THE FREE EXERCISE OF RELIGION IN AMERICA

WHEN, IF EVER, MAY THE GOVERNMENT LIMIT FREEDOM OF RELIGION? THE SUPREME COURT AND CONGRESS HAVE GRAPPLED WITH THIS QUESTION.

Library of Congress

A lithograph, done seven years after the killing, depicts the 1844 murder of Mormon leader Joseph Smith.

The First Amendment to the U.S. Constitution begins with what are known as the religion clauses: “Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof . . . .” Note that initially the First Amendment only limited the actions of Congress, our national legislature, but not the governments of any of the states. That came later.

The phrases *establishment of religion* and *free exercise of religion* mean different things. Most British colonies in America before 1776 had “established churches,” churches that received direct financial support from taxpayer money. Several states in the early American republic also had established churches. The establishment clause protects against the federal government’s funding or sponsoring particular religious views.

The free exercise clause serves another purpose: It prevents the government from interfering with people’s religious beliefs and forms of worship. It was many years before the Supreme Court heard its first case involving the free exercise clause.

The First Free Exercise Case

In the 1820s, a man named Joseph Smith had spiritual visions, and from his visions came the new religion of the Church of Latter-day Saints, whose adherents are called Mormons. Throughout the 19th century, the Mormon faith spread as the charismatic Smith gathered followers. Among the Mormons’ more controversial practices was polygamy, or men having multiple wives. Joseph Smith based his belief in polygamy on biblical examples of the practice, though his followers did not, at first, accept this part of his revelation.

The Mormons faced resistance and even persecution when they settled in many traditionally Christian communities. The Mormons followed Smith until his death at the hands of an angry mob in 1844 and then followed his successor, Brigham Young, until they ultimately settled in the territory of Utah. There, they openly practiced polygamy.

Determined to clamp down on their polygamy in U.S. territories, Congress passed the Anti-Bigamy Act of 1862, which President Lincoln signed into law. The law made polygamy a federal crime punishable by prison and a fine: “That every person having a husband or wife living, who shall marry any other person, whether married or single, in a Territory of the United States, . . . shall . . . be adjudged guilty of bigamy . . . .” Lincoln, however, promised not to enforce the law if Young agreed not to join the Confederacy in the Civil War.

When the federal government began to more actively enforce the law in the 1870s, Young and other Mormon elders decided to challenge the law. Young had his secretary, George Reynolds, arrested for bigamy. According to plan, Reynolds claimed his arrest violated his fundamental right to free exercise of religion. The U.S. Supreme Court agreed to hear his appeal.

When in 1879, the court issued its opinion in *Reynolds v. U.S.*, Reynolds and the Mormons lost. In a unanimous opinion, Chief Justice Morrison Waite wrote, “Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.” Unless the government can regulate our actions, every citizen would become “a law unto himself.” In other words, the government may limit your actions, but not your beliefs.

In 1890, the Mormons formally banned the practice of polygamy within their church, though some fundamentalist Mormons continued the practice illegally even into the 21st century. (The practice of polygamy in Utah had made many in Congress oppose its becoming a state. After the ban, Congress admitted Utah to the Union in 1896.)

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Incorporation of Rights

The First Amendment initially only applied to the federal government. The Mormons could challenge the Anti-Bigamy Act because it was an act of Congress, the only governmental body named in the First Amendment.

But following the Civil War, the 14th Amendment was added to the Constitution. Among its provisions was the due process clause: "nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." Beginning in the 1920s, the Supreme Court began to interpret the due process clause as incorporating the fundamental rights of the Constitution and thus protecting individuals against the actions of state and local governments. On a case-by-case basis, the court has decided which rights are incorporated into the 14th Amendment's due process clause. Once a fundamental right has been incorporated, it protects persons from unconstitutional laws and actions of their state and local governments and not just the federal government.

The free exercise clause was incorporated in the 1940 case of *Cantwell v. Connecticut*. Newton Cantwell belonged to the Jehovah's Witnesses, a Christian sect that places great importance on its members' proselytizing, or working to convert others to its beliefs. One day, Cantwell and his two sons went door-to-door in a mostly Catholic neighborhood in Connecticut, taking with them religious books and pamphlets and even a portable phonograph (record player) to play recordings for people at their front doors.

