Daniel Levin POLS 5212

Civil Rights/Civil Liberties Spring 2010

**Free Exercise of Religion**

**Terms**:

Religious Freedom Restoration Act (RFRA) neutral law of general applicability

Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

**Assigned Cases:**

*Wisconsin v. Yoder; Employment Division v. Smith; City of Boerne v. Flores; United States v. Ballard; Church of Lukumi Babalu Aye v. Hialeah; Locke v. Davey*

**Questions for Reading Assigned Cases:**

Most of the controversies over free exercise in the last 18 years stem from the Supreme Court’s

decision in *Employment Division v. Smith*. How did *Smith* change the Court’s jurisprudence? What are the implications of *Smith*? Why, in the face of continued and widespread political opposition, does the Court continue to support the *Smith* ruling? Should it? And what are the best arguments for the Court’s decision in *Smith*?

Should religious activities have greater protection than secular activities?

Can there ever be a proper test for what counts as a religion for purposes of greater protections for religious, over secular, activities?

**Additional Cases**:

*Reynolds v. US* (1876). The Supreme Court upheld Congress’ ban on polygamy in Utah territory,

by distinguishing between belief, which was protected, and behavior, which was not.

*Davis v. Beason* (1890). Idaho territory prohibited any person “who is a bigamist or polygamist,

or who teaches, advises, counsels, or encourages any person or persons to become bigamists or

polygamists ... or who is a member of any order, organization, or association which [does so] to

vote at any election, or to hold any [government] position or office.” The Court upheld the law,

which went beyond the prohibition of polygamy to deny voting rights based membership in a

religious organization that advocated polygamy, thus moving beyond the simple beliefs/actions

dichotomy in *Reynolds* by analogizing promotion of such religious beliefs to criminal

conspiracy, stating that “[b]igamy and polygamy are crimes by the laws of all civilized and

Christian countries.”