

# Chapter 12: Religion: Exercise and Establishment

# Introduction (1 of 2)

- The role of religion in America.
- Relationship between government and religion.
- Post-independence attitudes.
- Mention of religion in the Constitution.

# Introduction (2 of 2)

- Protesting the absence of Bill of Rights.
- The First Amendment of the Constitution.
- Questions on the religion clauses.

# Free Exercise of Religion (1 of 18)

- The First Amendment.
- Literal approach to free exercise.
- Jefferson's 1802 letter.

# Free Exercise of Religion (2 of 18)

## Initial Interpretations: The Belief/Action Distinction and the Valid Secular Policy Test

- Difference in approaches.
- *Reynolds v. United States*.
- Belief/action dichotomy.

# Free Exercise of Religion (3 of 18)

Initial Interpretations: The Belief/Action Distinction and the Valid Secular Policy Test

- *Cantwell v. Connecticut*.
- Valid secular policy test.
- Legitimate state interest.

# Free Exercise of Religion (4 of 18)

Initial Interpretations: The Belief/Action Distinction and the Valid Secular Policy Test

- Flag salute laws.
- *Minersville School District v. Gobitis*.
- *Prince v. Massachusetts*.

# Free Exercise of Religion (5 of 18)

## The *Sherbert-Yoder* Compelling Interest Test

- Movement away from belief/action dichotomy.
- *Braunfeld v. Brown*.
- Questions raised.



# Free Exercise of Religion (6 of 18)

## The *Sherbert-Yoder* Compelling Interest Test

- *Sherbert v. Verner*.
- Strict scrutiny: a legal standard.
- *Wisconsin v. Yoder*.

# Free Exercise of Religion (7 of 18)

## The *Sherbert-Yoder* Compelling Interest Test

- *Thomas v. Review Board of Indiana Employment Security Division.*
- Parallels between *Sherbert* and *Thomas*.

# Free Exercise of Religion (8 of 18)

## The *Smith* Test

- 1980s dilemma of the Court.
- *United States v. Lee*.
- *Lee*'s inconsistency with *Sherbert-Yoder*.

# Free Exercise of Religion (9 of 18)

## The *Smith* Test

- *Goldman v. Weinberger*.
- Congressional action.
- Contrasting scholarly opinions.

# Free Exercise of Religion (10 of 18)

## The *Smith* Test

- Ideological balance shift: late 1980s to 1990s.
- *Employment Division v. Smith.*

# Free Exercise of Religion (11 of 18)

## The *Smith* Test

- New standard
- Scalia's opinion

# Free Exercise of Religion (12 of 18)

## The *Smith* Test

- Replacing the *Sherbert-Yoder* test.
- Comparing *Smith* and *Reynolds*.

# Free Exercise of Religion (13 of 18)

## The *Smith* Test

- *Church of the Lukumi Babalu Aye v. City of Hialeah*
- Support for Santerians



# Free Exercise of Religion (14 of 18)

## The *Smith* Test

- Interest groups lobby after *Smith*.
- Religious Freedom Restoration Act.
- Compelling interest test returns.
- Differing responses to the RFRA.

# Free Exercise of Religion (15 of 18)

## The *Smith* Test

- *City of Boerne v. Flores.*
- Congressional power.

# Free Exercise of Religion (16 of 18)

## The *Smith* Test

- RLUIPA: supplementing the RFRA.
- Provisions of the RLUIPA.
- *Cutter v. Wilkinson*.
- *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*

# Free Exercise of Religion (17 of 18)

## The *Smith* Test

- *Holt v. Hobbs*.
- *Burwell v. Hobby Lobby*
- Before and after *Hobby Lobby*.
- RFRA and RLUIPA only statutory.

# Free Exercise of Religion (18 of 18)

## The *Smith* Test

- *Trinity Lutheran v. Comer.*
- *Masterpiece Cakeshop v. Colorado CRC.*
- *Christian Legal Society v. Martinez*
- Neutrality
- Constitutional v. statutory decisions.

# Religious Establishment (1 of 14)

- Establishment clause: First Amendment.
- What sort of separation.
- Three alternative interpretations.
- Separationists and Accommodationists

# Religious Establishment (2 of 14)

- Fluctuations of the Court's decisions.
- *Bradfield v. Roberts*.
- Repeated issues faced by the justices.

# Religious Establishment (3 of 14)

## Establishment Clause Developments through the Warren Court Era

- *Everson v. Board of Education.*
- Encouraged aid to church-sponsored schools.



# Religious Establishment (4 of 14)

## Establishment Clause Developments through the Warren Court Era

- *Board of Education v. Allen.*
- Aid treated differently from prayer.
- *Engel v. Vitale.*

# Religious Establishment (5 of 14)

## Establishment Clause Developments through the Warren Court Era

- *School District of Abington Township v. Shempp.*
- Public did not support.

# Religious Establishment (6 of 14)

## The *Lemon* Test: Adoption and Discontent

- End of the Warren Court.
- *Walz v. Tax Commission of the City of NY.*
- *Lemon v. Kurtzman.*
- *Lemon* Test

# Religious Establishment (7 of 14)

## The *Lemon* Test: Adoption and Discontent

- *Lemon* test over time.
- Post-*Lemon* era.

# Religious Establishment (8 of 14)

## The Lemon Test: Adoption and Discontent

- Court's changing position.
- *Zelman v. Simmons-Harris*.

# Religious Establishment (9 of 14)

## The Lemon Test: Adoption and Discontent

- Secular purpose.
- *Lynch v. Donnelly*.
- *Country of Allegheny v. ACLU*.
- Ten Commandments.
- *Van Orden v. Perry*.

# Religious Establishment (10 of 14)

## The Lemon Test: Adoption and Discontent

- *McCreary County v. ACLU*.
- Differentiating *Van Orden* from *McCreary County*.
- Can meaning change over time?

# Religious Establishment (11 of 14)

## The Lemon Test: Adoption and Discontent

- *American Legion v. AHA.*
- Divided opinion.
- *Town of Greece v. Galloway.*
- Continued support for religious accommodation.



# Religious Establishment (12 of 14)

## The Lemon Test: Adoption and Discontent

- Separationist in Schools
- *Epperson v. Arkansas*.
- *Edwards v. Aguillard*.

# Religious Establishment (13 of 14)

## The Lemon Test: Adoption and Discontent

- *Wallace v. Jaffree.*
- *Lee v. Weisman.*
- *Santa Fe Independent School District v. Doe.*
- Prayer in School: Unconstitutional

# Religious Establishment (14 of 14)

## The Supreme Court and the Establishment Clause

- Difficult to characterize.
- Recurrence of the *Lemon* test.
- Individualistic viewpoints.