**Date and Time:** Wednesday, February 3, 2021 1:24:00 PM EST

## Results List (includes up to 250)

1. Results list for:{Headnote: HN4 - Murdock v. Pennsylvania, 319 U.S. 105}

   **Client/Matter:** -None-

   **Headnote:**HN4 - Murdock v. Pennsylvania, 319 U.S. 105

   [HN4 - The states can prohibit the use of the streets for the distribution of purely commercial leaflets, even though such leaflets may have a civic appeal, or a moral platitude appended. They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes. But the mere fact that the religious literature is sold by itinerant preachers rather than donated does not transform evangelism into a commercial enterprise.]

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LexisNexis

**Results for:** **HN4 - Murdock v. Pennsylvania, 319 U.S. 105**

## Cases

1. Heritage Village Church & Missionary Fellowship, Inc. v. State

Court of Appeals of North Carolina | Apr 03, 1979 | 40 N.C. App. 429

**Overview:** A religious organization was entitled to relief from a denial of a license to solicit funds under a state statute because it constituted a prior restraint on the exercise of religion and was violative of due process and equal protection rights.

**HN1 -** When a **religious** sect uses ordinary **commercial** methods of sales of articles to raise propaganda **funds**, it is proper for the state to charge reasonable fees for the privilege of canvassing. Situations will arise where it will be difficult to determine whether a particular **activity** is **religious** or **purely commercial**. The distinction at times is vital. The state can prohibit the **use of the streets** for the **distribution** of **purely commercial leaflets**, even though such **leaflets** may have a **civic** appeal, or a **moral platitude appended.** They may not prohibit the **distribution** of **handbills** in the **pursuit** of a clearly **religious activity** merely because the **handbills invite** the **purchase** of **books** for the **improved understanding** of the **religion** or because the **handbills** seek in a **lawful fashion** to **promote** the **raising of funds** for **religious** purposes. But the **mere fact** that the **religious literature** is **sold** by **itinerant preachers** rather than **donated** does not **transform evangelism** into a **commercial enterprise.** The constitutional rights of those spreading their **religious** beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of **books**. A **religious** organization needs **funds** to remain a going concern.

**HN2 -** The United States Supreme Court recognized the need for a **religious** organization to raise **funds** in order to remain an ongoing concern. Even though an **activity** is **religious**, the state may regulate it if the regulation does not: (1) involve a **religious** test; (2) unreasonably burden or delay the **religious activity**; or (3) discriminate against one because he is engaged in an **activity** for a **religious** purpose.

**HN18 -** Solicitation of **funds** is a **religious activity** protected by the first amendment of the United States Constitution. The state may legitimately act to prevent the fraudulent solicitation of its citizens. But, first amendment freedoms are in a preferred position. Restrictions upon first amendment rights must be narrowly tailored to achieve legitimate state objectives, and where less intrusive means are available, they must be used.

2. Murdock v. Pennsylvania

Supreme Court of the United States | May 03, 1943 | 319 U.S. 105

**Overview:** Jehovah's witnesses' door-to-door religious canvassing was not subject to a municipal ordinance that required solicitors to have a license and pay a license tax because the exercise of religious freedom could not be conditioned on payment of a tax.

**HN4 -** The states can prohibit the **use of the streets** for the **distribution** of **purely commercial leaflets**, even though such **leaflets** may have a **civic** appeal, or a **moral platitude appended.** They may not prohibit the **distribution** of **handbills** in the **pursuit** of a clearly **religious activity** merely because the **handbills invite** the **purchase** of **books** for the **improved understanding** of the **religion** or because the **handbills** seek in a **lawful fashion** to **promote** the **raising of funds** for **religious** purposes. But the **mere fact** that the **religious literature** is **sold** by **itinerant preachers** rather than **donated** does not **transform evangelism** into a **commercial enterprise.**

**HN2 -** Spreading one's **religious** beliefs or preaching the Gospel through **distribution** of **religious literature** and through personal visitations is an age-old type of **evangelism** with as high a claim to constitutional protection as the more orthodox types.

**HN3 -** When a **religious** sect uses ordinary **commercial** methods of sales of articles to raise propaganda **funds**, it is proper for the state to charge reasonable fees for the privilege of canvassing.