The recordings offended many people in the neighborhood. Some listeners later testified that they had to restrain themselves from punching Cantwell. A local ordinance forbade anyone from soliciting (asking for donations) for "any alleged religious, charitable or philanthropic cause" without prior approval from the local "public welfare council," a governmental body. The punishment for violating the ordinance included a fine and up to 30 days in jail. Cantwell was arrested for violating the ordinance and for disturbing the peace.

Cantwell defended his actions on the basis of his free exercise of religion under the First and 14th amendments. When his case was appealed to the Supreme Court, the court held unanimously in Cantwell's favor. In his opinion, Justice Owen Roberts wrote:

> In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets [basic beliefs] of one man may seem the rankest error to his neighbor . . . . But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

Compelling Interest

More than 20 years later, in *Sherbert v. Verner* (1963), the Supreme Court made another important ruling on the free exercise clause. The court was presented with this issue: If an employee cannot perform the required functions of a job for religious reasons, and is then fired, may a state deny that employee unemployment benefits?

The case involved Seventh Day Adventism, a Christian denomination. All Christians observe a holy day each week called the Sabbath, and most Christians in the United States observe the Sabbath on Sunday. The Seventh Day Adventists, however, observe it on Saturday, according to their biblical interpretation.

The free exercise clause prevents government from interfering with people's religious beliefs and forms of worship.

Adell Sherbert, a young woman, had converted to Seventh Day Adventism in South Carolina. She worked a five-day week at a textile mill, but when the mill's schedule changed to a six-day week, including Saturdays, she refused to work on her Sabbath day. She was fired, and she could not find other work because of her Sabbath restriction. When she applied for state unemployment benefits, the state denied her claim, stating that she was refusing to accept available work.

Sherbert appealed the state's decision. When her case ultimately reached the U.S. Supreme Court, the court decided in her favor. Writing for the majority, Justice William Brennan stated a rule for deciding when the government could limit a person's free exercise of religion. The decision to deny Sherbert her benefits

> must be either because her disqualification as a beneficiary represents no infringement by the State of her constitutional rights of free exercise, or because any incidental burden on the free exercise of appellant's religion may be justified by a "compelling state interest. . . ."

In other words, the court, recognizing the free exercise of religion as a fundamental right, decided that if the government wants to place a burden on a person's sincere religious beliefs, then the government must have a very strong reason for placing such a burden. The only reason the state put forward in Sherbert's case was the possibility of "fraudulent claims by unscrupulous claimants feigning religious objections to Saturday work." Brennan noted that no evidence of fraudulent claims was presented in court and doubted even if evidence existed, that this would amount to a compelling state interest. "For even if the possibility of spurious claims did threaten to dilute the fund and disrupt the scheduling of work, it would plainly be incumbent upon the [state] to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights."

Drugs, Religion, and the Law

For nearly 30 years, the courts used *Sherbert*'s "compelling interest" test to decide free exercise cases. In *Employment Division v. Smith* (1990), however, the Supreme Court moved decidedly in another direction, by reinvigorating the original standard set in *Reynolds v. U.S.*

The case of *Smith* involved adherents of a small religion called the Native American Church (NAC). The NAC synthesize Christianity with traditional North American indigenous, or Native American, religion. Beliefs and practices in the NAC vary from region to region.

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Full Text of the Religious Freedom Restoration Act

In the text of RFRA below, note how it uses the language of the Supreme Court's *Sherbert* decision to describe the only circumstances when the government may burden any person's free exercise of religion.

42 U.S. Code Sec. 2000bb – 1 - Free exercise of religion protected

(a) **In general**

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) **Exception**

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person –

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(c) **Judicial relief**

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

Part of the NAC's ritual practices, however, involves the controversial use of part of a small cactus called peyote (pronounced pay-OH-tee). When ingested into the body, peyote can cause a strong hallucinogenic (mind-altering) effect. Archaeologists have found peyote "buttons" (bite-size pieces) in caves in southern Texas that date back to 5,000 B.C., indicating a long tradition of use before the arrival of Europeans in North and South America.

The federal government classifies peyote as a Schedule I controlled substance, or illegal narcotic. Federal law, however, makes an exemption for peyote's use by the NAC: "The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church." All states also outlaw the use of peyote, but many of them also have exemptions for its use by the NAC.

