IN THE SUPREME COURT OF OHIO

WENDELL A. HUMPHREY,	:	
	:	**Case No. 99-0206**
Plaintiffs-Appellees	:	
	:	**ON APPEAL FROM THE HOCKING**
v.	:	**COUNTY COURT OF APPEALS,**
	:	**FOURTH APPELLATE DISTRICT**
JANIS LANE, et al.,	:	
	:	**COURT OF APPEALS CASE NO.**
Defendants-Appellants.	:	**98-CA004**

BRIEF OF THE BECKET FUND FOR RELIGIOUS LIBERTY, *AMICUS CURIAE*, ON BEHALF OF APPELLANT

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INTEREST OF *AMICUS*

The Becket Fund for Religious Liberty is a non-partisan and interfaith public interest law firm that protects the free expression of all religious traditions and the ability of religious people and institutions to participate fully in public life. The Becket Fund engages in litigation in state and federal courts in Ohio and throughout the United States, both as primary counsel and as *amicus curiae*. One of the core principles the Becket Fund defends is the idea that individuals should not be disqualified from public employment because of their religious beliefs and practices. The issue of the scope of religious rights both generally and in the government workplace specifically has caused considerable confusion among states and local governments in the wake of the Supreme Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). The Becket Fund believes that our experience in this area of the law will enable us to help the Court's resolution of this case. We believe that our brief will not duplicate the briefs of the parties.

ARGUMENT

In its determination that the religious liberty protections afforded by Section 7, Article I of the Ohio Constitution did not provide any more protection than the modern interpretation of the federal Free Exercise Clause, the Court of Appeals erred in not recognizing the independent force of this State's Constitution. The language of the two provisions are clearly dissimilar. Furthermore, given the abdication by the United States Supreme Court of its role as protector of

the free exercise of religion in *Employment Division v. Smith*,[1] and its refusal to allow Congress to perform that function in *City of Boerne v. Flores*, 117 S. Ct. 2157 (1997), there exists a persuasive and compelling reason for Ohio to continue to use the compelling interest standard of scrutiny when interpreting its Constitution.

I. THE TEXTS OF SECTION 7, ARTICLE I AND THE FEDERAL FREE EXERCISE CLAUSE ARE NOT SIMILAR, AND THUS DEFERENCE SHOULD NOT BE GRANTED TO THE DECISION IN *EMPLOYMENT DIVISION V. SMITH*.

This Court has adopted federal constitutional standards of scrutiny when applying Ohio's own Constitution "where the provisions are similar and no persuasive reason for a differing interpretation is presented." *State v. Robinette*, 80 Ohio St. 3d 234, 238, 685 N.E.2d 762, 766 (1997) (finding federal and State protections from search and seizure "virtually identical"). *Robinette* highlights the importance of text in the determination of whether this Court will defer to federal standards when interpreting this State's own Constitution. In *Robinette*, the Court held that the protections afforded by Section 14, Art. I of the Ohio Constitution were coextensive with the federal Fourth Amendment in part because the language of the two provisions were "virtually identical."[2] *Id.* *See also id.* at 767 ("While we are not bound by federal decisions upon this

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[1]494 U.S. at 891 (*Smith* holding "dramatically departs from well-settled First Amendment jurisprudence." (O'Connor, J., concurring)); *id.* at 908 ("wholesale overturning of settled law concerning the Religion Clauses" (Blackmun, J., dissenting)). *See generally* Miller & Sheers, *Religious Free Exercise under State Constitutions*, 34 J. CH. & STATE 303 (1992) (discussing need for State protections in the wake of *Smith*).

[2]The appeals court below in this case failed to mention that the cases in which constitutional provisions were found to be coextensive by this Court involved texts which were nearly identical. *See Robinette*; *State v. Gustafson*, 76 Ohio St. 3d 425, 668 N.E.2d 435 (1996) (double jeopardy); *State v. King*, 70 Ohio St. 3d 158, 637 N.E.2d 903 (1994) (right to speedy

feature of the case, since the Bill of Rights in the Constitution of the United States is in almost the exact language of that found in our own, the reasoning of the United States court upon this aspect of the case should be very persuasive." (quoting *Nicholas v. Cleveland*, 125 Ohio St. 474, 484, 182 N.E. 26, 30 (1932)); *Arnold v. Cleveland*, 67 Ohio St. 3d 35, 43-46, 616 N.E.2d 163, 169-71 (1993) (examining the text of Section 4, Article I).

