* at 1480. First, FLA. STAT. ch. 828 (1976 & Supp. 1993) did not preempt the ordinances because an ordinance is only preempted when it directly conflicts with the statute. The court found that the city's ordinance merely modified the statute without directly conflicting with it. 723 F. Supp. at 1480.

Second, FLA. STAT. §§ chs. 828.22-828.26 (1976 & Supp. 1993) create an exemption for the ritual slaughter of livestock for food. However the district court found that the city's ordinance only prohibited the sacrifice of animals when the "primary purpose is not food consumption." 723 F. Supp. at 1480.

Third, the court found that ordinances regulating the zoning of sacrifice did not conflict with the state statute's exemptions protecting ritual slaughter. *Id.* at 1481.

Finally, the court found that the imposition of criminal penalties for zoning violations did not conflict with the state statutes relating to animal control or cruelty, which only imposed civil penalties. *Id.* at 1481-82.

27. 723 F. Supp. at 1482-83. The court noted for example that the freedom of speech does not extend absolutely to obscenities or shouting "fire" in a crowded theatre. *Id.* at 1483 (citing Alberts v. California, 354 U.S. 476, 484 (1957)).

28. Grosz v. City of Miami Beach, 721 F.2d 729, 733 (11th Cir. 1983). The Supreme Court has not clearly articulated a test for these issues. The Eleventh Circuit's framework is a result of the court's analysis of the Supreme Courts opinions in this area. *See infra* notes 29-30. This case goes one step further than *Grosz*. In that decision the Eleventh Circuit

quirements. First, the government's action must regulate conduct rather than belief, and it must have both a secular purpose and effect.[29] Then, if these requirements are met, at the second level the court must balance the competing interests of the government and the religious organization.[30]

In the first level analysis, the district court found that the laws in question "clearly met the first threshold test" in that they were obviously directed at conduct and not belief.[31] The court also found that the laws met the second threshold requirement because the laws did not violate the secular purpose test.[32] The city conceded that it passed the ordinances in response to the plaintiffs' decision to open a church; however the court determined that the ordinances prohibited the "killing of animals by anyone for any reason, except in slaughterhouses" and therefore was not aimed specifically at the plaintiffs.[33] Furthermore, the court found that the use of the phrase "ritual or ceremony" did not equate with "religion or religious" because the ordinances would also prohibit non-religious groups, as well as groups not protected by the First Amendment, from sacrificing animals.[34] The court concluded that the effect of the city's ordinances on religious conduct was "incidental" to the secular purpose and effect.[35] The court also noted that the First Amendment does not require strict religious neutrality.[36]

Following the framework in *Grosz v. City of Miami Beach*,[37] the court then took to the admittedly "difficult" task of balancing the competing interests of the city and the Church.[38] The court noted that it must bal-

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upheld a city zoning ordinance that prohibited the use of buildings for public religious ceremonies on property zoned for single family residences. The Groszs were orthodox Jews who used a separate structure on their property to hold daily ceremonies. The court articulated the framework used in this case and held that the city had not restricted the religion in violation of the constitution. *Grosz*, 721 F.2d at 741.

29. 723 F. Supp at 1483. Regarding the first threshold test, the Eleventh Circuit stated that "[t]he government may never regulate religious beliefs; but, the Constitution does not prohibit absolutely government regulation of religious conduct." *Grosz*, 721 F.2d at 733 (citing Braunfeld v. Brown, 366 U.S. 599, 603 (1961) and Cantwell v. Connecticut, 310 U.S. 296, 303-04 (1940)). Regarding the second threshold test, the court wrote that a law "may not have a sectarian purpose" nor may the " 'essential effect' " of the government's action be to negatively influence the pursuit of religious activity. *Id.* at 733-34 (citing *Braunfeld*, 366 U.S. at 607).

30. *Grosz*, 721 F.2d at 734-38.

31. 723 F. Supp. at 1483.

32. *Id.*

33. *Id.* at 1484.

34. *Id.* at 1483-84.

35. *Id.* at 1484.

36. *Id.* (citing Wallace v Jaffree, 472 U.S. 38, 82-83 (1985) (O'Connor, J., concurring)).

37. 721 F.2d 729 (11th Cir. 1933).