In the late 1980s, Alfred Smith and Galen Black worked in a private Oregon drug-rehabilitation clinic as counselors. They also belonged to the Native American Church. When their employer learned they ingested peyote as part of their religious practice, they were fired for "misconduct" even though they did it when they were not working. Use of peyote is a crime in Oregon, and the state does not have an exemption for the NAC. Smith and Black, however, were never charged with a crime. They made a claim for state unemployment benefits, but the Oregon Department of Human Resources denied the benefits because of the misconduct claim.

The Oregon Supreme Court held that the denial of benefits did violate the free exercise clause, citing *Sherbert v. Verner* and the compelling interest test. When the state of Oregon appealed the case to the U.S. Supreme Court, it argued that the use of peyote is a criminal act, and therefore the denial of benefits was permitted even though Smith and Black only used peyote for religious purposes. The state argued that their conduct set a bad example for the drug addicts who Smith and Black counseled.

Smith and Black argued that criminal activity not directly "job-related" is not a reason to deny unemployment benefits under Oregon law. They cited an example of a university professor who was not denied benefits even though he had been convicted for conspiracy to set off bombs at federal buildings.

The U.S. Supreme Court, however, held for the state of Oregon in a 6–3 split. In his majority opinion, Justice Antonin Scalia wrote that a "neutral, generally applicable law" does not violate the free exercise clause simply because it burdens a person's religious beliefs. Scalia continued, "We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." Citing the *Reynolds* case, Scalia warned that a decision favoring Smith and Black would allow "every citizen to become a law unto himself."

Writing in dissent, Justice Harry Blackmun argued that the compelling interest test "was settled and inviolate principle," and that the Oregon government had simply not established a compelling interest "in enforcing its drug laws against religious users of peyote." Blackmun said that the majority was wrong to say the court had "never held that an individual's religious beliefs" excuse him or her from the law. Blackmun pointed to the *Cantwell* decision as an example.

The RFRA

The decision in *Smith* prompted outrage from across political and religious dividing lines. Many liberals and conservatives thought the decision harmed religious liberty. *Smith* brought the liberal American Civil Liberties Union and the conservative Traditional Values Coalition together to denounce the Supreme Court's decision. A variety of religious groups also opposed the decision. The Religious Action Center of Reform Judaism, the Baptist Joint Committee on Public Affairs, the National Association of Evangelicals, and others all agreed that the decision would have far-reaching effects, damaging more than just the Native American Church.

Members of Congress responded. Representative Chuck Schumer (D-NY) introduced a bill called the Religious Freedom Restoration Act (RFRA) in 1993, which reinstated the compelling interest test of the *Sherbert* case. It passed unanimously in the House of Representatives and sailed through the Senate in a 97–3 vote. President Bill Clinton then signed RFRA into law. The text of the law referred only to "government," meaning that it applied at both the federal and state levels.

In 1997, however, the Supreme Court declared unconstitutional the application of RFRA to the states in the case of *City of Boerne v. Flores*. In a 6–3 decision, the court held that Congress exceeded its authority under the 14th Amendment when it passed

