

Handout 1

Historical Context of Religious Freedom in the United States

The right to religious freedom is a foundational American principle. It was the reason both French Huguenots and English Protestant pilgrims came to the American continent in the seventeenth century: to freely practice their faiths in ways which were banned in Europe.

Thus, in the newly independent United States of America, the framers of the Bill of Rights ensured in the very first clause of the very first amendment to the Constitution that the federal government would not establish any national religion, nor prohibit any person's free exercise of their religion.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

First Amendment

In interpreting the First Amendment, the Supreme Court has issued several rulings that have developed what it means for persons to freely exercise their religion. In *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993), the Court held a state statute banning animal sacrifice was unconstitutional because it targeted the religious practice of the Santeria religion, but did not prohibit other practices that killed animals, like hunting and farming.

However, the Court also made clear that the Free Exercise Clause did not generally require the government to grant religious exemptions to laws that were neutral and applied equally to everyone. In *Employment Division v. Smith* (1990), the Court held that a state statute denying unemployment benefits to persons fired from a job for illegally smoking peyote was constitutional, concluding that the Free Exercise clause of the First Amendment did not excuse one's responsibility to follow laws that are generally applicable to everyone.

In response to *Smith*, Congress passed the Religious Freedom Restoration Act of 1993 (RFRA) to provide greater protection for religious exercise under the First Amendment and rejected the Court's unwillingness to strike down generally applicable laws. The statute provides that the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except . . . [if] it is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1 (2015). The Supreme Court later stopped the application of RFRA to the states because it exceeded Congress's limited powers (see *City of Boerne v. Flores*, 1997). But RFRA continues to apply to actions of the federal government.

Recent Supreme Court cases such as *Holt v. Hobbs* (2015) make clear that RFRA provides greater protection for religious exercise than the First Amendment. What will happen when these broad protections come into conflict with other important government interests, including the enforcement of other laws and regulations that promote health and safety?