This is not the case here. The texts of Section 7, Article I of the Ohio Constitution and the federal Free Exercise Clause are not similar. *See Simmons-Harris v. Goff*, __ Ohio St. 3d __ (No. 97-1117 May 27, 1999) ("The language of the Ohio [Religion Clauses] is quite different from the federal language."). Unlike the vague language of the federal clause, the State section contains many specific prohibitions and duties regarding the free exercise of religion. In *State v. Geraldo*, this Court stated "we are disinclined to impose greater restrictions *in the absence of explicit state constitutional guarantees*." 68 Ohio St. 2d 120, 125-26, 429 N.E.2d 141, 145 (emphasis added)).[3] But such explicit state constitutional guarantees do exist here. Article I

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trial); *State v. Geraldo*, 68 Ohio St. 2d 120, 429 N.E.2d 141 (1980) (search and seizure); *State v. Andrews*, 57 Ohio St. 3d 86, 565 N.E.2d 1271 (1991) (same); *Nicholas v. City of Cleveland*, 125 Ohio St. 474, 182 N.E. 26 (1932) (same). In *Eastwood Mall, Inc. v. Slanco*, this Court did not extend Ohio's Free Speech protections further than the federal standard under circumstances where such application would infringe on other federal constitutional protections. 68 Ohio St. 3d 221, 223, 626 N.E.2d 59, 61 (1994) ("When the First Amendment does not protect speech that infringes on private property rights, Section 11 does not protect that speech either."). No such competing constitutional values exist here.

[3]*Compare* § 7, Art. I *with* HAW. CONST. Art. I, § 4 ("No law shall be enacted respecting an establishment of religion, or prohibiting the free exercise thereof"); S.C. CONST. Art. I, § 2 ("The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof"); MONT. CONST. Art. II, § 5 ("The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."); LA. CONST. Art. I, § 8 ("No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.").

affirmatively commands the State Legislature to pass laws to protect religious denominations. This sound principle is certainly not encompassed within the text of the federal clause, which speaks in the most general terms of limitations on government power, not explicit restraints and affirmative duties.

Most importantly, the Constitution requires that no "interference with the rights of conscience be permitted" and that "[a]ll men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience."[4] These clauses have no counterpart in the text of the First Amendment. The language "nor shall any interference with the rights of conscience be permitted" signifies a personal right protected against government action, without regard to the purpose or focus of the law interfering with it.[5] In fact, with certain exceptions, the First Amendment, as interpreted by the Supreme Court in *Employment Division v. Smith*, does nothing to protect rights of conscience and worship from neutral and generally applicable laws.

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[4]These clauses have always applied to actions as well as beliefs. Prior to *Smith*, this court held that

> The First Amendment to the United States Constitution and Section 7, Article I of the Ohio Constitution safeguard an individual's freedom to both choose and employ religious beliefs and practices. . . . While religiously inspired *acts* do not receive absolute protection, only the gravest abuses, endangering paramount interests, give occasion for permissible limitation.

In re Milton, 29 Ohio St. 3d 20, 23-24, 505 N.E.2d 255, 258 (1987) (quotation omitted). *Smith's* ruling that actions violating neutral, generally applicable laws may be barred even if they burden religious freedom arguably constitutes a sharp cutback on the protection of religious actions as opposed to religious ideas. To the extent that it does, it conflicts with this Court's statement in *Milton* that Article I protects both the right to choose a belief and to act upon those beliefs.

[5]Other states with similar clauses have so interpreted it. *See, e.g., State v. Hershberger*, 462 N.W.2d 393 (Minn. 1990); *State v. Pack*, 527 S.W.2d 99 (Tenn. 1975).