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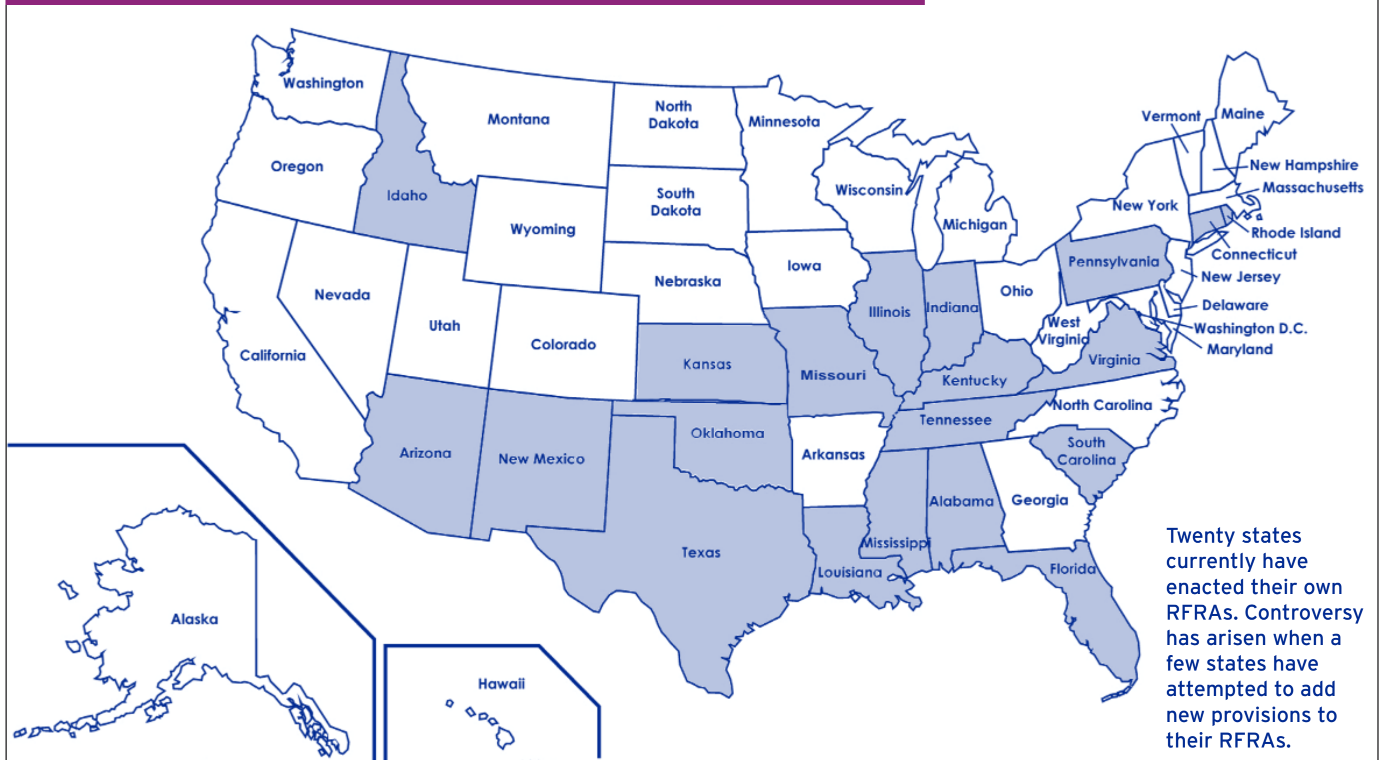
States With Religious Freedom Restoration Acts (March 2015)



Twenty states currently have enacted their own RFRAs. Controversy has arisen when a few states have attempted to add new provisions to their RFRAs.

RFRA. The court decided that congressional legislation could limit the federal government's actions, but that Congress could not tell state governments to give citizens more First Amendment protection than the *Smith* decision required.

Over the ensuing years, several states passed their own *state-level* "RFRAs." As of March 2015, a total of 20 states have RFRA laws.

Hobby Lobby and Beyond

In *Burwell v. Hobby Lobby* (2014), the Supreme Court was once again asked to tackle the Religious Freedom Restoration Act. The owners of Hobby Lobby, a private for-profit corporation, are members of a single family and are evangelical Christians. *Hobby Lobby* is a "closely held" corporation, which is one that is owned by relatively few people and whose stock is not traded on the stock market. The corporation runs more than 500 stores nationwide and employs thousands of people.

Acting collectively as the Hobby Lobby corporation, the owners objected to having to comply with a portion of the Affordable Care Act (ACA) that required employers' health insurance plans to cover birth control for employees. They argued that their religious beliefs forbade them from funding "abortifacient" contraceptives, or those they believed caused the abortion of fetuses.

Hobby Lobby sued the federal government under RFRA. In its decision, the U.S. Supreme Court ruled 5–4 in favor of Hobby Lobby. In his opinion for the majority, Justice Samuel Alito wrote, "Protecting the free-exercise rights of corporations like Hobby Lobby protects the religious liberty of the humans who own and control those companies."

Justice Alito explained that the court had already decided in another case that RFRA applied to non-profit corporations. In *Hobby Lobby*, the court for the first time interpreted RFRA to apply to for-profit, closely held corporations. The holding also only pertained to the ACA's mandate for employer-covered birth control.

