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[A.M. NO. P-02-1651 (FORMERLY OCA I.P.I NO. 00-1021-P), June 22, 2006]

ALEJANDRO ESTRADA, COMPLAINANT, VS. SOLEDAD S. ESCRITOR, RESPONDENT.

R E S O L U T I O N

PUNO, J.:

While man is finite, he seeks and subscribes to the Infinite. Respondent Soledad Escritor once again stands before the Court invoking her religious freedom and her Jehovah God in a bid to save her family - united without the benefit of legal marriage - and livelihood. The State, on the other hand, seeks to wield its power to regulate her behavior and protect its interest in marriage and family and the integrity of the courts where respondent is an employee. How the Court will tilt the scales of justice in the case at bar will decide not only the fate of respondent Escritor but of other believers coming to Court bearing grievances on their free exercise of religion. This case comes to us from our remand to the Office of the Court Administrator on August 4, 2003.[1]

I. THE PAST PROCEEDINGS

In a sworn-letter complaint dated July 27, 2000, complainant Alejandro Estrada requested Judge Jose F. Caoibes, Jr., presiding judge of Branch 253, Regional Trial Court of Las Piñas City, for an investigation of respondent Soledad Escritor, court interpreter in said court, for living with a man not her husband, and having borne a child within this live-in arrangement. Estrada believes that Escritor is committing an immoral act that tarnishes the image of the court, thus she should not be allowed to remain employed therein as it might appear that the court condones her act.[2] Consequently, respondent was charged with committing "disgraceful and immoral conduct" under Book V, Title I, Chapter VI, Sec. 46(b)(5) of the Revised Administrative Code. [3]

Respondent Escritor testified that when she entered the judiciary in 1999, she was already a widow, her husband having died in 1998.[4] She admitted that she started living with Luciano Quilapio, Jr. without the benefit of marriage more than twenty years ago when her husband was still alive but living with another woman. She also admitted that she and Quilapio have a son.[5] But as a member of the religious sect known as the Jehovah's Witnesses and the Watch Tower and Bible Tract Society, respondent asserted that their conjugal arrangement is in conformity with their religious beliefs and has the approval of her congregation.[6] In fact, after ten years of living together, she executed on July 28, 1991, a "Declaration of Pledging Faithfulness."[7]

For Jehovah's Witnesses, the Declaration allows members of the congregation who have been abandoned by their spouses to enter into marital relations. The Declaration thus makes the resulting union moral and binding within the congregation all over the world except in countries where divorce is allowed. As laid out by the tenets of their faith, the Jehovah's congregation requires that at the time the declarations are executed, the couple cannot secure the civil authorities' approval of the marital relationship because of legal impediments. Only couples who have been baptized and in good standing may execute the Declaration, which requires the approval of the elders of the congregation. As a matter of practice, the marital status of the declarants and their respective spouses' commission of adultery are investigated before the declarations are executed.[8] Escritor and Quilapio's declarations were executed in the usual and approved form prescribed by the Jehovah's Witnesses,[9] approved by elders of the congregation where the declarations were executed,[10] and recorded in the Watch Tower Central Office.[11]

Moreover, the Jehovah's congregation believes that once all legal impediments for the couple are lifted, the validity of the declarations ceases, and the couple should legalize their union. In Escritor's case, although she was widowed in 1998, thereby lifting the legal impediment to marry on her part, her mate was still not capacitated to remarry. Thus, their declarations remained valid.[12] In sum, therefore, insofar as the congregation is concerned, there is nothing immoral about the conjugal arrangement between Escritor and Quilapio and they remain members in good standing in the congregation.