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3. ## United States v. Silberman

United States District Court for the Middle District of Florida, Jacksonville Division | Feb 09, 1979 | 464 F. Supp. 866

**Overview:** Defendant was entitled to an acquittal of charges that he knowingly and willfully solicited business on federal property without a permit by selling flowers because he was charged under an incorrect regulation and did not commit the charged offense.

**HN6 -** The state can prohibit the use of **streets** for the **distribution** of **purely commercial leaflets**, even though such **leaflets** may have a **civic** appeal, or a **moral platitude appended.** They may not prohibit the **distribution** of **handbills** in the **pursuit** of a clearly **religious activity** merely because the **handbills invite** the **purchase** of **books** for the **improved understanding** of the **religion** or because the handbill seeks in a **lawful fashion** to **promote** the **raising of funds** for **religious** purposes." But the **mere fact** that the **religious literature** is "**sold**" by **itinerant preachers** rather than "**donated**" does not **transform evangelism** into a **commercial enterprise.**

**HN16 -** By interpreting 36 C.F.R. § 5.3 to apply only to the regulation of **purely commercial activity**, and not to **religious activity**, any conflict with the free exercise clause of the First Amendment is avoided.

**HN7 -** The freedom to adhere to **religious** beliefs is absolute. The freedom to express or exercise **religious** beliefs, on the other hand, is not absolute. The expression and exercise of **religion**, like speech and assembly, may be regulated and restricted in the time, place, and manner in which they occur.

4. Slater v. Salt Lake City

Supreme Court of Utah | May 14, 1949 | 115 Utah 476

**Overview:** A salesman was not entitled to enjoin the police department from enforcing an ordinance that required the salesman to obtain a license before he was allowed to sell magazines on the streets and sidewalks.

**HN16 -** The state can prohibit the use of the street for the **distribution** of **purely commercial leaflets**, even though such **leaflets** may have a **civic** appeal, or a **moral platitude appended.** They may not prohibit the **distribution** of **handbills** in the **pursuit** of a clearly **religious activity** merely because the **handbills invite** the **purchase** of **books** for the **improved understanding** of the **religion** or because the **handbills** seek in a **lawful fashion** to **promote** the **raising of funds** for **religious** purposes.

**HN9 -** The **streets** are proper places for the exercise of the freedom of communicating information and disseminating opinion and, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares. The United States Constitution imposes no restraint on government as respects **purely commercial** advertising. Whether, and to what extent, one may **promote** or pursue a gainful occupation in the **streets**, to what extent such **activity** shall be adjudged a derogation of the public right of user, are matters for legislative judgment. The question is not whether the legislative body may interfere with the harmless **pursuit** of a **lawful** business, but whether it must permit such **pursuit** by what it deems an undesirable invasion of, or interference with, the full and free use of the highways by the people in fulfillment of the public use to which **streets** are dedicated.

**HN15 -** Salt Lake City, Utah, Revised Ordinances § 3652 is not unconstitutional because it does not prohibit **religious** organizations from dispensing **religious literature** in the prohibited area.

5. Jamison v. Texas

Supreme Court of the United States | Mar 08, 1943 | 318 U.S. 413

**Overview:** Defendant's conviction for distributing religious handbills in violation of city ordinance prohibiting dissemination of information by handbills was overturned. Ordinance denied her freedom of press and of religion guaranteed by U.S. Constitution.

**HN6 -** The states can prohibit the **use of the streets** for the **distribution** of **purely commercial leaflets**, even though such **leaflets** may have a **civic** appeal, or a **moral platitude appended.** However, they may not prohibit the **distribution** of **handbills** in the **pursuit** of a clearly **religious activity** merely because the **handbills invite** the **purchase** of **books** for the **improved understanding** of the **religion** or because the **handbills** seek in a **lawful fashion** to **promote** the **raising of funds** for **religious** purposes.

**HN2 -** States may provide for control of travel on their **streets** in order to insure the safety and convenience of the traveling public. They may punish conduct on the **streets** which is in violation of a valid law. But one who is rightfully on a street which the state has left open to the public carries with him there as

elsewhere the constitutional right to express his views in an orderly **fashion**. This right extends to the communication of ideas by **handbills** and **literature** as well as by the spoken word.

**HN3 -** The right to distribute **handbills** concerning **religious** subjects on the **streets** may not be prohibited at all times, at all places, and under all circumstances. The mere presence of an advertisement of a **religious** work on a handbill may not subject the **distribution** of the handbill to prohibition.