The case sparked deep controversy. In her dissenting opinion, Justice Ruth Bader Ginsburg said the *Hobby Lobby* decision would cause "havoc." She argued that Congress had already amended the ACA in 2012 to ensure that employers could not deny health care coverage to employees based on the employers' religious beliefs. On religious freedom, she continued, "There is . . . no support for the notion that free exercise rights pertain to for-profit corporations."

DISCUSSION & WRITING

1. What are the two religious clauses in the First Amendment? What does each guard against?
2. What are bigamy and polygamy? Why did Congress just write an anti-bigamy statute?
3. The article says the free exercise clause prevents government interference with each person's religious beliefs and practices. What government interference was alleged in the *Reynolds*, *Cantwell*, *Sherbert*, and *Smith* cases? Cite evidence from the article's text to support your answers.
4. Re-read the section "Drugs, Religion, and the Law." Compare the decision in *Reynolds* (1879) with the decision in *Smith* (1990). How were the facts in those cases similar or different? Do you think *Smith* was simply a restatement of *Reynolds*? Why or why not? Cite evidence from the article's text to support your answer.
5. Re-read the section "Hobby Lobby and Beyond." Do you agree with the majority opinion or with the dissenting opinion? Give reasons to support your answer.

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ACTIVITY

What Should the Test Be? A Close-Reading Activity on the Free Exercise Clause

The Supreme Court in the *Sherbert* and *Smith* cases used two different tests to decide free exercise clause cases. In this activity, students will apply the tests to the 1972 case of *Wisconsin v. Yoder*.

That case involved the Amish, separatist Christians who avoid most modern technology in favor of traditional communal farming. In the *Yoder* case, Amish parents refused to enroll their children in public high school, arguing that attending was "contrary to the Amish way of life." These parents were charged and fined for violating the state's compulsory education laws. The U.S. Supreme Court had to decide the following issue: **Do a state's compulsory education laws violate the First Amendment rights of parents who refuse to send their children to school for sincerely held religious reasons?**

For this activity, students should first form pairs and do a close reading of the facts of *Wisconsin v. Yoder*. Then each student will write a short essay, answering text-dependent questions.

Instructions:

1. Read the facts of the case below, taken directly from the majority opinion written by Chief Justice Warren Burger. Circle words or phrases that you do not understand or need to look up. After reading, discuss the main points with a partner and try to reach agreement on what the case is about. Read aloud the words or phrases that you do not understand and see if your partner can help explain them to you.
2. Re-read the excerpts, this time drawing a question mark in the margin next to any paragraph or sentence that makes you have a question about the text. Write down your questions on a separate sheet of paper if the margin does not give you enough room.
3. After re-reading, share your questions about the text with your partner. Determine if your partner can help you answer them, or if you need to look up more information.
4. **Writing Activity:** Using the text and the main article, answer the following questions, each with at least one well-developed paragraph, citing relevant text to support your answers:
   (a) How should the *Yoder* case be decided under the compelling interest test of *Sherbert v. Verner*?
   (b) How should it be decided under the "general applicability" test of *Employment Division v. Smith*?
   (c) How do you think the case should be decided? Why?

Facts (as stated in the majority opinion of *Wisconsin v. Yoder*)

Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence. This concept of life aloof from the world and its values is central to their faith.

A related feature of Old Order Amish communities is their devotion to a life in harmony with nature and the soil, as exemplified by the simple life of the early Christian era that continued in America during much of our early national life. Amish beliefs require members of the community to make their living by farming or closely related activities. Broadly speaking, the Old Order Amish religion pervades and determines the entire mode of life of its adherents. . . .

Amish objection to formal education beyond the eighth grade is firmly grounded in these central religious concepts. They object to the high school, and higher education generally, because the values they teach are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a "worldly" influence in conflict with their beliefs. The high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students. Amish society emphasizes informal "learning through doing;" a life of "goodness," rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society.

Formal high school education beyond the eighth grade is contrary to Amish beliefs not only because it places Amish children in an environment hostile to Amish beliefs, with increasing emphasis on competition in class work and sports and with pressure to conform to the styles, manners, and ways of the peer group, but also because it takes them away from their community, physically and emotionally, during the crucial and formative adolescent period of life. . . . In short, high school attendance with teachers who are not of the Amish faith — and may even be hostile to it — interposes a serious barrier to the integration of the Amish child into the Amish religious community. Dr. John Hostetler, one of the experts on Amish society, testified that the modern high school is not equipped, in curriculum or social environment, to impart the values promoted by Amish society.

