

# Free Exercise

# **Free exercise: 3 Major Problems**

- 1) Legal prohibition of religiously obligatory activities: polygamy, snake-handling, peyote**
- 2) Acts required by law, but prohibited by religion: mandatory school attendance, Social Security**
- 3) Disadvantage because of regulation - Blue Laws, Restrictions on public funds**

# **A Foundational Problem: Defining Religion**

**Two major contexts:**

- 1) Providing benefits – use of religion for tax evasion, avoiding regulation**
- 2) Recognizing other ethical imperatives as equally deserving of protection – nonreligious conscientious objectors**

# *United States v. Ballard (1944)*

**Trial of "I AM" movement leaders for fraudulently seeking and collecting donations on the basis of religious claims that the defendants themselves did not believe**

# ***United States v. Ballard (1944)***

## **Court ruled**

- 1. the question of whether the Ballards believed their religious claims with "good faith" was rightly submitted to the jury**
- 2. the question of the truth or falsity of the beliefs was rightly withheld from the jury**

***U.S. v. Seeger* (1965)**

***Welch v. U.S.* (1970)**

**Dispute denial sought conscientious objector status for failure to "belong to an orthodox religious sect."**

**Claim pacifism as ethical, not religious, choice**

**Seeger uses agnostic language, Welch most likely an atheist**

***U.S. v. Seeger* (1965)**

***Welch v. U.S.* (1970)**

**“the statute does not distinguish between externally and internally derived beliefs. Such a determination would ... prove impossible as a practical matter, and we have found that Congress intended no such distinction.” *(Seeger)***

# Is secularism a religion?

Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others

Ftn 11 in *Torcaso v. Watkins* (1961)



# ***Reynolds v. US (1878)***

**U.S. criminalizes polygamy in federal territories, including Utah**

**Court decides in favor of U.S.**

**Fundamental principle: Free exercise rights protect belief, not action**

# ***Reynolds v. US (1878)***

**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 necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice.**

***Chief Justice Waite***

# ***Davis v. Beason* (1890)**

**Idaho territory statute required voters to swear that they were not members of any organization that "teaches, advises, counsels or encourages" its members to commit the crime of bigamy.**

**Question: could Idaho prohibit voting based on religious affiliation and not criminal action?**

# ***Davis v. Beason (1890)***

**... if [bigamy and polygamy] are crimes, then to teach, advise and counsel their practice is to aid in their commission, and such teaching and counseling are themselves criminal and proper subjects of punishment....**

**Crime is not the less odious because sanctioned by what any particular sect may designate as religion.**

***Justice Field***

# ***Wisconsin v. Yoder***

**Old Order Amish believe that high school makes teenagers too much “of the world”**

**Believe that an 8<sup>th</sup> grade education is all that is necessary to succeed as farmer**

**Lack of high school reduces career options**

**Amish do not become dependent on the state**

# ***Employment Division v. Smith (1990)***

**Drug counselors apply for unemployment, argue discharge for peyote consumption discriminates against religious obligation**

**Court changes standard from strict scrutiny to “generally applicable” laws**

**Dissenters note that many states exempt Native American religious use of peyote from drug laws**

***Church of Lukumi Babalu  
Aye v. Hialeah***

**Santeria – Cuban “voodoo” combining  
Catholicism w/ West African religion**

**Animal sacrifices and use of animal  
parts are elements in ceremonies**

**Hialeah law clearly targets Santeria,  
exempts kosher/halal slaughter**

# **Religious Freedom Restoration Act (RFRA) of 1993**

**"Government shall not burden a person's exercise of religion even if the burden results from a rule of general applicability [unless] it demonstrates that application of the burden... 1) furthers a compelling governmental interest, and (2) is the least restrictive means of furthering that compelling governmental interest."**



# **City of Boerne v. Flores**

## **Constitutionality of RFRA**

**Does Congress have proper power under 14<sup>th</sup> Amendment to interpret 1<sup>st</sup> Amendment?**

**Does congressional action threaten separation of powers?**

# **Religious Land Use and Institutionalized Persons Act of 2000**

**No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person ... unless [can demonstrate] law is**

- a. is in furtherance of a compelling governmental interest; and**
- b. is the least restrictive means of furthering that compelling governmental interest.**

# ***Locke v. Davey* (2004)**

**Establishment Clause v. Free Exercise Clause**

**Must a state fund scholarships that go to students attending religious colleges equally with secular higher education?**

**Court finds denial of funding does not evince bias against religion**