To apply *Smith*'s test for the federal Free Exercise clause would be to render portions of the text of Section 7, Article I meaningless. *See Froelich v. City of Cleveland*, 99 Ohio St. 376, 389, 124 N.E. 212, 216 (1919) ("One part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together" (citation omitted)). The fact that this section was held to be coextensive with pre-*Smith* federal analysis only serves to highlight the heightened scrutiny demanded today by the Ohio Constitution. Whether or not the U.S. Supreme Court had consistently applied a "compelling interest" test in Free Exercise cases before *Smith*,[6] it is clear that this Court certainly did. *See In re Milton*, 29 Ohio St. 3d at 24, 505 N.E.2d at 258; *Whisner*, 47 Ohio St. 2d at 216-18, 351 N.E.2d at 771. *See also State v. Bontrager*, 114 Ohio App. 3d 367, 375, 683 N.E.2d 126, 131 (Ohio App. 3 Dist. 1996) ("[T]he state must show a compelling interest for the regulation and the regulation is drafted in the least restrictive manner."). The reinterpretation of the First Amendment by the U.S. Supreme Court in 1990 did not, and could not, change this State's guarantees of religious freedom. "[T]he Ohio Constitution is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a *floor* below which state court decisions may not fall." *Arnold v. Cleveland*, 67 Ohio St. 3d 35, 42, 616 N.E.2d 163, 169 (1993) (emphasis added).[7]

The language in this State's provision is not derived from the First Amendment to the

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[6]*See* 494 U.S. at 883-85.

[7]In fact, some states have already declined *Smith's* invitation for a narrower construction of their own religious freedom guarantees. *See, e.g., First Covenant Church v. City of Seattle*, 840 P.2d 174, 186 (Wash. 1992); *State v. Hershberger*, 462 N.W.2d 393, 397-99 (Minn. 1990); *Society of Jesus v. Boston Landmarks Commission*, 564 N.E.2d 571, 572-573 (Mass. 1990).

United States Constitution–which reads "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;"–but rather in part from Articles I and III of the Ordinance of the Northwest Territory, which provided that "No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory. . . . Religion, morality, and knowledge being necessary to good government and happiness of mankind, schools and the means of education shall forever be encouraged." 1 Stat. 51 (1787). This was the basis for the original 1802 Constitution, which provided:

> That all men have a natural and indefeasible right to worship Almighty God according to the dictates of conscience; that no human authority can, in any case whatever, control or interfere with the rights of conscience; that no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent, and that no preference shall ever be given, by law, to any religious society or mode of worship, and no religious test shall be required as a qualification to any office of trust or profit. But religion, morality and knowledge being essentially necessary to good government and the happiness of mankind, schools and the means of instructions shall forever be encouraged by legislative provision not inconsistent with the rights of conscience.

Article VIII § 3. In fact, the 1802 Enabling Act authorizing admission of Ohio into the Union explicitly required that its Constitution and government "not [be] repugnant to the ordinance." 2 Stat. 173, 174. Other influences included the early constitutions of other states, many of which included the phrase "natural and indefeasible right to worship Almighty God." *See* ANSON P. STOKES & LEO PFEFFER, CHURCH AND STATE IN THE UNITED STATES 155 (1964) ("Th[is] reference ... is one of the most characteristic of [early] religious freedom guarantees in state constitutions.").

The difference between the texts of the federal and State religion clauses is echoed by a

comparison between the state and federal Freedom of the Press clauses. The federal provision reads "Congress shall make no law . . . abridging the freedom of speech, or of the press." Ohio's Constitution, much like Section 7, Article I, is worded differently:

> Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press.

Section 11, Article I. This Court held that the State Constitution "provides a separate and independent guarantee of protection for opinion ancillary to freedom of the press." *Vail v. The Plain Dealer Publishing Co.*, 72 Ohio St. 3d 279, 281, 649 N.E.2d 182, 185 (1995). There is also a constitutional balancing between the rights of publishers and the ability of government to protect those possibly libeled by such speech. *See* Ohio Const. § 11, Art. I ("being responsible for the abuse of that right"); *Vail*, 72 Ohio St. 3d at 385-87, 649 N.E.2d at 188-89 (Pfeifer, J, concurring in the judgment). Similarly, there is a balancing between what government may not do regarding religion and the duties that government does have in protecting religious denominations. These principles certainly are not explicit in the federal clauses.