38. 723 F. Supp. at 1484.

ance the burden placed on the religious interest by the government activity against the government's cost in altering its activity to allow the religious practice to continue.[39]

The court first identified the Church's interest: to practice an integral part of its religious ceremonies and rituals, namely the sacrifice of animals. The court then recognized three government interests: to protect the welfare and public safety of the community as a whole; to prevent any adverse effects on the mental health of children; and to prevent cruelty to animals.[40]

A. *Disease Control*

The court found that the government had a compelling interest in controlling disease.[41] Plaintiffs' testimony revealed that there is little regulation among practitioners regarding either the acquisition or the disposal of the animals used in sacrifice. Each poses its own unique health hazards.[42] Because the Church members usually eat the animals following their sacrifice, these regulations fall within the government's interest in ensuring the purity and quality of food sources.[43] Furthermore, plaintiffs did not dispute that many of the animals found in public places were the result of animal sacrifices performed by members of their, and other, religions.[44]

B. *Protection of Children*

No party can dispute that the government has a compelling interest in protecting the emotional and psychological development of children. The court noted that the Supreme Court has held that the risk of emotional injury to children is more important than any countervailing religious and parental rights.[45] In its discretion, the court adopted the conclusions of

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39. *Id.* (citing 721 F.2d at 734).

40. *Id.* at 1485.

41. *Id.* The court analogized this situation to the government's prohibition of snake handling and marijuana use. *Id.*

42. The animals are usually kept in unsanitary conditions before acquisitions and the carcasses are often disposed of in a manner that promotes breeding and infestation of vermin and disease. *Id.*

43. *Id.*

44. *See supra* note 15 and accompanying text.

45. 723 F. Supp. at 1486. See Prince v. Massachusetts, 321 U.S. 158 (1944) (upholding a statute forbidding minors from selling magazines despite plaintiff's argument that her religion required that minors help distribute) and Jehovah's Witnesses v. King County Hosp., 278 F. Supp. 488 (W.D.N.D. Wash. 1967), *aff'd*, 390 U.S. 598 (1968)(upholding a statute allowing judges to order blood transfusions in the case of minors despite objections of parents, members of Jehovah's witnesses).

Dr. Huesman, finding that exposure to the ritual sacrifices posed a significant risk to the emotional well-being of children and increased the likelihood that the child would become inclined towards aggression and violence.[46]

C. *Prevention of Cruelty to Animals*

The support for the government's interest in the welfare of, and the prevention of cruelty to, animals is not as obvious as the government's interest in the welfare of children. However, the court relied on a federal district court opinion and a Florida Supreme Court decision finding such an interest.[47] At trial the court heard evidence that both supported and refuted the government's interest. However the court, in its discretion, adopted the opinions of defendant's experts that in both the period before the sacrifice and throughout the ritualistic killing the animals experienced stress and anxiety amounting to cruelty.[48]

Having found that the parties' interests were in direct conflict, the court then determined whether there was a workable exception to the city's ordinances that would allow the religion to continue practicing animal sacrifice. "An ordinance will [nevertheless] withstand constitutional challenge if an exception for religious purpose will 'unduly interfere with fulfillment of the governmental interest.' "[49] The Church asked the court to hold that the Church is entitled to an exception to the city's ordinances.[50] However, the court found plaintiffs' promise to comply with any disposal ordinances would not address the city's interests in the welfare of children and animals.[51] Furthermore, the court concluded that any exception in favor of practitioners of Santeria was simply unworkable given the disorganization inherent to this religion, and the administrative difficulty in enforcing the ordinances with the proposed exceptions.[52]

In conclusion, the court noted that, after balancing the interests, the government's interests fully justified the absolute prohibition of ritual sacrifice without the requisite permits and zoning.[53]

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46. 723 F. Supp. at 1486. *See supra* note 16 and accompanying text.

47. 723 F. Supp. at 1486 (citing Human Society of Rochester v. Lyng, 633 F. Supp. 480 (W.D.N.Y. 1986) and C.E. America, Inc. v. Antinori, 210 So. 2d 443 (Fla. 1968)).

48. *Id. See supra* notes 11-12 and accompanying text.

49. 723 F. Supp. at 1486 (citing United States v. Lee, 455 U.S. 252, 259 (1982)).

50. *Id.*

51. *Id.*

52. *Id.* at 1487.

