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Symposium on Religion and Politics
RELIGIOUS DIVERSITY AND THE COMMON GOOD
"On the Free Exercise of Religion" (continued)

Reynolds v. United States

Wisconsin v. Yoder

Employment Division v. Smith

Boy Scouts v. Dale

5. As to the defence of religious belief or duty.

On the trial, the plaintiff in error, the accused, proved that at the time of his alleged second marriage he was, and for many years before had been, a member of the Church of Jesus Christ of Latter-Day Saints, commonly called the Mormon Church, and a believer in its doctrines; that it was an accepted doctrine of that church "that it was the duty of male members of said church, circumstances permitting, to practise polygamy; . . . that this duty was enjoined by different books which the members of said church believed to be of divine origin, and among others the Holy Bible, and also that the members of the church believed that the practice of polygamy was directly enjoined upon the male members thereof by the Almighty God, in a revelation to Joseph Smith, the founder and prophet of said church; that the failing or refusing to practise polygamy by such male members of said church, when circumstances would admit, would be punished, and that the penalty for such failure and refusal would be damnation in the life to come." He also proved "that he had received permission from the recognized authorities in said church to enter into polygamous marriage; . . . that Daniel H. Wells, one having authority in said church to perform the marriage ceremony, married the said defendant on or about the time the crime is alleged to have been committed, to some woman by the name of Schofield, and that such marriage ceremony was performed under and pursuant to the doctrines of said church."

Upon this proof he asked the court to instruct the jury that if they found from the evidence that he "was married as charged -- if he was married -- in pursuance of and in conformity with what he believed at the time to be a religious duty, that the verdict must be 'not guilty.'" This request was refused, and the court did charge "that there must have been a criminal intent, but that if the defendant, under the influence of a religious belief that it was right, -- under an inspiration, if you please, that it was right, -- deliberately married a second time, having a first wife living, the want of consciousness of evil intent -- the want of understanding on his part that he was committing a crime -- did not excuse him; but the law inexorably in such case implies the criminal intent."

sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions.

This brought out a determined opposition. Amongst others, Mr. Madison prepared a "Memorial and Remonstrance," which was widely circulated and signed, and in which he demonstrated "that

every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a

Wisconsin v. Yoder

SUPREME COURT OF THE UNITED STATES

406 U.S. 205

May 15, 1972

CERTIORARI TO THE SUPREME COURT OF WISCONSIN

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

On petition of the State of Wisconsin, we granted the writ of certiorari in this case to review a decision of the Wisconsin Supreme Court holding that respondents' convictions of violating the State's compulsory school attendance law were invalid under the Free Exercise Clause of the First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment. For the reasons hereafter stated, we affirm the judgment of the Supreme Court of Wisconsin.

Respondents Jonas Yoder and Wallace Miller are members of the Old Order Amish religion, and respondent Adin Yutzy is a member of the Conservative Amish Mennonite Church. They and their families are residents of Green County, Wisconsin. Wisconsin's compulsory school attendance law required them to cause their children to attend public or private school until reaching age 16, but the respondents declined to send their children, ages 14 and 15, to public school after they completed the eighth grade. The children were not enrolled in any private school, or within any recognized exception to the compulsory attendance law, and they are conceded to be subject to the Wisconsin statute.

On complaint of the school district administrator for the public schools, respondents were charged, tried, and convicted of violating the compulsory attendance law in Green County Court, and were fined the sum of \$5 each. Respondents defended on the ground that the application of the compulsory attendance law violated their rights under the First and Fourteenth Amendments. The trial testimony showed that respondents believed, in accordance with the tenets of Old Order Amish communities generally, that their children's attendance at high school, public or private, was contrary to the Amish religion

stage of development, contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child.

The impact of the compulsory attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religi

"actions" in refusing to send their children to the public high school; in this context, belief and action cannot be neatly confined in logic-tight compartments.

