FREEDOM OF RELIGION:

First Amendment Cyber-Tribune

FACT

An overall view of religious liberty as defined by U.S. Supreme Court cases

This page will be expanded
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Establishment Clause:

"Congress shall make no law respecting an establishment of religion ..."

The Establishment Clause has generally come to mean that government cannot authorize a church, cannot pass laws that aid or favor one religion over another, cannot pass laws that favor religious belief over non belief, cannot force a person to profess a belief. In short, government must be neutral toward religion and cannot be entangled with any religion.

Religion in public schools

Minersville v. Gobitis, 310 U.S. 586 (1940) - Supreme Court rules that a public school may require students to salute the flag and pledge allegiance even if it violates their religious scruples.

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) - Court overturns *Gobitis* but is broader in its scope. No one can be forced to salute the flag or say the pledge of allegiance if it violates the individual's conscience.

McCollum v. Board of Education, 333 U.S. 203 (1948) - Court finds religious instruction in public schools a violation of the establishment clause and therefore unconstitutional.

Zorach v. Clausen, 343 U.S. 306 (1952) - Court finds that release time from public school classes for religious instruction does not violate the establishment clause.

Engel v. Vitale, 370 U.S. 421 (1962) - Court finds school prayer unconstitutional.

Abington School District v. Schempp, 374 U.S. 203 (1963) - Court finds Bible reading over school intercom unconstitutional **and** *Murray v. Curlett,* 374 U.S. 203 (1963) - Court finds forcing a child to participate in Bible reading and prayer unconstitutional.

Epperson v. Arkansas, 393 U.S. 97 (1968) - Court says the state cannot ban the teaching of evolution.

Stone v. Graham, 449 U.S. 39 (1980) - Court finds posting of the Ten Commandments in schools unconstitutional.

Wallace v. Jaffree, 472 U.S. 38 (1985) - Court finds state law enforcing a moment of silence in schools had a religious purpose and is therefore unconstitutional.

Edwards v. Aguillard, 482 U.S. 578 (1987) - Court finds state law requiring equal treatment for creationism has a religious purpose and is therefore unconstitutional.

Board of Education v. Mergens, 496 U.S. 226 (1990) - The court rules that the Equal Access Act does not violate the First Amendment. Public schools that receive federal funds and maintain a "limited open forum" on school grounds after school hours cannot deny "equal access" to student groups based upon "religious, political, philosophical, or other content."

Lee v. Weisman, 112 SCt. 2649 (1992) - Court finds prayer at public school graduation ceremonies violates the establishment clause and is therefore unconstitutional.

Lamb's Chapel et al. v. Center Moriches Union Free School District, 508 U.S. 384 (1993) - Court says that school districts cannot deny churches access to school premises after-hours, if the district allowed the use of its building to other groups.

Kiryas Joel Village School District v. Grumet, (1994) - Court states that the New York State Legislature cannot create a separate school district for a religious community.

Santa Fe Independent School District v. Doe, (2000) - Court rules that student-led prayers at public school football games violate the Establishment Clause of the First Amendment.

Good News Club v. Milford Central School, (2001) - Court rules that Milford Central School cannot keep Good News Club from using its facilities because the school had created a limited public forum and prohibiing the religious club was viewpoint discrimination.

Religion in state colleges or universities

Widmar v. Vincent, 454 U.S. 263 (1981) - Court rules that a state university cannot refuse to grant a student religious group "equal access" to facilities that are open to other student groups.

Rosenberger v. Rector and Visitors of the University of Virginia, 515 U.S. 817 (1995) - Court finds student activity funds can be used to fund a Christian perspective student magazine called "Wide Awake."

Support for religious schools

Pierce v. Society of Sisters, 268 U.S. 510 (1925) - Court invalidates an Oregon law that required all children between the ages of eight and 16 to attend public schools. A Roman Catholic orphanage and military academcy brought suit. The court said the Oregon law interfered with parents right to oversee and guide their children's education.

Everson v. Board of Education, 330 U.S. 1 (1947) - Court says that state reimbursement for bus fares to attend religious schools is constitutional.

Board of Education v. Allen, 392 U.S. 236 (1968) - Court says that the state's lending of textbooks to private and religious schools is constitutional.

Lemon v. Kurtzman, 403 U.S. 602 (1971) - Court finds state supplements to the salary of Catholic school teachers to be unconstitutional.

Tilton v. Richardson, 403 U.S. 671 (1971) - Court finds that federal funding to private, religious, and public colleges in order to build classrooms is constitutional.