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Who Has the Stronger Case?

Understanding Religious Freedom Laws in the United States

Overview

This activity supplements students' reading of "The Free Exercise of Religion in America," which can be found in the Spring 2015 issue of *Bill of Rights in Action* (30:3). In this activity, students work in small groups to evaluate one of three scenarios that address how state-level religious freedom laws work in the United States. Then, working individually, students write a paragraph in which they weigh the main arguments for and against the application of a religious freedom law and decide what they think should be done in each scenario.

Materials

- "The Free Exercise of Religion in America," *Bill of Rights in Action* – one per student
- Religious Freedom Activity (Scenario One, Two, or Three) – one per student
- Graphic Organizer (Scenario One, Two, or Three) – one per student

Procedure

1. Explain to students that the application of laws meant to protect the religious freedom of citizens has recently become a major political issue. Those laws sometimes come into conflict with other laws that provide different types of legal protections for citizens. Tell students they will get to decide for themselves how to apply a state Religious Freedom Restoration Act (RFRA) in scenarios based on real-life situations.

2. Divide the class into small groups and distribute the handouts. Inform students that they will first read their assigned scenario and discuss the Discussion Question in their group. Review with students the instructions on the handout for discussing their particular case.

3. Provide sufficient time to complete the activity and answer questions related to understanding the readings and activity, including writing the paragraph. Alternatively, the paragraph can be completed as homework.

4. After writing individually, students can reconvene in their groups and share their decisions and reasons with each other. Each group will then take a vote on how they want to decide the issue.

5. Read aloud Scenario One. One person from each group that dealt with that scenario should then report their group's decision and give the main reasons for their decision. Encourage other groups to ask questions. Repeat for Scenarios Two and Three.

6. Have the class discuss the most persuasive arguments they heard for each scenario and what made those arguments persuasive. Then, have the class vote how they would decide in each scenario.

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College and Career Anchor Standards

Speaking and Listening

Comprehension and Collaboration

CCSS.ELA-Literacy.CCRA.SL.1
Prepare for and participate effectively in a range of conversations and collaborations with diverse partners, building on others' ideas and expressing their own clearly and persuasively.

Presentation of Knowledge and Ideas

CCSS.ELA-Literacy.CCRA.SL.4
Present information, Endings, and supporting evidence such that listeners can follow the line of reasoning and the organization, development, and style are appropriate to task, purpose, and audience.

Reading

Key Ideas and Details:

CCSS.ELA-Literacy.CCRA.R.1
Read closely to determine what the text says explicitly and to make logical inferences from it; cite specific textual evidence when writing or speaking to support conclusions drawn from the text.

Integration of Knowledge and Ideas

CCSS.ELA-Literacy.CCRA.R.8
Delineate and evaluate the argument and specific claims in a text, including the validity of the reasoning as well as the relevance and sufficiency of the evidence.

Common Core State Standards

CCSS.ELA-Literacy.SL.1
Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades [9-10 or 11-12] topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.

CCSS.ELA-Literacy.SL.1.b
Work with peers to promote civil, democratic discussions and decision-making, set clear goals and deadlines, and establish individual roles as needed.

CCSS.ELA-Literacy.SL.1.d
Respond thoughtfully to diverse perspectives; synthesize comments, claims, and evidence made on all sides of an issue; resolve contradictions when possible; and determine what additional information or research is required to deepen the investigation or complete the task.

CCSS.ELA-Literacy.RH.1
Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-Literacy.RH.9
Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

CCSS.ELA-Literacy.WHST.9
Draw evidence from informational texts to support analysis, reflection, and research.

National High School Civics

National High School Civics Standard 2: Understands the essential characteristics of limited and unlimited governments. (5) Knows essential political freedoms (e.g., freedom of religion, speech) and economic freedoms . . . and understands competing ideas about the relationships between the two . . . .

National High School Civics Standard 11: Understands the role of diversity in American life and the importance of shared values, political beliefs, and civic beliefs in an increasingly diverse American society. (1) Knows how the racial, religious, socioeconomic, regional, ethnic, and linguistic diversity of American society has influenced American politics through time.