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6. Krafchow v. Town of Woodstock

United States District Court for the Northern District of New York | Aug 16, 1999 | 62 F. Supp. 2d 698

**Overview:** Plaintiff's Tarot card readings and poster sales were constitutionally protected speech; a content-related law restricting speech in public forum, not narrowly tailored to serve valid state interests, was unconstitutional.

**HN4 -** Relative to both freedom of **religion** and freedom of speech, U.S. Const. amend. I protection is not lost because the materials sought to be distributed are **sold** rather than given away or because contributions or gifts are solicited in the course of propagating the faith. A speaker's rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak. The **mere fact** that the **religious literature** is **sold** by **itinerant preachers** rather than **donated** does not **transform evangelism** into a **commercial enterprise.**

**HN9 -** Courts recognize the following three general types of forums: (1) quintessential public forums which by long tradition or by government fiat have been devoted to assembly and debate, such as **streets** and parks; (2) state-created semi-public forums opened for use by the public as a place for expressive **activity**, such as school board meetings; and (3) non-public forums or public property which is not by tradition or designation a forum for public communication. If the regulation affects a non-public forum, courts apply a reasonableness standard. If, however, a regulation affects speech in a public forum, courts animate a more stringent inquiry.

**HN14 -** In "hybrid" cases involving, for example, free exercise of **religion** along with free speech claims, governmental actions that substantially burden a **religious** practice must be justified by a compelling governmental interest.

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7. Church of Scientology v. Commissioner

United States Tax Court | Sep 24, 1984 | 83 T.C. 381

**Overview:** A church was not entitled to tax-exempt status because it was operated for a substantial commercial purpose, its net earnings benefitted its founder and his family, and it violated well-defined standards of public policy.

**HN13 -** The First Amendment protects some **commercial** practices. However, they are protected only when they are carried on as part of a **religious** mission. The First Amendment draws a vital distinction between **purely commercial activity** and **commercial activity** in furtherance of a **religious** purpose. I.R.C. § 501(c)(3) incorporates the requirements of First Amendment tolerance for **commercial activity** in aid of **religion**. A **religious** organization can maintain its exemption and engage in **commercial activity**, provided it is incidental to its **religious** purpose. The exemption is only lost when church-sponsored **commercial activity** takes on a life of its own and assumes an independent importance and purpose. U.S. Treas. Reg. § 1.501(c)(3)-1(c).

**HN12 -** A taxpayer has no constitutional right under the **religion** clauses to tax-free **religious** income. The activities shielded by the First Amendment from government interference share a common preferred position in the constitutional scheme. Just as the press is not free from general economic regulation and is apparently subject to an ordinary tax, so, too, the Free Exercise Clause does not immunize the income derived from **religious activity** from taxation. The Free Exercise Clause takes the first step and protects **religious** beliefs and practices from governmental interference. It does not go a second step and require the government to subsidize **religion**. The Establishment Clause likewise does not compel a **religious** exemption from taxation or, at the very least, allows Congress to interpret the course of "benevolent neutrality" demanded by the **religion** clauses. A compulsory subsidy of **religious activity** appears to have the primary effect of advancing **religion**, a result prohibited by the Establishment Clause. An exemption for "**religious** income" is also potentially entangling since it requires church and Government to determine item-by-item what is and is not income derived from and dedicated to **religious activity**. Given these dangers of entanglement and establishment, at the very least, Congress ought to be the body to decide whether **religious** income is deserving of an exemption.

**HN18 -** Usually, the entanglement test is invoked by a claimant seeking to invalidate a government program authorizing benefits to **religion**. However, the entanglement test has been used on occasion to limit the reach of governmental power to regulate **religious activity**.

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8. ## Jimmy Swaggart Ministries v. State Bd. of Equalization

Court of Appeal of California, Fourth Appellate District, Division One | Aug 29, 1988 | 204 Cal. App. 3d 1269

**Overview:** Sales and use taxes as applied to nonprofit religious corporation were constitutional based on its merchandising of religious and nonreligious materials in the state of California.

**HN5 -** The hand **distribution** of **religious** tracts is an age-old form of missionary **evangelism** - as old as the history of printing presses. This form of **religious activity** occupies the same high estate under U.S. Const. amend. I as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of **religion**. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.