Committee v. Nyquist, 413 U.S. 756 (1973) **and in** *Sloan v. Lemon,* 413 U.S. 825 (1973) - Court rules that states cannot reimburse parents for sending their children to religious schools.

Meek v. Pittenger, 421 U.S. 349 (1975) - Court rules that states can lend textbooks to religious schools but no other materials.

Roemer v. Board of Public Works, 426 U.S. 736 (1976) - Court rules that states can provide grants to private and religious colleges.

Committee for Public Education v. Regan, 444 U.S. 646 (1980) - Court rules that states can reimburse religious schools for the cost of giving standardized tests.

Mueller v. Allen, 463 U.S. 388 (1983) - Court rules that taxpayers can deduct tuition, textbooks, and transportation expenses from state income taxes that were incurred by attending private and religious schools.

Aguilar v. Felton, 473 U.S. 402 (1985) - Court rules that sending public school teachers to religious schools to provide remedial education and counseling is unconstitutional.

Zobrest et al. v. Catalina Foothills School District, 509 U.S. 1 (1993) - Court rules that the school district does not violate the Establishment Clause by furnishing a sign-interpreter to a deaf child in a sectarian school.

Kiryas Joel Village School District v. Grumet, 512 U.S. 687 (1994) - Court rules that a school district carved out for religious reasons and financed by public funds violates the Establishment Clause.

Agostini v. Felton, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997) - Court overturns *Aguilar*and says that public school teachers providing supplemental, remedial instruction to disadvantaged students in religious schools does not violate the Establishment Clause.

Mitchell v. Helms, (2000) - High court rules that Chapter 2 of the Education and Consolidation and Improvement Act of 1981 does not violate the Establishment Clause when it provides educational equipment to religious schools with taxpayer money.

Zelman v. Simmons-Harris, (2002) - A 5-to-4 court, in an opinion written by Chief Justice William Rehnquist, upheld Ohio's voucher program that gives tax dollars to parents in Cleveland to send their children to religious or non-religious schools. It is the first time the court has upheld a voucher system.

Religious Tests to Hold Public Office

Torcaso v. Watkins, 367 U.S. 488 (1961) - Court holds that the state of Maryland can not require applicants for public office to swear that they believed in the existence of God. The court unanimously rules that a religious test violates the Establishment Clause.

McDaniel v. Paty, 435 U.S. 618 (1978) - Court majority rules that ministers may serve in legislatures and hold public office. The state of Tennessee and seven other states had provisions prohibiting clergymen from serving in the legislatures.

Prayer in Legislatures

Marsh v. Chambers, 463 U.S. 783 (1983) - Court rules that prayers said in state legislatures do not violate the Establishment Clause.

Nativity Displays

Lynch v. Donnelly, 465 U.S. 668 (1984) - Court rules that a government owned nativity scene displayed on private land did not endorse a religion and therefore did not violate the Establishment Clause.

Allegheny County v. ACLU, 492 U.S. 573 (1989) - Court finds that a nativity scene displayed inside a government building violates the Establishment Clause.

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Free Exercise Clause:

"Congress shall make no law respecting an establishment of religion, **or prohibiting the free exercise thereof ..."**

The Free Exercise Clause has generally come to mean that one may believe anything, but that religious actions and rituals can be limited by laws that are passed for compelling government reasons. A law passed that is aimed at a particular religion or religions in general have been considered unconstitutional by the U.S. Supreme Court. Laws must be neutral in regard to religions.

Protected belief

Watson v. Jones, 13 Wall. 679 (1872) - Court rules that church membership disputes are beyond the bounds of civil courts.

United States v. Ballard, 322 U.S. 78 (1944) - Court rules that religious teachings cannot be prosecuted for fraud. The beliefs of one person may seem preposterous to another, but religious liberty demands the "widest toleration of conflicting views." Ruling protects against trials for heresy.

Presbyterian Church v. Hull Church, 393 U.S. 440 (1969) - Court rules that property disputes that turn on questions of church doctrine are outside the bounds of civil courts.

Jones v. Wolf, 443 U.S. 595 (1979) - Court rules that questions of church property disputes are outside the bounds of civil courts.

Religion in the workplace

Sherbert v. Verner, 374 U.S. 398 (1963) - Court rules that the violation of the Free Exercise Clause of the First Amendment demands a strict scrutiny. Adell Sherbert, a Seventh-day Adventist, was fired from her job because she refused to work on her sabbath, Saturday. She was denied unemployment benefits from the state. The high court said that the State of South Carolina could only burden Sherbert's free exercise of her religion if it had a compelling interest in doing so. South Carolina could not meet the test. Sherbert received her unemployment benefits.

Employment Division v. Smith,* 494 U.S. 872 (1990) overruled *Sherbert v. Verner' compelling interest test.

