

Free Exercise Clause Cases: The Essentials

- The Free Exercise Clause of the First Amendment applies to the states through the 14th Amendment.
- The Free Exercise Clause prohibits the government from punishing someone on the basis of a person’s religious beliefs.
- The Court has defined a religious belief as “a belief that must occupy a place in the believers life parallel to that occupied by orthodox religious beliefs....*U.S. vs. Seeger (1965)*.
- The Court may not declare a religious belief to be false, but may determine whether the person is sincere in asserting the belief.
- Religious beliefs may never be prescribed or coerced by the state (e.g. religious oaths for gov’t jobs are prohibited.).
- The state may regulate and even ban actions or practices that grow out of religious beliefs (e.g. plural marriage).
- Prior to *Employment Division vs. Smith* (Peyote case) in 1990, the Court had adopted a compelling state interest test to determine the constitutionality of policies regulating the free exercise of religion. However, in the peyote case, the Court abandoned that test and applied a much broader standard, angering many in America.
- Congress responded by passing the Religious Freedom Restoration Act of 1993 which reestablished the compelling state interest test, setting up a clash between the Legislative and Judicial branches highlighted in *Boerne vs. Flores (1997)*.

Case	Issue	Ruling
<i>Reynolds vs. U.S. (1879)</i>	Does a prohibition against the Mormon practice of polygamy violate the Free Exercise Clause?	No. Belief-action test. You can believe anything you want, but you can’t necessarily act on it.
<i>Cantwell vs. Connecticut (1940)</i>	Can local official deny a permit to a speaker if deemed not to belong to a “real” religion?	No. Govt officials can’t deny speaking permit to minority religious groups.
<i>West Va. School Bd. vs. Barnette (1943)</i>	Can a school board punish Jehovah’s Witness students for not saying the flag salute?	No. Witness children are taught flag salute violates biblical prohibition again idol worship. “The Bill of Rights is not up for public vote,” writes Justice Hugo Black.
<i>Sherbert vs. Verner (1963)</i>	Did the state violate the FE when it denied unemployment compensation to Seventh Day Adventist who quit rather than work on day of worship?	Yes. Woman was forced to quit in order to maintain her beliefs so it was just like being fired. If you are fired, you are entitled to unemployment benefits.

Case	Issue	Ruling
<i>Prince vs. Massachusetts (1944)</i>	Does Jehovah's Witness practice of requiring kids to evangelize during school hours violate child labor statute?	Yes. Protecting children trumps free exercise of religion.
<i>Goldman vs. Weinberger (1986)</i>	Does an Air Force requirement banning the wearing of a yarmulke violate the FE clause?	No. Air Force rabbi's free exercise rights are trumped by military "good order and discipline."
<i>O'Lone vs. Estate of Shabazz (1987)</i>	Must a prison accommodate the desires of Muslim inmates, working as a work gang in locations away from prison, to return to prison on Friday noon for prayers required by Islamic rule?	No. Prison warden's need to protect public safety trumps prisoners' free exercise claim.
<i>Employment Division vs. Smith (1990)</i>	Can state employees use free exercise of religion in defense of illegal drug use?	No. General applicability test. Court adopts rational basis standard to weigh claim of religious free exercise versus law that protects general health, safety and welfare. Law applies to everyone, even those using drugs in religious ceremony
<i>Church of the Lukumi vs. Hialeah (1993)</i>	Does a city ordinance making it a crime to kill animals in ritual sacrifice violate the FE clause?	Yes. General applicability test. Words "ritual animal sacrifice" in the city's ordinance indicate that the city is targeting this Santeria-practicing church. The ordinance is struck down as not being "generally applicable" to everyone.
<i>Boerne vs. Flores (1997)</i>	Can a city prohibit the expansion of a church because of the city's historic preservation laws?	Yes. General applicability test. Archbishop Flores cannot expand his church in downtown Boerne, TX historic district. No one in the downtown district is allowed to rebuild old buildings so the law applies to everyone.