**HN6 -** The exemption from a license tax of a preacher who preaches or a parishioner who listens does not mean that either is free from all financial burdens of government, including taxes on income or property. When followers of a particular sect enter into **commercial activity** as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that **activity**. A state may justify a limitation on **religious** liberty by showing that it is essential to accomplish some overriding governmental interest.

**HN12 -** The U.S. Supreme Court has recognized total separation between church and state is not possible in an absolute sense; some relationship between government and **religious** organizations is inevitable. Judicial caveats against entanglement must recognize that the line of separation depends on all the circumstances of a particular relationship. The taxation area is one where there is necessarily some entanglement between church and state, whether the state imposes a tax or grants an exemption. Determining that the legislative purpose of tax exemption is not aimed at establishing, sponsoring, or supporting **religion** does not end the inquiry; the end result must also not effect an excessive government entanglement with **religion**. The test is inescapably one of degree. The relevant inquiry is whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement.

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9. Robert v. Norfolk

Supreme Court of Virginia | Oct 11, 1948 | 188 Va. 413

**Overview:** A judgment convicting defendant of soliciting magazine subscriptions without a permit was improper because streets were natural and proper places for the dissemination of information and opinion.

**HN4 -** No private individual or corporation has a right to use the **streets** as a place for the prosecution of a **purely commercial enterprise.** However, **streets** are natural and proper places for the dissemination of information and opinion by citizens. In numerous recent cases the Supreme Court of the United States, speaking with particular reference to municipal ordinances which have sought to restrict the right to sell or distribute periodicals, magazines, **handbills** and other printed matter of not objectionable content, has discussed the meaning and effect of the constitutional guarantees of freedom of speech and of the press on the public **streets** and elsewhere. The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and **leaflets**. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. Liberty of circulating is an essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.

**HN9 -** Liberty of the press embraces the circulation and **distribution** of magazines and periodicals as well as **religious literature**. The solicitation of a subscription to a magazine or periodical expressing opinions and disseminating views is merely a step and but one of the steps in its publication and circulation. The **mere fact** that a charge is made for such **literature** does not remove the solicitation from the category of those activities which are included in the steps which lead to the full enjoyment of the rights guaranteed to a free press.

**HN5 -** Although a municipality may enact regulations in the interest of the public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the constitution to those who wish to speak, write, print or circulate information or opinion. Municipal authorities, as trustees for the public, have the duty to keep their communities' **streets** open and available for movement of people and property, the primary purpose to which the **streets** are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the **distribution** of **literature**, it may lawfully regulate the conduct of those using the **streets**.

10. Fernandes v. Limmer

United States District Court for the Northern District of Texas, Dallas Division | Jan 30, 1979 | 465 F. Supp. 493

**Overview:** The part of the airport that was not leased to others was a public forum, and the ordinance/resolution that prohibited solicitation of donation for non-profit religious society within the terminal buildings was facially unconstitutional as overbroad.

**HN5 -** The **mere fact** that the **religious literature** is **sold** by **itinerant preachers** rather than **donated** does not **transform evangelism** into a **commercial enterprise.** If it did, then the passing of a collection plate in church would make the church service a **commercial** project. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that **religious** organizations need **funds** to remain a going concern. Freedom of speech, freedom of the press, freedom of **religion** are available to all, not merely to those who can pay their own way.

**HN4 -** Solicitation of donations and contributions incidental to the main objective of preaching and propagating the doctrines of a **religion** is a constitutionally protected **activity**.

**HN13 -** The ability to pay is not a legitimate criterion for the state to employ in determining who is to express his views on its **streets** and who is not. Therefore any fee imposed as a prerequisite to the exercise of the right to communicate ideas on the public sidewalk is an unconstitutional prior restraint upon the freedom of expression.

11. State v. Van Daalan

Supreme Court of South Dakota | Oct 30, 1943 | 69 S.D. 466

12. Waikiki Small Bus. Ass'n v. Anderson

United States District Court for the District of Hawaii | May 14, 1984 | 1984 U.S. Dist. LEXIS 16714

**Overview:** Government properly enforced ordinance that prohibited distribution of commercial advertising intended to promote or pursue a gainful occupation in the streets and merchants pursuing purely commercial activities could not claim public forum rights.