Nor can this case be disposed of on the grounds that Wisconsin's requirement for school attendance to age 16 applies uniformly to all citizens of the State and does not, on its face, discriminate against religions or a particular religion, or that it is motivated by legitimate secular concerns. A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion. The Court must not ignore the danger that an exception from a general obligation of citizenship on religious grounds may run afoul of the Establishment Clause, but that danger cannot be allowed to prevent any exception, no matter how vital it may be to the protection of values promoted by the right of free exercise. By preserving doctrinal flexibility and recognizing the need for a sensible and realistic application of the Religion Clauses, we have been able to chart a course that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion. This is a "tight rope," and one we have successfully traversed.

We turn, then, to the State's broader contention that its interest in its system of compulsory education is so compelling that even the established religious practices of the Amish must give way. Where fundamental claims of religious freedom are at stake, however, we cannot accept such a sweeping claim; despite its admitted validity in the generality of cases, we must searchingly examine the interests that the State seeks to promote by its requirement for compulsory education to age 16, and the impediment to those objectives that would flow from recognizing the claimed Amish exemption.

The State advances two primary arguments in support of its system of compulsory education. It notes, as Thomas Jefferson pointed out early in our history, that some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. Further, education prepares individuals to be self-reliant and self-sufficient participants in society. We accept these propositions.

However, the evidence adduced by the Amish in this case is persuasively to the effect that an additional one or two years of formal high school for Amish children in place of their long-established program of informal vocational education would do little to serve those interests. Respondents' experts testified at trial, without challenge, that the value of all education must be assessed in terms of its capacity to prepare the child for life. It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith.

The State attacks respondents' position as one fostering "ignorance" from which the child must be protected by the State. No one can question the State's duty to protect children from ignorance, but this argument does not square with the facts disclosed in the record.

Whatever their idiosyncrasies as seen by the majority, this record strongly shows that the Amish community has been a highly successful social unit within our society, even if apart from the conventional "mainstream." Its members are productive and very law

instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”

Aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society, the Amish in this case have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of

Employment Division, Dept. of Human Resources of Oregon v. Smith
SUPREME COURT OF THE UNITED STATES, 1990

Justice SCALIA delivered the opinion of the Court.

This case requires us to decide whether the Free Exercise Clause of the First Amendment permits the State of Oregon to include religiously inspired peyote use within the reach of its general criminal prohibition on use of that drug, and thus permits the State to deny unemployment benefits to persons dismissed from their jobs because of such religiously inspired use.

Oregon law prohibits the knowing or intentional possession of a "controlled substance" unless the substance has been prescribed by a medical practitioner. The law defines "controlled substance" as a drug classified in Schedules I through V of the Federal Controlled Substances Act as modified by the State Board of Pharmacy. Persons who violate this provision by possessing a controlled substance listed on Schedule I are "guilty of a Class B felony." As compiled by the State Board of Pharmacy under its

confirmed that Oregon does prohibit the religious use of peyote, we proceed to consider whether that prohibition is permissible under the Free Exercise Clause.

The Free Exercise Clause of the First Amendment, which has been made applicable to the States by incorporation into the Fourteenth Amendment, see *Cantwell v. Connecticut* (1940), provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." U.S. Const. Am. I. The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all "governmental regulation of religious beliefs as such." The government may not compel affirmation of religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma [cites omitted].

But the "exercise of religion" often involves not only belief and profession but the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation. It would be true, we think (though no case of ours has involved the point), that a state would be "prohibiting the free exercise [of religion]" if it sought to ban such acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display. It would doubtless be unconstitutional, for example, to ban the casting of "statues that are to be used for worship purposes," or to prohibit bowing down before a golden calf.

Respondents in the present case, however, seek to carry the meaning of "prohibiting the free exercise [of religion]" one large step further. They contend that their

“Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities.”

We first had occasion to assert that principle in *Reynolds v. United States* (1879), where we rejected the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice. “Laws,” we said,

“are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.”