By invoking the religious beliefs, practices and moral standards of her congregation, in asserting that her conjugal arrangement does not constitute disgraceful and immoral conduct for which she should be held administratively liable,[13] the Court had to determine the contours of religious freedom under Article III, Section 5 of the Constitution, which provides, *viz*:

> Sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

A. RULING

In our decision dated August 4, 2003, after a long and arduous scrutiny into the origins and development of the religion clauses in the United States (U.S.) and the Philippines, we held that in resolving claims involving religious freedom (1) **benevolent neutrality** or **accommodation**, whether mandatory or permissive, is the spirit, intent and framework underlying the religion clauses in our Constitution; and (2) in deciding respondent's plea of exemption based on the Free Exercise Clause (from the law with which she is administratively charged), it is the **compelling state interest** test, the strictest test, which must be applied.[14]

Notwithstanding the above rulings, the Court could not, at that time, rule definitively on the ultimate issue of whether respondent was to be held administratively liable for there was need to give the State the opportunity to adduce evidence that it has a more "compelling interest" to defeat the claim of the respondent to religious

freedom. **Thus, in the decision dated August 4, 2003, we remanded the complaint to the Office of the Court Administrator (OCA), and ordered the Office of the Solicitor General (OSG) to intervene in the case so it can:**

> **(a) examine the sincerity and centrality of respondent's claimed religious belief and practice;**
>
> **(b) present evidence on the state's "compelling interest" to override respondent's religious belief and practice; and**
>
> **(c) show that the means the state adopts in pursuing its interest is the least restrictive to respondent's religious freedom.** [15]

It bears stressing, therefore, that the residual issues of the case pertained NOT TO WHAT APPROACH THIS COURT SHOULD TAKE IN CONSTRUING THE RELIGION CLAUSES, NOR TO THE PROPER TEST APPLICABLE IN DETERMINING CLAIMS OF EXEMPTION BASED ON FREEDOM OF RELIGION. **These issues have already been ruled upon prior to the remand, and constitute "the law of the case" insofar as they resolved the issues of which framework and test are to be applied in this case, and no motion for its reconsideration having been filed.**[16] The only task that the Court is left to do is to determine whether the evidence adduced by the State proves its more compelling interest. This issue involves a pure question of fact.

B. LAW OF THE CASE

Mr. Justice Carpio's insistence, in his dissent, in attacking the ruling of this case interpreting the religious clauses of the Constitution, made more than two years ago, is misplaced to say the least. Since neither the complainant, respondent nor the government has filed a motion for reconsideration assailing this ruling, the same has attained finality and constitutes the law of the case. Any attempt to reopen this final ruling constitutes a crass contravention of elementary rules of procedure. Worse, insofar as it would overturn the parties' right to rely upon our interpretation which has long attained finality, it also runs counter to substantive due process.

Be that as it may, even assuming that there were no procedural and substantive infirmities in Mr. Justice Carpio's belated attempts to disturb settled issues, and that he had timely presented his arguments, the results would still be the same.

We review the highlights of our decision dated August 4, 2003.

1. Old World Antecedents

In our August 4, 2003 decision, we made a painstaking review of Old World antecedents of the religion clauses, because "one cannot understand, much less intelligently criticize the approaches of the courts and the political branches to religious freedom in the recent past in the United States without a deep appreciation of the roots of these controversies in the ancient and medieval world and in the American experience."[17] We delved into the conception of religion from primitive times, when it started out as the state itself, when the authority and power of the state were ascribed to God.[18] Then, religion developed on its own and became

superior to the state,[19] its subordinate,[20] and even becoming an engine of state policy.[21]

We ascertained two salient features in the review of religious history: First, with minor exceptions, the history of church-state relationships was characterized by persecution, oppression, hatred, bloodshed, and war, all in the name of the God of Love and of the Prince of Peace. Second, likewise with minor exceptions, this history witnessed the unscrupulous use of religion by secular powers to promote secular purposes and policies, and the willing acceptance of that role by the vanguards of religion in exchange for the favors and mundane benefits conferred by ambitious princes and emperors in exchange for religion's invaluable service. This was the context in which the unique experiment of the principle of religious freedom and separation of church and state saw its birth in American constitutional democracy and in human history. [22]

Strictly speaking, the American experiment of freedom and separation was not translated in the First Amendment. That experiment had been launched four years earlier, when the founders of the republic carefully withheld from the new national government any power to deal with religion. As James Madison said, the national government had no "jurisdiction" over religion or any "shadow of right to intermeddle" with it. [23]

