

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."