Subsequent decisions have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a “valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” In *Prince v. Massachusetts* (1944), we held that a mother could be prosecuted under the child labor laws for using her children to dispense literature in the streets, her religious motivation notwithstanding. We found no constitutional infirmity in “excluding [these children] from doing there what no other children may do.” In *Braunfeld v. Brown* (1961) (plurality opinion), we upheld Sunday closing laws against the claim that they burdened the religious practices of persons whose religions compelled them to refrain from work on other days. In *Gillette v. United States* (1971), we sustained the military selective service system against the claim that it violated free exercise by conscripting persons who opposed a particular war on religious grounds.

Our most recent decision involving a neutral, generally applicable regulatory law that compelled activity forbidden by an individual's religion was *United States v. Lee*. There, an Amish employer, on behalf of himself and his employees, sought exemption from collection and payment of Social Security taxes on the ground that the Amish faith prohibited participation in governmental support programs. We rejected the claim that an exemption was constitutionally required. There would be no way, we observed, to distinguish the Amish believer's objection to Social Security taxes from the religious objections that others might have to the collection or use of other taxes.

“If, for example, a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. ge1.2 (t) 0.p8(uc) 0.22 (e) 0.2 () -105.8 uchatsystem c

The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction

religious beliefs, except where the State's interest is "compelling" -- permitting him, by virtue of his beliefs, "to become a law unto himself,"--contradicts both constitutional tradition and common sense.

The "compelling government interest" requirement seems benign, because it is familiar from other fields. But using it as the standard that must be met before the government may accord different treatment on the basis of race, or before the government may regulate the content of speech, is not remotely comparable to using it for the purpose asserted here. What it produces in those other fields -- equality of treatment, and an unrestricted flow of contending speech -- are constitutional norms; what it would produce here -- a private right to ignore generally applicable laws -- is a constitutional anomaly.

expected to be solicitous of that value in its legislation as well. It is therefore not surprising that a number of States have made an exception to their drug laws for sacramental peyote use. 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. It may fairly be said that leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in; but that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs.

Because respondents' ingestion of peyote was prohibited under Oregon law, and because that prohibition is constitutional, Oregon may, consistent with the Free Exercise Clause, deny respondents unemployment compensation when their dismissal results from use of the drug. The decision of the Oregon Supreme Court is accordingly reversed.

**BOY SCOUTS OF AMERICA AND MONMOUTH COUNCIL, ET AL. v. JAMES
DALE**

Hurley

Hurley



Tennessee Pastor Disputes Wildlife Possession Charge by State

By ALAN BLINDER

JACKSBORO, Tenn. — In a mix of old-time religion, modern media and Tennessee law, a 22-year-old preacher who has become a reality television star because of his experience in handling poisonous snakes pleaded not guilty on Friday to illegally keeping dozens of them that he and his congregants routinely touch during worship services.

Andrew Hamblin, pastor of the Tabernacle Church of God in nearby LaFollette and a star of “Snake Salvation,” a recent series on the National Geographic Channel, said he hoped to turn the case against him in Campbell County General Sessions Court into a new front in the battle for religious liberty.