53. *Id.*

IV. Analysis of the Opinion

This case, like the case of *Grosz* upon which the court relies, attempts to balance the First Amendment's prohibition from restriction of religious expression against a municipality's exercise of its police powers. By granting certiorari in this case, the Supreme Court will now have an opportunity to resolve this tension. The decision in *Grosz* provided one framework for evaluating these situations, and this opinion demonstrates once again the difficulties that arise when a city's police powers directly conflict with a church's exercise of religion.

By upholding the ordinances, the district court effectively prohibited the practice of Santeria in the city of Hialeah. The issue for the Supreme Court becomes whether a city ordinance can prohibit the practice of an integral rite of a religion when the members are left with no legal alternative for practicing their religion.

The only well settled principle of law in this area is that, while the freedom to believe is absolute, the freedom to act cannot be.[54] Beyond that simple proposition, the topography of the law is uncertain regarding when either the government or the religion must yield in favor of the other.

The district court properly analyzed the competing interests in this case and determined not only that each was fundamental and important, but that they were in direct conflict. The court could not create a workable exception that would accomodate the needs and interests of both parties. Either the government would have to accept the consequences of animal sacrifice, or the religion would have to forgo the practice. Consequently, the court resorted to the balancing test to determine which party would be forced to yield.

The framework articulated by the Eleventh Circuit in *Grosz* is an excellent attempt at synthesizing the decisions of the federal courts in this area, and to the extent that the district court relied on the framework, it cannot be faulted.[55] However, there is a credible argument that the district court improperly balanced the competing interests in this case, or at least utilized the wrong standard. On appeal to the Supreme Court, the Court will have an opportunity to affirm the *Grosz* test and to define more clearly the line between religious freedom and government police powers.

The great majority of the district court's opinion focuses on identifying the government's interests and identifying support in the case law for finding that those interests are compelling. However, the court gives little attention to identifying the proper standard for balancing the interests

54. 310 U.S. at 296.
55. *See supra* notes 28-29.

once identified. The court identifies the test as whether an exception in favor of the religion will "unduly interfere" with the government policy, and states that this standard is a "looser" standard than the least restrictive means test so familiar to the courts. This is not a balancing test at all, but merely a requirement that the government prove that 1) it has a compelling interest and 2) that an exception is simply unworkable. The district court has ignored the weight to be given to the religious practice.

If the proper analysis requires a balancing test, then the Supreme Court may very well reverse. This case presents the courts with the most fundamental challenge to a religious practice. Outlawing animal sacrifice works a dramatic effect on the practice of Santeria. The district court had no hesitation in finding that animal sacrifice is an integral part of the religion, and the evidence implies that it may play more than a symbolic role.[56]

While the city's interests are strong they are not absolute. The city has a strong interest in public health, and the evidence demonstrates that a strong causal connection exists between the disposal of animal carcasses and the creation of unsanitary conditions that promote disease.[57] The city's interest in the welfare of children is also strong; however, the court should have considered that no evidence showed any direct or immediate harm to children. Rather, the court found that because children exposed to animal sacrifice are perhaps more likely to develop violent tendencies, the city had a compelling interest.[58] Such an attenuated theory must diminish the weight accorded this interest in the balancing test. Finally, the court identified the city's interest in the welfare of animals. While the court's conclusions cannot be challenged, the issue left for the Supreme Court is whether the city's interest in the welfare of animals is sufficient to outweigh the religion's interest in animal sacrifice.

What remains for the Supreme Court to decide is, first, whether the district court erred in ignoring the balancing prong of the *Grosz* framework and, second, if so, whether the city's interests outweigh the religion's interest. A proper balancing may yield a very different result.

V. CONCLUSION

A Florida district court has again attempted to evaluate the balance between the freedom to exercise clause of the First Amendment and the government's interest in public health and welfare. The district court decided that the city's interest in public health, child welfare, and animal

56. 723 F. Supp. at 1474-75. However, the court noted that there has been no instance documenting a disease originating from a disposed carcass. *Id.* at 1474.

57. *Id.* at 1475.

58. *Id.*

welfare was sufficient to justify ordinances banning animal sacrifice for religious purposes. The Supreme Court has granted certiorari to decide the issues in this case. The district court may have ignored or misapplied the balancing element of the Supreme Court's analysis in these cases. If so the Court may reverse on the facts. However, the district court may have properly recognized that in certain circumstances a sufficient public interest, which cannot be accommodated by exceptions in favor of a religion's beliefs, will, as a matter of law, outweigh the religion's interest in practicing its beliefs.

PAUL L. BADER