Door-to-door proselytizing

Jones v. Opelika, 316 U.S. 584 (1942) - Slim majority of court upheld an ordinance requiring a fee for a license to sell books. The case was brought by Jehovah's Witnesses who wanted to sell religious literature in the Alabama town.

Murdock v. Pennsylvania, 319 U.S. 105 (1943) - Slim majority of court overruled *Jones v. Opelika* and ruled that imposing a fee to sell religious literature door-to-door was too great a burden on religious liberty. Case was brought by Jehovah's Witnesses.

Martin v. Struthers, 319 U.S. 141 (1943) - Court rules that the town of Struthers, Ohio cannot outlaw door-to-door selling altogether.

Watchtower Bible & Tract Society of New York v. Village of Stratton, (2002) - An 8-to-1 majority declare the village's door-to-door ordinance an unconstitutional burden on the religious expression and freedom of speech of Jehovah's Witnesses. The ordinance required registration with city officials, disclosure of names and obtaining a permit, which had to be produced on demand.

Proselytizing in other venues

Marsh v. Alabama, 326 U.S. 501 (1946) - Court rules that Jehovah's Witnesses have a right to distribute religious literature on the streets of a company town.

Fowler v. Rhode Island, 345 U.S. 67 (1953) - Court overturned conviction of a Jehovah's Witness who gave a religious address in a public park without permission of Pawtuckett, Rhode Island city officials. Pawtuckett officials had allowed other religous groups to speak in the park.

Krishna v. Lee, 112 S.Ct. 2701 (1992) - Majority of the Supreme Court rules that airport managers can prohibit solicitation of money by members of the Krishna religion, but must allow the free distribution of religious literature.

When religious acts break the law

Reynolds v. United States, 98 U.S. 145 (1878) - Court finds that the federal law prohibiting polygamy, which was challenged by a Mormon defendant, to be constitutional. Polygamy was outlawed.

Cleveland v. United States, 329 U.S. 14 (1946) - Court rules that transporting a woman across state lines to enter into a plural marriage, even if motivated by a religious belief is illegal.

Wisconsin v. Yoder, 406 U.S. 205 (1972) - Court decides that the Amish do not have to follow state law which required that children attend school until the age of 16. The Amish stop their children's formal education at 8th grade.

Employment Division v. Smith, 494 U.S. 872 (1990) - Court rules that the Free Exercise Clause cannot exempt one from drug laws. The two defendants were members of the Native American Church and had ingested peyote, a hallucinogenic drug. The high court states a new rule: no religious actions may violate general laws, but laws aimed specifically at religions or a particular religious practice will be held unconstitutional.

Church of Lukumi Babalu Aye v. Hialeah, 508 U.S. 520 (1993) - Court finds ordinances passed by the city of Hialeah, Florida, to stop members of the Santeria religion from sacrificing animals in their religious ceremonies were aimed directly at the church and are therefore unconstitutional. While sacrificing animals was outlawed, slaughtering them was not - so meat packing plants could continue to operate, or

hunters continue to dress their kill.

Congress passes the Religious Freedom Restoration Act in October 1993.

It restores the traditional reading of the Free Exercise Clause: the government must show a compelling interest to justify any substantial restriction on religion.

The **Religious Freedom Restoration Act of 1993** states in part:

FREE EXERCISE OF RELIGION PROTECTED

(a) IN GENERAL - Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).
(b) EXCEPTION - Government may substantially burden a person's excercise of religion only if it demonstrates that application of the burden to the person -

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling interest.

(c) JUDICIAL RELIEF - A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

A challenge to the constitutionality of the Religious Freedom Restoration Act was heard by the U.S. Supreme Court on Feb. 19, 1997.

The case pits the City of Boerne, Texas' historic district law against St. Peter's Catholic Church which wants to rebuild and expand a part of its church so that it can accomodate its large membership *(City of Boerne, Texas v. P.F. Flores, Archbishop of San Antonio)*
Boerne city fathers refused to permit the building. Church leaders brought suit under RFRA, saying the law infringes on religious exercise. The federal trial judge ruled RFRA unconstitutional. The Fifth Circuit Court of Appeals reversed. Both sides asked the U.S. Supreme Court to review the decision.

The U.S. Supreme Court ruled RFRA unconstitutional as applied to the states on June 25, 1997. The case is *City of Boerne, Texas v. P.F. Flores, Archbishop of San Antonio.*

For entire text of the the Religious Freedom Restoration Act of 1993.

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Updated link: *For the complete text of the U.S. Supreme Court decisions go to Cornell Law School.*
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