

JEROLD DANIEL FRIEDMAN,

CASE NO.

Plaintiff,

v.

SOUTHERN CALIFORNIA
PERMANENTE MEDICAL
GROUP/KAISER FOUNDATION
HOSPITALS and KAISER
FOUNDATION HEALTH PLAN, INC.,

Defendants.

BRIEF OF AMICUS CURIAE
ANIMAL LEGAL DEFENSE FUND
IN SUPPORT OF PLAINTIFF

I. INTRODUCTION

The Animal Legal Defense Fund presents this brief as Amicus Curiae, respectfully requesting the Court to rule in favor of the Plaintiff's First Cause of Action by declaring Veganism to constitute a religion for purposes of employment discrimination law.

II. INTEREST OF THE AMICUS CURIAE

[omitted by author]

III. STATEMENT OF FACTS

Plaintiff Jerold Daniel Friedman ("Plaintiff") had been working through a temporary agency for Defendant Southern California Permanente/Kaiser Foundation Hospitals ("Defendant") from June, 1997, to March, 1998, at which time he secured a permanent position in Defendant's employ. At all material times, Plaintiff's position was, and would be, in Defendant's pharmaceutical warehouse. Upon securing said permanent position, Plaintiff was informed that he would have to be vaccinated for several diseases, including mumps. Plaintiff is a strict Vegan; he holds strong beliefs against the killing or exploitation of animals for food, clothing, or the testing of products and medications. His beliefs are the central guiding theme in his life, to the extent that he would disregard elementary self-interest in order to adhere to them. He holds his beliefs with the strength of traditional religious convictions; they are sincere and meaningful, and occupy a place in his life parallel to that filled by God in traditionally religious individuals adhering to the Christian, Jewish or Muslim faiths.

**IV. VEGANISM IS A RELIGION WITHIN THIS PARTICULAR PLAINTIFF'S SCHEME
OF THINGS, ACCORDING TO FEDERAL COURT DEFINITIONS OF THE TERM**

The Supreme Court has never stated an absolute definition of religion under the first amendment. Smith v. Board of School Commissioners of Mobile County, 655 F. Supp. 939, 975 (S.D.Ala. 1987), rev'd on other grounds, 827 F.2d 684 (11th Cir. Ala. 1987). Rather, the high court's approach has been one of deciding whether conduct in a particular case falls within the protection of the free exercise clause or the prohibitions of the establishment clause. Id. The court's focus has shifted over the years from monotheism to a broad and mayhap vague notion of ultimate concerns and equivalent beliefs. Id.

The Ninth Circuit has reiterated the U.S. Supreme Court holdings concerning the determination of whether beliefs are "religious." These holdings state that in determining whether a plaintiff's personal beliefs are protected as religious, the task of a court is to decide whether they are "sincerely held and whether they are, within [the plaintiff's] own scheme of things, religious." United States v. Ward, 989 F.2d 1015, 1018 (9th Cir. 1992), quoting United States v. Seeger, 380 U.S. 163, 185, 85 S.Ct 850, 863, 13 L.Ed.2d 733 (1965). Religious beliefs are those that stem from a persons "moral, ethical or religious beliefs about what is right and wrong" and are "held with the strength of traditional religious convictions." Id., quoting Welsh v. United States, 398 U.S. 333, 340, 90 S.Ct 792, 796, 26 L.Ed.2d 308 (1970).

It is undisputed that Plaintiff Jerold Friedman bases his beliefs on moral, ethical, or religious beliefs about what is right and wrong. See Plaintiff's Complaint for Damages for Cause of

Action, p.4. ("To be vaccinated with a vaccine either made with animal products and/or tested on animals would violate the Plaintiff [*sic*] system of beliefs and would be considered immoral by the Plaintiff.") He preferred termination of his employment to violation of his deeply held convictions on this subject. "To the extent that the free exercise clause does not protect 'so-called religions which . . . are obviously shams and absurdities and whose members are patently devoid of religious sincerity,' the focus of the judicial inquiry is not definitional, but rather devotional. That is, is [the plaintiff] sincere? Are his beliefs held with the strength of traditional religious convictions?" Ward, 989 F.2d at 1018, quoting Callahan v. Woods, 658 F.2d 679, 683 (9th Cir. 1981). The Ward court noted that the plaintiff in that case "[did] not describe his beliefs in terms ordinarily used in discussions of theology or cosmology ... but he clearly attempt[ed] to express a moral or ethical sense of right and wrong." Id. Furthermore, the Ward court noted that Ward's actions were evidence of the strength of his beliefs, specifically the fact that he was willing to risk conviction and incarceration rather than abandon the principles of his belief. Id. Plaintiff in the instant case also bases his beliefs on a moral or ethical sense of right and wrong, and, in addition to losing his job rather than compromising his vegan principles, also has taken the risk of incarceration while acting upon his beliefs. See Plaintiff's Complaint for Damages for Cause of Action, p.2.

For many of its adherents, Veganism is far more than just a diet or a political/social ideology. It is a spiritual set of beliefs that guide their lives and lifestyles. A quote from The Vegan Sourcebook, described by one prominent vegan as "the most comprehensive account of veganism seen to date," (Tom Regan, Ph.D., in a brief review quoted on the back cover of the book), would serve as an instructive insight into how some vegans view their own belief system: "Because veganism is so all-encompassing, it is not surprising that its principles form the core

value system for a large number of practitioners. Some people refer to veganism as their 'religion' because the tenets of vegan practice and belief create a compelling moral code on a par with any religious doctrine or theology." J. STEPANIAK, The Vegan Sourcebook 158 (emphasis added).