**HN3 -** Honolulu, Haw., Ordinance § 26-3 makes it unlawful to carry on or conduct any promotional **activity** upon the **streets**, alleys, sidewalks, parks, beaches, and other public places within the Waikiki Business District, except through dispensing racks provided by the city. "Promotional **activity**" as defined by Honolulu, Haw., Ordinance § 26-2 means:(A) **Distribution** to the public of **literature**, **handbills**, advertisements, or other such publications, which advertises, promotes, or otherwise directs attention to a product, service or business which may or may not be identified by a brand name;(B) **Distribution** to the public of gifts, samples, or prizes. Honolulu, Haw., Ordinance § 26-4 provides for dispensing racks suspended from light poles in Waikiki which are made available to merchants for their advertising materials,

making these materials available to pedestrians. They are awarded by lot on a first come, first served basis under rules and regulations.

**HN10 -** The **streets** are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares. The Constitution imposes no such restraint on government as respects **purely commercial** advertising. Whether, and to what extent, one may **promote** or pursue a gainful occupation in the **streets**, to what extent such **activity** shall be adjudged a derogation of the public right of user, are matters for legislative judgment.

**HN5 -** The state of Hawaii delegates to the city the power to regulate or prohibit **commercial** activities on its **streets**. Haw. Rev. Stat. § 70-63 provides as follows: The city council may regulate and control for any and every purpose the **use of the streets**, highways, public thoroughfares, public places, alleys, and sidewalks of the city and county and without limitation upon the generality of the power, to regulate or prohibit the hawking, selling, or vending of goods, wares, merchandise, foodstuffs, refreshments, or other kinds of property or services thereon.

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13. Legacy Church, Inc. v. Kunkel

United States District Court for the District of New Mexico | Jul 13, 2020 | 2020 U.S. Dist. LEXIS 122542

**Overview:** Plaintiff was unlikely to succeed on the merits of its claim that public health orders issued in response to COVID-19 violated Free Exercise or Freedom of Assembly clauses, as there was no evidence that religious animus motivated the orders, they were generally applicable and narrowly tailored, and they left open alternative channels of expression.

**HN30 -** Another factor in the balancing process has been the directness of the burden upon the **religion**. When a **religious activity** is prohibited or a contrary practice compelled, the burden is direct, and where there is otherwise some burden, the interference is considered indirect.

**HN53 -** The general-applicability requirement is related closely to the neutrality requirement. Although all laws are selective to some extent, a regulation is not generally applicable when the government affords favorable treatment to secular conduct that endangers the government's interests in a similar or greater degree as does restricted **religious activity**.

**HN61 -** Although the First Amendment requires that the State treat analogous conduct alike, this rule does not require that the State treat all outdoor **activity** alike. The State may permissibly restrict non-expressive outdoor **activity** in the name of public health, like sporting events and barbecues. Although it is possible to find some kernel of expression in almost every **activity** a person undertakes such a kernel is not sufficient to bring the **activity** within the protection of the First Amendment. Instead, the First Amendment requires the State to treat **religious activity** the same as it treats analogous secular **activity**.

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14. South-Central Conf. of Seventh Day Adventists v. City of Alabaster

United States District Court for the Northern District of Alabama, Southern Division | Mar 19, 2013 | 2013 U.S. Dist. LEXIS 37623

15. Jimmy Swaggart Ministries v. Board of Equalization

Supreme Court of the United States | Jan 17, 1990 | 493 U.S. 378

**Overview:** The California tax board's collection of a generally applicable sales tax imposed no constitutionally significant burden on a religious organization's religious practices or beliefs. Neither the Free Exercise nor Establishment Clauses were offended.

**HN4 -** Spreading one's **religious** beliefs or preaching the Gospel through **distribution** of **religious literature** and through personal visitations is an age-old type of **evangelism** with as high a claim to constitutional protection as the more orthodox types.

**HN7 -** The Establishment Clause prohibits sponsorship, financial support, and active involvement of the sovereign in **religious activity**. The "excessive entanglement" prong of the tripartite purpose-effect-entanglement Lemon test requires examination of the character and purposes of the institutions that are benefited, the nature of the aid that the state provides, and the resulting relationship between the government and the **religious** authority.

**HN1 -** The Free Exercise Clause withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of **religion**. Its purpose is to secure **religious** liberty in the individual by prohibiting any invasions thereof by civil authority.

