

State of Oregon v. Ruth Barnett, 251 Or. 234 (1968).

In the late 1960's, defendant Ruth Barnett was convicted of “abortion” in Clackamas County Circuit Court. During voir dire, the trial court allowed her counsel to ask prospective jurors if they had any religious beliefs that would prevent them from being impartial, but did not allow counsel to follow up by asking what the juror’s religious faith was.

Barnett appealed her conviction on the grounds that she was entitled to ask prospective jurors about their religious beliefs despite the jurors stating they could be impartial. The Oregon Supreme Court found in her favor, reversed the conviction, and remanded the matter.

The Oregon Supreme Court noted that Article I, section 6 of Oregon’s Constitution provides that:

No person shall be rendered incompetent as a witness, or juror in consequence of his opinions on matters of religion [sic]; nor be questioned in any Court of Justice Touching [sic] his religious [sic] belief to affect the weight of his testimony.

Barnett, 251 Or. at 235-36. The court noted that Barnett was not asserting that the juror’s religious belief might make him incompetent and thus subject to challenge for cause nor was Barnett asserting that the juror’s religious belief affected his credibility. Instead, Barnett was seeking information which might indicate that a juror was prejudiced and thus essential to making “intelligent peremptory challenges.” Id. at 236. The court specifically noted that “[t]here is a widely accepted belief that certain religious faiths feel more strongly about abortions than others do.”

In holding that the trial court erred by prohibiting counsel from asking the juror’s specific faith, the Oregon Supreme Court observed that peremptory challenges permit rejection of jurors for real or imagined partiality that is less easily designated or demonstrable than a challenge for cause (which is based on a narrowly specified, provable and legally cognizable basis of partiality). Accordingly, the Oregon Supreme Court held that a trial court cannot prevent counsel from seeking information about prospective jurors that is obviously relevant.

The Oregon Supreme Court’s decision in Barnett noted that while the Oregon Constitution’s Bill of Rights prohibited precluding a citizen from jury service based on his or her religious belief and precluded questioning witnesses as to their religious beliefs for reasons of credibility, it did not preclude a defendant from questioning a jury for the purpose of discovering information relevant to a peremptory challenge. This holding comports with the establishment clause in that questioning a juror about his or her religion and then using the answer for a peremptory challenge does not impose a substantial burden on any religion (although the court indicated that using such information for a challenge for cause would likely yield a different result).

Newton v. Cupp, 3 Or. App. 434 (1970) (superseded by statute on other grounds).

Muslim prisoner filed a habeas petition in Oregon state court alleging that he had been denied religious freedom because prison officials prohibited him from having religious materials which petitioner claimed were essential to his practice of his faith.

Prison officials had denied petitioner access to the materials on the grounds that the materials would present a threat to prison discipline and security because members of the Muslim Religious Group believed in the supremacy of the black race, advocated hatred of the white race, and refused to yield to prison officials' authority.

The Oregon Court of Appeals noted that it was impossible to tell from the record whether petitioner sought a true religious experience (although they noted that petitioner rejected any belief in the "Black Muslim Sect) rather than violence. The court noted that both the Oregon and United States Constitutions prohibited discrimination against any religion by prison officials. If members of one faith can possess materials, then the equivalent opportunity must be available to members of another faith. Newton, 3 Or. App. at 440-41. The Court stated, however, that "it would seem" that any publication that would disrupt prison discipline should be excluded. Id. at 441. In remanding the matter for further proceedings, the Court noted that the trial court must "consider what limitations should be placed on religious observances because of other compelling interests of the state," such as prison discipline.

In short, the court recognized a prisoner's right under the Oregon and United States Constitution to practice religion, so long as that right did not infringe on a compelling state interest.

This particular issues has been addressed by The Religious Land Use and Institutionalized Person's Act (RLUIPA), found at 42 U.S.C. § 2000cc. The Supreme Court has held that RLUIPA fits within "the corridor between the Religion Clauses: On its face, the Act qualifies as a permissible legislative accommodation or religion that is not barred by the establishment clause." Cutter v. Wilkinson, 544 U.S. 709, 720 (2005). The Cutter court, however, noted:

We do not read RLUIPA to elevate accommodation of religious observances over an institution's need to maintain order and safety. Our decisions indicate that an accommodation must be measured so that it does not override other significant interests.

Cutter, 544 U.S. at 722. Thus, it appears that both Oregon and federal courts considering this issue must continue to engage in a balancing test.