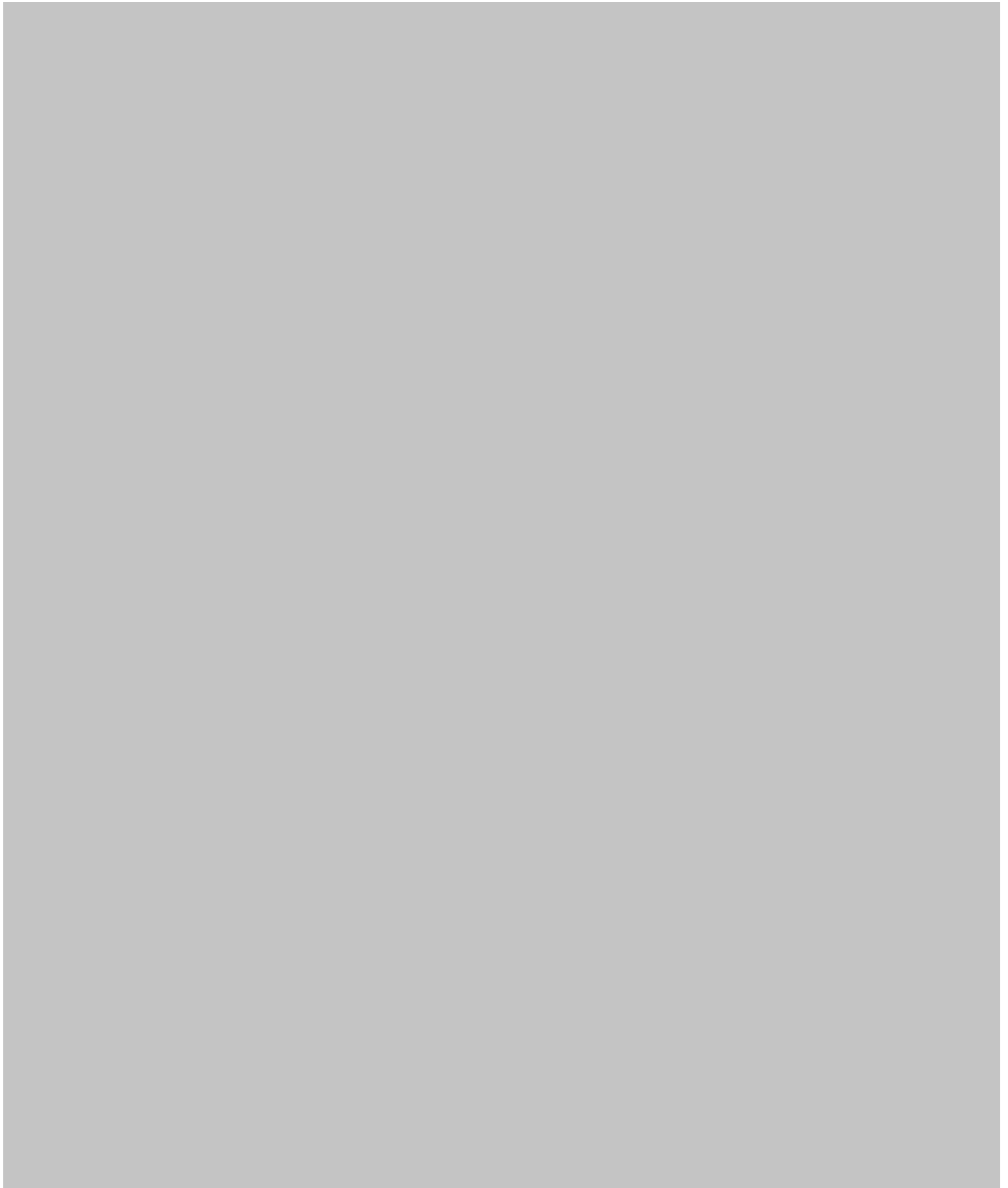
in this room," Mr. Hamblin said during an interview on Thursday night in his sanctuary, which includes a large photograph of him holding up a snake. "Snake handling isn't going to get me into heaven. The blood of Jesus Christ is what is going to get me into heaven."

Whether the transparency, bravado or legal tactics of Mr. Hamblin will lead to a new precedent or a groundswell of public opinion remains an open question.

But legal scholars from outside Tennessee said Mr. Hamblin could mount a credible defense, especially because the state allows some entities, like zoos, to possess snakes.

"It all really comes down to whether or not there are exceptions for other reasons, and that's really the key factor," said James A. Sonne, the director of the Religious Liberty Clinic at Stanford Law School. "The devil is going to be in the details."

Mr. Hamblin, who sat at his church for hours on Thursday as supporters brought in petitions endorsing his battle, said he was prepared to take his case to the federal appellate courts.



MARTIN: Lehman explains how the free-will donation system works when a member of the community gets sick.

LEHMAN: They would travel to their local hospital. They seek treatment just like any private payer would do. And then when they

Amish members. Because of this, they don't have the tax status needed for that exemption. Roberson has helped the Amish figure out another way to comply with the insurance mandate. There's a provision in the health care that allows for what's called health care