The wording of Section 11 also echoes a theme running through the religion clauses as well: It explicitly provides for a personal right. Whereas the corresponding federal provisions speak of limitations on Congress' law-making power, the Ohio Constitution addresses the rights of individuals: "All men have a natural and indefeasible right . . . ," "No person shall be compelled to . . . ," and "Every citizen may freely . . . ." This difference is more than merely stylistic. Whereas the federal clauses may be (and have been in *Smith*) interpreted as a requirement of *neutrality* towards religion, Ohio's provisions provide an *affirmative* right to practice religion freely. This difference is crucial here. Although the policy at issue may be

neutral and generally applicable and thus permissible under *Smith*, it still infringes upon the "natural and indefeasible right to worship Almighty God according to the dictates of [one's] own conscience."

II. "PERSUASIVE REASONS" COMPEL A FINDING OF INDEPENDENT STATE PROTECTION OF FREE EXERCISE IN SECTION 7, ARTICLE I.

This Court held in *Robinette* that federal and state provisions may be found coextensive where they "are similar and no persuasive reason for a differing interpretation is presented." 80 Ohio St. 3d at 238, 685 N.E.2d at 766. For the reasons described above, the state and federal protections of religious freedom are not similar. However, even if this State's text more closely matched the federal provision, persuasive reasons would exist to support a finding of independent force in the State Constitution.

A. The history of Article 1, § 7 of the Ohio Constitution supports a broader construction of religious liberty than that given to the Free Exercise Clause of the United States Constitution by *Employment Division v. Smith.*

The courts of this State have repeatedly enunciated the need for, and importance of, the protection of the free exercise of religion. "Freedom of religion may be infringed only to prevent grave and immediate danger to interests which the State may lawfully protect." *In re Milton*, 29 Ohio St. 3d 20, 24, 505 N.E.2d 255, 258 (1987) (quotation omitted). *See State v. Whisner*, 47 Ohio St. 2d 181, 197, 351 N.E.2d 750, 760 (1976) (describing the free exercise of religious beliefs, even against neutral and generally applicable compulsory school attendance laws, as an issue "of paramount importance"). This concern on the part of the courts of Ohio has deep

historical roots.[8] Article 1, § 7 can trace its roots back to the Northwest Ordinance's guarantee of religious freedom. The First Article of the Ordinance provided: "No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory." This document "is rightly regarded as one of the fundamental documents in the history of American religious freedom." STOKES & PFEFFER, *supra* at 155. Enacted in the same year that the United States Constitution was created, the Northwest Ordinance contained many of the ideas found in the federal Bill of Rights. But it also included many provisions that were ahead of their time, such as, for instance, a ban on slavery within the territory. Art. VI, 1 Stat. 51. Hence, the Northwest Ordinance and the United States Constitution, while overlapping in many respects, were not coextensive.

When the Framers of the Ohio Constitution met in Chillicothe in 1802, they clearly kept in mind the Northwest Ordinance's declaration of purpose: "extend[ing] the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected." Section 13, 1 Stat. 51. As one commentator noted, the founders of the State of Ohio took that purpose to heart: the Ohio Constitution "adopted [in 1802] was one of the most comprehensive of any up to that time in its guarantees of religious freedom." STOKES & PFEFFER, *supra* at 155. As mentioned above in § I, the text of the Ohio provision is much more detailed and sophisticated than that of the United States Constitution. The Ohio guarantee of religious liberty reflects a desire on the part of the founders of the Frontier Republic to create on this 'blank slate' a more perfect set of liberties than those already existing elsewhere.

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[8] *See State v. Smith*, 80 Ohio St. 3d 89, 104, 684 N.E.2d 668, 684 (1997) ("'In the interpretation of an amendment to the Constitution, the object of the people in adopting it should be given effect.'" (quoting *Castleberry v. Evatt*, 147 Ohio St. 30, 67 N.E.2d 861 (1946))).