The omission of an express guaranty of religious freedom and other natural rights, however, nearly prevented the ratification of the Constitution. The restriction had to be made explicit with the adoption of the religion clauses in the First Amendment as they are worded to this day. Thus, the First Amendment did not take away or abridge any power of the national government; its intent was to make express the absence of power.[24] It commands, in two parts (with the first part usually referred to as the Establishment Clause and the second part, the Free Exercise Clause), *viz*:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. [25]

The Establishment and Free Exercise Clauses, it should be noted, were not designed to serve contradictory purposes. They have a single goal-to promote freedom of individual religious beliefs and practices. In simplest terms, the Free Exercise Clause prohibits government from inhibiting religious beliefs with penalties for religious beliefs and practice, while the Establishment Clause prohibits government from inhibiting religious belief with rewards for religious beliefs and practices. In other words, the two religion clauses were intended to deny government the power to use either the carrot or the stick to influence individual religious beliefs and practices.[26]

In sum, a review of the Old World antecedents of religion shows the movement of establishment of religion as an engine to promote state interests, to the principle of non-establishment to allow the free exercise of religion.

2. Religion Clauses in the U.S. Context

The Court then turned to the religion clauses' interpretation and construction in the United States, not because we are bound by their interpretation, but because the

U.S. religion clauses are the precursors to the Philippine religion clauses, although we have significantly departed from the U.S. interpretation as will be discussed later on.

At the outset, it is worth noting that American jurisprudence in this area has been volatile and fraught with inconsistencies whether within a Court decision or across decisions. For while there is widespread agreement regarding the value of the First Amendment religion clauses, there is an equally broad disagreement as to what these clauses specifically require, permit and forbid. No agreement has been reached by those who have studied the religion clauses as regards its exact meaning and the paucity of records in the U.S. Congress renders it difficult to ascertain its meaning.[27]

U.S. history has produced two identifiably different, even opposing, strains of jurisprudence on the religion clauses. **First** is the standard of ***separation***, which may take the form of either (a) **strict separation** or (b) the tamer version of **strict neutrality or separation**, or what Mr. Justice Carpio refers to as the second theory of **governmental neutrality**. Although the latter form is not as hostile to religion as the former, both are anchored on the Jeffersonian premise that a "wall of separation" must exist between the state and the Church to protect the state from the church.[28] Both protect the principle of church-state separation with a rigid reading of the principle. On the other hand, the **second** standard, the **benevolent neutrality** or **accommodation**, is buttressed by the view that the wall of separation is meant to protect the church from the state. A brief review of each theory is in order.

a. Strict Separation and Strict Neutrality/Separation

The ***Strict Separationist*** believes that the Establishment Clause was meant to protect the state from the church, and the state's hostility towards religion allows no interaction between the two. According to this Jeffersonian view, an absolute barrier to formal interdependence of religion and state needs to be erected. Religious institutions could not receive aid, whether direct or indirect, from the state. Nor could the state adjust its secular programs to alleviate burdens the programs placed on believers.[29] Only the complete separation of religion from politics would eliminate the formal influence of religious institutions and provide for a free choice among political views, thus a strict "wall of separation" is necessary. [30]

Strict separation faces difficulties, however, as it is deeply embedded in American history and contemporary practice that enormous amounts of aid, both direct and indirect, flow to religion from government in return for huge amounts of mostly indirect aid from religion.[31] For example, less than twenty-four hours after Congress adopted the First Amendment's prohibition on laws respecting an establishment of religion, Congress decided to express its thanks to God Almighty for the many blessings enjoyed by the nation with a resolution in favor of a presidential proclamation declaring a national day of Thanksgiving and Prayer.[32] Thus, ***strict separationists*** are caught in an awkward position of claiming a constitutional principle that has never existed and is never likely to.[33]

The tamer version of the strict separationist view, the ***strict neutrality*** or