National High School U.S. History Standard 8: Understands the institutions and practices of government created during the Revolution and how these elements were revised between 1787 and 1815 to create the foundation of the American political system based on the U.S. Constitution and the Bill of Rights. (3) Understands the Bill of Rights and various challenges to it (e.g., . . . recent court cases involving the Bill of Rights).

National High School U.S. History Standard 31: Understands economic, social, and cultural developments in the contemporary United States. (3) Understands how the rise of religious groups and movements influenced political issues in contemporary American society (e.g., . . . how Supreme Court decisions since 1968 have affected the meaning and practice of religious freedom).

California History-Social Science Standard

California History-Social Science Standard 11.3: Students analyze the role religion played in the founding of America, its lasting moral, social, and political impacts, and issues regarding religious liberty. (5) Describe the principles of religious liberty found in the Establishment and Free Exercise clauses of the First Amendment, including the debate on the issue of separation of church and state.

California History-Social Science Standard 12.5: Students summarize landmark U.S. Supreme Court interpretations of the Constitution and its amendments. (1) Understand the changing interpretations of the Bill of Rights over time, including interpretations of the basic freedoms (religion, . . .) articulated in the First Amendment and the due process . . . clauses of the Fourteenth Amendment.

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ACTIVITY

Who Has the Stronger Case?
(Scenario One)

Central State's Religious Freedom and Restoration Act (RFRA) states:

> *The state, and any institution of the state, may not make it substantially difficult for a person to freely practice his or her religious beliefs. The state may not also make it substantially difficult for any organization or business to freely practice their religious beliefs. People, organizations, and businesses have the right to use the courts to challenge any action of the state that they think makes it substantially difficult to freely practice their religious beliefs.*

Working in groups, you will be making a decision on the outcome of one of three cases.

Instructions

Have one member of your group read the scenario aloud. The other members should read along silently and underline important facts in the scenario.

All members should answer the Discussion Question, referring to the text of the Central State RFRA above, the text of the scenario, and their knowledge of the Main Article ("The Free Exercise of Religion in America").

Write a one-paragraph decision explaining your position. One sentence should clearly state your point of view. The supporting sentences should defend your point of view and should include references to both the RFRA and the facts of the case. In arguing for your point of view, **make sure at least one sentence addresses the opposite point of view and explains why your argument is stronger.** To help you with this, a **graphic organizer** has been included to help you create your decision.

Scenario

Centerville has passed a new ordinance (local law) stating that no one can serve food to anyone outdoors in a public area within 500 feet of a residential area. Also, the ordinance states that all food served outdoors must be served from food trucks certified by the city. Citing public safety concerns, the city council passed the ordinance in order to prevent large numbers of homeless people from congregating in and around Tree Park. Volunteers from a local church bring meals to the park in their cars. Residents living around Tree Park have been complaining for years about the practice because crowds of homeless people often congregate. Sometimes, several homeless people will cause minor disturbances both in the park and in the surrounding neighborhood. After the laws were passed, a group of volunteers from First Centerville Church received large fines for continuing the practice. They are appealing the fines, claiming that their religious beliefs require them to help feed the homeless as part of their free exercise of religion and the city has no right to regulate their religious practices.

Discussion Question: Does Centerville's ordinance make it substantially difficult for the church volunteers to practice their religion? Why or why not?

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WHO HAS THE STRONGER CASE? SCENARIO ONE – GRAPHIC ORGANIZER

What arguments support Centerville's position that groups cannot serve food to the homeless in Tree Park?	What arguments support the volunteers' position that they have the right to serve food in Tree Park?

Who has the better argument, Centerville or the volunteers? Why? Write your answer in a paragraph in the space provided.

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ACTIVITY

Who Has the Stronger Case?
(Scenario Two)

Central State's Religious Freedom and Restoration Act (RFRA) states:

> *The state, and any institution of the state, may not make it substantially difficult for a person to freely practice his or her religious beliefs. The state may not also make it substantially difficult for any organization or business to freely practice their religious beliefs. People, organizations, and businesses have the right to use the courts to challenge any action of the state that they think makes it substantially difficult to freely practice their religious beliefs.*

Working in groups, you will be making a decision on the outcome of one of three cases.

Instructions

Have one member of your group read the scenario aloud. The other members should read along silently and underline important facts in the scenario.

All members should answer the Discussion Question, referring to the text of the Central State RFRA above, the text of the scenario, and their knowledge of the Main Article ("The Free Exercise of Religion in America").