One other historical distinction serves to highlight the difference between the scope of the Ohio and Federal guarantees of religious liberty. The State of Ohio enacted its guarantee of religious liberty at a time when they were permitted by the United States Constitution to establish a state church.[9] In fact, a number of other states had state churches at the time of the adoption of the religious liberty guarantee. *See Wallace v. Jaffree*, 472 U.S. 38, 99 n.4 (1985) (Rehnquist, J., dissenting); *Engel v. Vitale*, 370 U.S. 421, 428 n.10 (1962). Instead of establishing a religion, Ohio elected to guarantee religious freedom. Ohio chose to protect the religious rights of all–whether majority of minority. Through securing religious freedom for all, the greater good would be advanced. As Article 1, § 7 of the Ohio Constitution notes, "Religion, morality, and knowledge [are] essential to good government and the pursuit of happiness."

The history of Article 1, § 7 distinguishes it from the Free Exercise Clause of the U.S. Constitution. Consistent with the intention of its Framers, its protections are broader than that of its national counterpart. Adhering to the compelling interest test that this Court has consistently applied to government burdens on religion is therefore necessary to see Section 7, Article I's goals to their fruition

B. After the United States Supreme Court's decision in *Smith* and *Boerne*, an independent reading of Ohio's Constitution is necessary to effectuate the goals of Section 7, Article I.

Prior to 1990, the protections afforded by federal law fulfilled the principles underlying Article I. However, in 1990, the United States Supreme Court determined that the guarantee of

[9]Incorporation of the Establishment Clause against the states did not occur until 1947. *See Everson v. Board of Education*, 330 U.S. 1.

religious freedom provided by the Free Exercise Clause of the First Amendment is not violated by a law that is generally applicable and neutral in character, regardless of the burdens placed upon religious practice. *Smith*, 494 U.S. at 878-79. The Court in *Smith* declined to apply the compelling interest test of *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Verner*, 374 U.S. 398 (1963). *Smith* reflected a concern regarding the competency of the federal judiciary to review decisions arising out of the political process. *See id.* at 890 ("a society that believes in the negative protection accorded to religious belief can be expected to be solicitous of that value in its legislation . . . . But to say that a nondiscriminatory religious-practice exemption is permitted, or even that it is desirable, is not to say that it is constitutionally required, and that the appropriate occasions for its creation can be discerned by the courts."). Commenting on his opinion in *Smith* Justice Scalia wrote in *City of Boerne v. Flores*:

> Who can possibly be against the abstract proposition that government should not, even in its general, nondiscriminatory laws, place unreasonable burdens upon religious practice? Unfortunately, however, that abstract proposition must ultimately be reduced to concrete cases. The issue presented by *Smith* is, quite simply, whether the people, through their elected representatives, or rather this Court, shall control the outcome of those concrete cases.

117 S. Ct. at 2176 (Scalia J., concurring). *Cf. Lyng v. Northwest Indian Cemetery Prot. Assn.*, 485 U.S. 439, 452 (1988) ("The Constitution does not, and courts cannot, offer to reconcile the various competing demands on government, many of them rooted in sincere religious belief, that inevitably arise in so diverse a society as ours. That task, to the extent that it is feasible, is for the legislatures and other institutions.").

Recognizing the importance of Free Exercise protection across the nation, Congress enacted the Religious Freedom Restoration Act. 42 U.S.C. § 2000bb *et seq.* (restoring the

compelling interest standard). In 1997, the high Court held that Congress exceeded its powers in enacting RFRA. *City of Boerne v. Flores*, 117 S. Ct. 2157 (1997) (striking down the RFRA as applied to the States). Thus the free exercise rights protecting Ohio citizens from generally applicable laws were no longer protected by federal law.

The idea advanced in *Smith* that federal judges are ill-suited to craft religious exemptions to State laws, and the holding of *Boerne* that Congress cannot force exemptions on the States, does not carry over to religious protections that a state chooses to provide. And Ohio has chosen to protect religious minorities. As this Court stated in *Board of Education v. Minor*, and reaffirmed in *State v. Whisner*:

> [Article 1, § 7] *means that a man's right to his own religious convictions, and to impart them to his own children, and his and their right to engage, in conformity thereto, in harmless acts of worship toward the Almighty, are as sacred in the eye of the law as his rights of person or property, and that although in the minority, he shall be protected in the full and unrestricted enjoyment thereof.* The 'protection' guaranteed by [Article 1,§ 7] means protection to the minority. The majority can protect itself. Constitutions are enacted for the very purpose of protecting the weak against the strong; the few against the many.

