

Ch. 4B: Religion and the State – The Free-Exercise Clause**IV. The judicial record**

A. Pre-1940s: little attention to either no-establishment or free-exercise issues

B. 1940s-

1. *No-establishment cases*: [see previous outline]

2. *Free-exercise cases*:

a. **Judicial tests**:

- (1) Government may compel or restrict *behavior* but not affirmation or rejection of religious *beliefs*.
- (2) The burden of proof is on the government. Since the 2006 *Gonzales v. O Centro Espirita* ruling,
 - (a) The stricter **Sherbert standards of proof** limit the federal government:
 - i) A *compelling interest of the highest order* is required to justify a federal restriction of the free exercise of religion, and
 - ii) the *least-restrictive means* must be used to achieve the compelling interest, and
 - iii) that restriction does not expressly target a particular religion for hardship but is *generally applicable* to all citizens.
 - (b) The weaker **Smith standards of proof** apply to state governments – unless a state chooses to impose the stricter (Sherbert) standards on itself (and many states have done so).

b. **General trend: the libertarian doctrine** – an individual's right to freely exercise religious beliefs (including both non-traditional-Christian beliefs and non-Christian beliefs) has priority over community norms or interests

- (1) *Pierce v. Society of Sisters* (1925) struck down an OR statute forbidding students from attending private (Catholic) schools
- (2) *Cantwell v. CT* (1940): overturned a New Haven ordinance requiring prior governmental approval to solicit funds for religious purposes (Cantwell was a Jehovah's Witness)
- (3) *Murdock v. PA* (1943): struck down state laws levying license taxes on peddlers of religious tracts (Murdock was a Jehovah's Witness)
- (4) *Martin v. Struthers* (1943): struck down laws prohibiting door-to-door distribution of religious handbills (Martin was a Jehovah's Witness)
- (5) *WV v. Barnette* (1943): struck down WV flag-salute law — overturned the *Gobitis* (1940) decision [#3 on the next page] (Barnette was a Jehovah's Witness)
- (6) *Girouard v. US* (1946): overturned the denial of US citizenship to a Seventh-Day Adventist immigrant from Canada (Girouard) with a conscientious objection to bearing arms but willing to provide alternative service as a noncombatant in the military
- (7) *Niemotka v. MY* (1951): struck down laws requiring official approval to hold public worship meetings in public parks (Niemotka was a Jehovah's Witness)
- (8) *Sicurella v. US* (1955): ordered a draft board to grant conscientious-objector status to Sicurella, a Seventh-Day Adventist, (upholding a Congressional statute providing for alternatives to bearing arms in combat – a very common form of conscientious-objector alternative service in the Vietnam War was to be an unarmed combat medic in the Army or unarmed combat corpsman in the Navy and Marine Corps)

(9) ***Sherbert v. Verner* (1963)**: prohibited the SC Employment Security Commission from denying unemployment benefits to persons whose religious beliefs (Seventh-Day Adventist) conflicted with working on their sabbath (Saturdays) [see also #12, 13, 14, & 17 below; but also, #8 & 9 on the next page]

- (10) *US v. Seeger* (1965): ordered local draft boards to treat equally conscientious-objector applicants with nontraditional forms of religious belief
- (11) *WI v. Yoder* (1972): upheld the right of Amish parents to keep their children out of public school after the age of fourteen
- (12) *Wooley v. Maynard* (1977): struck down the requirement to display a statement on an automobile license plate that violates one's religious beliefs
- (13) *Thomas v. IN* (1981): upheld the claim to unemployment benefits of a Jehovah's Witness who was fired for refusing to work on the production of weapons
- (14) *Ansonia Board of Education v. Philbrook* (1986): an employer must make reasonable accommodations to an employee's religious practices – unpaid leave is not a reasonable accommodation when paid leave is provided for all purposes except religious ones.
- (15) *Hobbie v. FL* (1987): struck down the denial of unemployment benefits to a Seventh-Day Adventist who was discharged for refusal to work on the Sabbath (Friday nights and Saturdays)
- (16) *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993): struck down a city ordinance prohibiting animal sacrifices

- (17) ***Gonzales v. O Centro Espirita* (2006)**: granted the Union of the Plants Christian Church a preliminary injunction preventing the confiscation of imported hallucinogenic tea or the arrest of any members using the drug while the district court trial is pending. **The Court ruled that: 1) Congress overstepped its constitutional authority by making the Religious Freedom Restoration Act (1993) applicable to the states; 2) however, the Court left in place the RFRA's restoration of the *compelling-interest* and *least-restrictive-means* tests when the federal government abridges or denies the free exercise of religious freedom. While the RFRA is no longer applicable to the states, many states have passed their own mini-RFRAs, achieving the same effect.**

- c. **Exceptions: the *communitarian* doctrine** – compelling community norms or interests have priority over an individual's right to freely exercise religious beliefs (especially if those religious beliefs are unorthodox and held by unpopular minority religions labeled as "cults")

- (1) *Reynolds v. US* (1878): upheld law prohibiting polygamy
- (2) *Hamilton v. CA* (1934): upheld a state law requiring military training for able-bodied male students enrolled at state universities
- (3) *Minersville School District v. Gobitis* (1940): upheld a PA school board that expelled two young members of Jehovah's Witness for refusing to salute the American flag in a public school ceremony (was overturned just 3 years later by *WV v. Barnette*, # 4 above)
- (4) *Cox v. NH* (1941): upheld the requirement of prior approval of parades on public streets and roads
- (5) *Chaplinsky v. NH* (1942): upheld enforcement of a statute prohibiting the breach of peace in the course of a public meeting
- (6) *Prince v. MA* (1944): upheld child-welfare restrictions on children selling magazines on a street corner late at night
- (7) *Bob Jones Univ. v. US* (1983): upheld the denial of tax-exempt status to racially discriminatory schools that base their policies on religious belief

- (8) ***OR v. Smith* (1990)**: upheld the denial of unemployment benefits to Native Americans who used an illegal drug, peyote, for sacramental purposes; and in the process **significantly weakened in the 1963 *Sherbert* standard by dropping the *compelling-interest* and *least-restrictive-means* tests and substituting an easier-to-demonstrate, *reasonable-grounds* test**
- (9) ***City of Boerne v. Flores* (1997)**: the Court ruled that Congress overstepped its constitutional authority by attempting to overturn a Supreme Court interpretation of the Constitution by passing a statute (the Religious Freedom Restoration Act) instead of proposing a Constitutional amendment to be ratified by the states.

V. Politics of church-state relations

- A. Diverse coalitions:
 1. Not simply pro-religion v. anti-religion
 2. Not simply Christian v. anti-Christian
 3. Not simply conservative v. liberal
- B. Loser's tactics:
 1. Interpret decisions narrowly
 2. Evade enforcement of decisions (noncompliance highest where evangelical Protestantism is strongest, i.e., the south)
 3. Try to get Congress to restrict federal court jurisdiction over church-state issues
 4. Alter membership of the Court
 5. Pursue Constitutional amendments to override
- C. Overall evaluation: compromise is working
 1. Churches are relatively independent of government
 2. Government protects the religious rights of persons of diverse faith
 3. No widespread religious violence that has plagued other societies

VI. The constitutional revolution in perspective

- A. Judicial appointments
- B. The dilemma in balancing the no-establishment and free-exercise clauses
 1. The accommodation and free exercise of (majority) religion comes at the expense of religious diversity
 2. But the protection of religious diversity comes at the expense of the accommodation and freedom of (majority) religion(s)