Write a one-paragraph decision explaining your position. One sentence should clearly state your point of view. The supporting sentences should defend your point of view and should include references to both the RFRA and the facts of the case. In arguing for your point of view, **make sure at least one sentence addresses the opposite point of view and explains why your argument is stronger.** To help you with this, a **graphic organizer** has been included to help you create your decision.

Scenario

Center State has a law which protects people from discrimination in work, housing, and businesses open to the public. Discrimination occurs when someone is treated differently or denied equal protection of the laws because of that person's race, religion, ethnicity, nationality, physical disability, or sexual orientation. Yummy Bakery refused to create a wedding cake for a gay couple's wedding. The owner claims that his religious beliefs prevent him from supporting same-sex marriage. The couple filed a complaint with Center State's human rights commission against Yummy Bakery for refusing them service. The state fined Yummy Bakery and ordered it to serve all customers. Yummy Bakery is appealing the decision and claims the anti-discrimination law prohibits them from acting on their religious beliefs.

Discussion Question: Does Center State's decision to fine Yummy Bakery and order it to serve all customers make it substantially difficult for the owners of Yummy Bakery to practice their religion? Why or why not?

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WHO HAS THE STRONGER CASE? SCENARIO TWO – GRAPHIC ORGANIZER

What arguments support Yummy Bakery's refusal to create a cake for a same-sex marriage ceremony?	What arguments support Center State's decision to fine and the demand that Yummy Bakery serve all customers?

Who has the better argument, Yummy Bakery or Center State? Why? Write your answer in a paragraph in the space provided.

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ACTIVITY

Who Has the Stronger Case?
(Scenario Three)

Central State's Religious Freedom and Restoration Act (RFRA) states:

> *The state, and any institution of the state, may not make it substantially difficult for a person to freely practice his or her religious beliefs. The state may not also make it substantially difficult for any organization or business to freely practice their religious beliefs. People, organizations, and businesses have the right to use the courts to challenge any action of the state that they think makes it substantially difficult to freely practice their religious beliefs.*

Working in groups, you will be making a decision on the outcome of one of three cases.

Instructions

Have one member of your group read the scenario aloud. The other members should read along silently and underline important facts in the scenario.

All members should answer the Discussion Question, referring to the text of the Central State RFRA above, the text of the scenario, and their knowledge of the Main Article ("The Free Exercise of Religion in America").

Write a one-paragraph decision explaining your position. One sentence should clearly state your point of view. The supporting sentences should defend your point of view and should include references to both the RFRA and the facts of the case. In arguing for your point of view, **make sure at least one sentence addresses the opposite point of view and explains why your argument is stronger.** To help you with this, a **graphic organizer** has been included to help you create your decision.

Scenario

Center State has a law that protects people from discrimination in work, housing, and businesses open to the public. Discrimination occurs when someone is treated differently or denied equal protection of the laws because of that person's race, religion, ethnicity, nationality, physical disability, or sexual orientation.

Elena is a Muslim and says her religion requires her to wear a headscarf in public at all times. She interviewed for a job as a sales associate with the High Fashion store at Centerville's mall. The assistant manager told her she did great in the interview, but Elena never got a call back. Through a friend who works at High Fashion, Elena learned that the owners said they could not hire Elena because of Elena's headscarf. The store has a dress code, which does not allow any hats or scarves. Elena filed a complaint with the state human rights commission against High Fashion. High Fashion claimed it did not discriminate against Elena because of her religion, but instead because of the pre-existing dress code that is "essential for success in business." High Fashion argued that Elena should have mentioned that the headscarf was religious during the interview. The commission ruled in favor of High Fashion and dismissed Elena's case. Elena is appealing the decision and also claims the human rights commission has violated the Central State RFRA.

Discussion Question: Does Center State's human rights commission's dismissal of Elena's case make it substantially difficult for Elena to practice her religion? Why or why not?

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WHO HAS THE STRONGER CASE? SCENARIO THREE – GRAPHIC ORGANIZER

What arguments support Center State's decision to dismiss Elena's case against High Fashion?	What arguments support Elena's claim that Center State (the human rights commission) made it substantially difficult for Elena to practice her religion?

Who has the better argument, Elena or Center State? Why? Write your answer in a paragraph in the space provided.

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