Whisner, 47 Ohio St. 3d at 209, 351 N.E.2d at 766 (quoting *Minor*, 23 Ohio St. 211, 251 (1872)). This Court later explains that the above passage

> retains continued vitality, nonetheless, as an accurate expression of the necessary distinction between church and state, and as a perpetual warning of the potential pitfalls awaiting unreasonable and excessive state involvement in matters touching upon convictions of conscience.

Whisner, 47 Ohio St. 3d at 209, 351 N.E.2d at 767. Article 1, § 7 does not leave the weak to beg the ministers of the political process for their natural right to worship. Instead, the citizens of Ohio adopted this constitutional provision to guarantee themselves the right to look to the courts of this State to protect their religious liberty from incursion by the other branches of State

government.

This conclusion is bolstered by the reluctance of the United States Supreme Court to allow federal interference with "legislative spheres of autonomy previously reserved to the States." *City of Boerne v. Flores*, 117 S. Ct. at 2163 (quotation omitted). In finding that Congress had exceeded its authority under Section 5 of the Fourteenth Amendment when enacting RFRA, the Court held that its requirement of a compelling interest test to justify government interference with religious practice was "a considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of their citizens." *Id.* at 2171.

This principle–that RFRA "curtail[ed the States] traditional general regulatory power," *id.*, presumes the rights of the States to create their own levels of protection for their citizens. And that is precisely what this State did with the passage of Article I. Therefore, under *Robinette*, there is not merely a persuasive reason, but compelling reasons, for applying heightened scrutiny to laws burdening religious exercise.

Finally, note that in *Arnold v. Cleveland*, this Court interpreted Ohio's Constitution to protect the right to bear arms where the federal Second Amendment does not provide protections against State action. This Court noted with approval another state court's assertion that "[w]hen a state court interprets the constitution of its state merely as a restatement of the Federal Constitution, it both insults the dignity of the state charter and denies citizens the fullest protection of their rights." *Arnold v. Cleveland*, 67 Ohio St. 3d 35, 42, 616 N.E.2d 163, 169 (1993) (quoting *Davenport v. Garcia*, 834 S.W.2d 4, 12 n.21 (Tex. 1992)). Likewise, the federal

Supreme Court's decision to find no protection for religious practice from generally-applicable laws requires the independent force of this State's Constitution to fill that void.

In his dissent in *Eastwood Mall, Inc. v. Slanco*, Justice Wright emphasized the danger in relying upon federal standards at the expense of the independent force of the Ohio Constitution:

> In essentially concluding that Section 11, Article I provides no broader rights than the First Amendment [Free Speech Clause] "under the facts of this case," the majority is undoubtedly influenced by the fact that at the present time the United States Supreme Court has from time to time taken a fairly broad view of the protections afforded by the First Amendment. However, it was not ever thus and there is no guarantee that it shall remain the case. After all, the United States Supreme Court has not been reluctant to retreat from the broad views announced in other areas of constitutional interpretation. . . . This retrenchment has been a major impetus for the development of the "new federalism" under which state supreme courts interpret their state constitutions more broadly than they interpret the United States Constitution.

68 Ohio St. 3d 221, 228, 626 N.E.2d 59, 65 (1994). This Court very recently affirmed this principle. *See Simmons-Harris v. Goff*, __ Ohio St. 3d at __ ("We reserve the right to adopt a different constitutional standard pursuant to the Ohio Constitution, whether because the federal constitutional standard changes or for any other relevant reason."). Such a retreat by the Supreme Court has occurred with First Amendment Free Exercise rights. It is therefore imperative that the citizens of Ohio be able to turn to their Constitution and receive the protections it was intended to provide.

CONCLUSION

For the reasons set forth above, the Judgment of the Court of Appeals should therefore be reversed.

June 12, 1999

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Amicus Brief of The Becket Fund for Religious Liberty was sent by United States mail, first-class, postage prepaid, this 12th day of June, 1999, to the following:

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