16. Ark Encounter, LLC v. Parkinson

United States District Court for the Eastern District of Kentucky, Central Division | Jan 25, 2016 | 152 F. Supp. 3d 880

**Overview:** Awarding tax incentives under the Kentucky Tourism Development Act, Ky. Rev. Stat. Ann. § 148.850 et seq., for a Noah's Ark tourist attraction that was to be built by a religious organization would not violate the Establishment Clause because there was no endorsement of religion, advancement of religion, or excessive entanglement with religion.

**HN23 -** In considering whether a relationship has the primary effect of advancing **religion**, courts also consider whether the action at issue conveys an objective message that the government is endorsing **religion**. What is sometimes referred to as the "endorsement test" considers whether the state coerces participation in a **religious activity**. Coercion not only includes securing participation through rules and threats of punishments but also includes imposing public pressure, or peer pressure, on individuals.

**HN24 -** Although the issue frequently arises in the context of prayer or **religious** ceremonies on government-owned property, certain uses of private property for government-sponsored functions can be

considered coercive if the function is held in a **religious** environment and attendance is not truly voluntary. In such cases, the government violates the endorsement test if a reasonable observer would think that the **activity** is a governmental endorsement of **religion**. However, when a non-governmental entity is responsible for the **religious** references conveyed to observers, and the purpose of the arrangement between that entity and the government entity is **purely** secular, the **religious** message is incidental to the relationship between the government and the entity receiving the benefit, and therefore the reasonable observer will view the **religious** message very differently than if it were conveyed by a governmental entity itself or on government-owned property.

**HN44 -** The mere non-funding of private secular and **religious** programs does not burden a person's **religion** or the free exercise thereof. A substantial burden exists when governmental action penalizes **religious activity** by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens.

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17. Ams. United for Separation of Church & State v. Prison Fellowship Ministries

United States District Court for the Southern District of Iowa | Jun 02, 2006 | 432 F. Supp. 2d 862

**Overview:** Where a state funded intensive prison program's indoctrinating language and practice effectively precluded participation of non-Evangelical Christian inmates, and provided participating inmates with a less restrictive security environment, the state's contract with the ministry for the program violated the First Amendment's Establishment Clause.

**HN27 -** Aid by the government normally may be thought to have a primary effect of advancing **religion** when it flows to an institution in which **religion** is so pervasive that a substantial portion of its functions are subsumed in the **religious** mission or when it **funds** a specifically **religious activity** in an otherwise substantially secular setting. To answer the question whether an institution is so "pervasively sectarian" that it may receive no direct state aid of any kind, it is necessary to paint a general picture of the institution, composed of many elements.

**HN30 -** The pervasively sectarian inquiry for purposes of the First Amendment Establishment Clause does not consider the theological beliefs or dogmas cherished by the institution in question. Instead, the inquiry looks at the recognizable factors that indicate whether, in practice, aid flows to an institution in which **religion** is so pervasive that a substantial portion of its functions are subsumed in the **religious** mission or when it **funds** a specifically **religious activity** in an otherwise substantially secular setting.

**HN31 -** Funding of a sectarian institution is not forbidden under the First Amendment Establishment Clause when the inherently **religious** nature of the institution can be separated from its secular work. The principle that a government may fund the secular work of a **religious** institution is a long-standing one. Simply put, a **religious** motivation on behalf of a party providing secular services does not **transform** such services into **religious activity**.

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18. ## International Soc. for Krishna Consciousness, Inc. v. New Orleans

United States District Court for the Eastern District of Louisiana | Jul 20, 1972 | 347 F. Supp. 945

19. ## Brown v. City of Pittsburgh

United States District Court for the Western District of Pennsylvania | Feb 22, 2008 | 543 F. Supp. 2d 448

**Overview:** Abortion protestor was not entitled to a preliminary injunction prohibiting enforcement of Pittsburgh, Pa., Code of Ordinances §§ 623.03 and 623.04, as the restrictions on protest activities near health care facilities had not been shown to violate the First or Fourteenth Amendments or the Pennsylvania Religious Freedom Protection Act.