While adherents of Veganism do not worship a deity as such, that quality is not necessary for the definition of "religion." Secular humanism, a creed that discourages "any belief in a deity or adherence to a religious system that is theistic in any way," Smith at 981, has been declared to be a "belief system [that] is similar to groups traditionally afforded protection by the first amendment religion clauses." Id.

Defendant's points out that "Plaintiff's vegetarianism [sic] is not tied to any institutionalized religion." (Defendant's Memorandum of Points and Authorities, p.4.) While this statement is true, it does not nullify the fact that, in Plaintiff's own scheme of things, the tenets of his Veganism create a moral and compelling code on par with established religions.

The cases cited in Defendant's Memorandum of Points and Authorities, pp. 4-5, are distinguishable here. In Brown v. Pena, 441 F. Supp. 1382 (S.D.Fla 1977), aff'd 589 F.2d 1113 (5th Cir. 1979), the plaintiff's charges of employment discrimination stemmed from his claimed "personal religious creed" that a certain cat food "contributed significantly to [his] state of well being . . . [and therefore] to [his] overall work performance by increasing his energy." Id. at 1382-3. The Brown court pointed out that the Supreme Court has characterized "a 'religious' belief or practice entitled to constitutional protection" as "not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily

living." Id. at 1383. The court then stated that its own test of whether a belief constitutes a religion: "the 'religious' nature of a belief depends on (1) whether the belief is based on a theory of 'man's nature or his place in the Universe,' (2) which is not merely a personal preference but has an institutional quality about it, and (3) which is sincere. Id., quoting Brown v. Dade Christian Schools, Inc., 556 F.2d 310, 324 (5th Cir. 1977) (Roney, J., dissenting). Firstly, unlike the plaintiff in Brown v. Pena, Plaintiff in the instant case does base his belief on a theory of "man's nature or his place in the Universe"; Veganism preaches that human beings have a duty to respect all animate life, and they are to live their lives according to this tenet. Secondly, while Veganism is not an organized religion per se, it does have an institutional quality to it, with numerous groups espousing its spiritual as well as health virtues. And thirdly, Plaintiff's beliefs are unquestionably sincere (see *supra*, p. 4).

In Slater v. King Soopers, Inc., 809 F. Supp. 809 (D.Colo. 1992), the court held that the Ku Klux Klan is not a religion for the purposes of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e). The court, after pointing out that "[t]he definition of religion contained in Title VII ... does not make clear whether or not the KKK is a religion," Id. at 810, reiterated the test laid out in Seeger, *supra*: "The test might be stated in these words: A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition." Id. at 810, citing Seeger, 380 U.S. at 176. The beliefs of the plaintiff in Slater did not meet this test: "the proclaimed racist and anti-semitic ideology of the organization to which [the plaintiff] belongs takes on ... a narrow, temporal and political character inconsistent with the meaning of 'religion' as used in § 2000e." Id., quoting Bellamy v. Mason's Stores 's, Inc., 368 F. Supp. 1025, 1026 (E.D. Va. 1973), *aff'd* 508 F.2d

504 (4th Cir. 1974). By contrast, Plaintiff's beliefs here do meet the Seeger test, since Plaintiff's Veganism is a sincere and meaningful belief which occupies a place in Plaintiff's life parallel to that filled by the God of those admittedly qualifying for the exemption. See Plaintiff's Complaint for Damages for Cause of Action, p.6. ("The Plaintiff lives by a system of beliefs that requires him to value all living beings equally. These canons guide and direct his life in the same manner and with the same strength as traditionally held religious beliefs.")

Defendant's discussion of mutual exclusivity (Defendant's Memorandum of Points and Authorities, p.4.) is not applicable in this case. While a person can adhere to a vegan diet and be a Christian, and institutionalized religions do generally require mutual exclusivity, the issue here is whether, in Plaintiff's own scheme of things, Veganism constitutes his religion. Application of the "devotional test," supra p. 4, from Ward, 989 F.2d at 1018, requires an answer in the affirmative.

V. CONCLUSION

Under the test for whether an individual's belief constitutes a religion, propounded by the U.S. Supreme Court in United States v. Seeger, 380 U.S. 163, 85 S.Ct 850, 13 L.Ed.2d 733 (1965) and Welsh v. United States, 398 U.S. 333, 90 S.Ct 792, 26 L.Ed.2d 308 (1970), and followed by the Ninth Circuit in United States v. Ward, 989 F.2d 1015 (9th Cir. 1992), Veganism is on par with a religious belief within this particular plaintiff's scheme of things. In his practice of Veganism, Plaintiff follows rigid moral and ethical standards, and his vegan beliefs occupy a place in his life that is parallel to that filled by God in traditionally religious individuals adhering to the Christian, Jewish or Muslim faiths. Plaintiff's vegan beliefs are sincerely and devoutly held. The termination

of his employment by Defendant was based upon his refusal to obey a requirement that violated these beliefs. Therefore, Amicus Curiae respectfully requests a ruling in favor of the Plaintiff's First Cause of Action by declaring Veganism to constitute a religion for purposes of employment discrimination law.

Dated April 13, 2000

By _____

Animal Legal Defense Fund

Amicus Curiae