**HN63 -** Pittsburgh, Pa. Code of Ordinances ch. 623 is not designed to favor one **religion** over another. It is generally applicable, and does not proscribe any particular conduct, Nor does the law regulate or prohibit conduct because it is undertaken for **religious** reasons. The ordinance does not discriminate based upon one's **religion** nor does it refer to any **religious** practice in its language or context. In the application of the ordinance, the fact that it may have an adverse impact on an individual does not mean there has been impermissible targeting, as where a social harm may have been a legitimate concern of government for reasons quite apart from discrimination of the basis of **religion**. The ordinance is a neutral law of general application; therefore it does not need to be justified by a compelling interest because it is not targeted at religiously motivated conduct nor does it selectively burden **religious activity**.

**HN65 -** A local law or ordinance will be found to substantially burden a person's free exercise of **religion** under the Pennsylvania **Religious** Freedom Protection Act only if it does any of the following: (1) significantly constrains or inhibits conduct or expression mandated by a person's sincerely held **religious** beliefs; (2) significantly curtails a person's ability to express adherence to the person's **religious** faith; (3) denies a person a reasonable opportunity to engage in activities which are fundamental to the person's **religion**; (4) compels conduct or expression which violates a specific tenet of a person's **religious** faith. 71 Pa. Stat. Ann. § 2403 (2007).

**HN66 -** In order to meet the burden of proof required by 71 Pa. Stat. Ann. § 2404 of the Pennsylvania **Religious** Freedom Protection Act (RFPA), it is not enough that the challenged action has some de minimus, tangential or incidental impact or is at odds with a plaintiff's **religious** beliefs. A tangential burden does not equate with a substantial infringement on **religious** practice. On the contrary, a person asserting a claim pursuant to the RFPA must prove by clear and convincing evidence that his or her free exercise of **religion** has or will be burdened; only then may a court award such a person injunctive relief.

20. ## Steele v. Industrial Dev. Bd. of the Metro. Gov't

United States District Court for the Middle District of Tennessee, Nashville Division | Oct 24, 2000 | 117 F. Supp. 2d 693

**Overview:** Issuance of tax-exempt industrial development bonds to private religious university, which were approved by city government and city development board, violated the Establishment Clause of the First Amendment.

**HN20 -** The three main evils against which the Establishment Clause of U.S. Const. amend. I is intended to afford protection are: sponsorship, financial support, and active involvement of the sovereign in **religious activity**. There is a three-pronged test for affording this protection. First, the statute must have a secular, legislative purpose. Second, its principal or primary effect must be one that neither advances nor inhibits **religion**. Finally, the statute must not foster an excessive government entanglement with **religion**.

**HN37 -** Where the government **funds** are provided to individuals who then decide to use those **funds** in support of **religious** education, there is no government support of **religion**. Where the government **funds** are provided directly to the **religious** institutions without the intervening decisions of private individuals, the government support is more likely to be found to have the effect of advancing the **religious** purposes of the institution.

**HN21 -** The entanglement prong for affording protection under the Establishment Clause of U.S. Const. amend. I, evolves into a consideration within the primary effect prong of the test. As a result, the analysis of the "effects" prong of the Lemon test consists of three primary considerations: (1) whether the statute results in government indoctrination; (2) whether the statute defines its recipients by reference to **religion**; and (3) whether the statute creates an excessive entanglement. Within that framework, the analysis of excessive entanglement involves the same factors as when it was a separate consideration: (1) the character and purposes of the institution benefitted; (2) the nature of the aid the state provides; and (3) the resulting relationship between government and **religious** authority.

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21. ## International Soc. for Krishna Consciousness, Inc. v. Barber

United States District Court for the Northern District of New York | Aug 25, 1980 | 506 F. Supp. 147

**Overview:** Religious devotees' rights to freedom of speech and of religion were not violated by a state fair regulation that confined their solicitation of contributions to a booth because the regulation was a reasonable time, place, and manner restriction.

**HN11 -** The First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for **religious** purposes, but for political, economic, scientific, news, or informational ends as well. When limits are reached which such communications must observe, can one go farther under the cloak of **religious evangelism**? Does what is obscene, or **commercial**, or abusive, or inciting become less so if employed to **promote** a **religious** ideology? The rights of secular and nonreligious communications are not more narrow or in any way inferior to those of avowed **religious** groups.

**HN6 -** The general regulation, in the public interest, of solicitation, which does not involve any **religious** test and does not unreasonably obstruct or delay the collection of **funds**, is not open to any constitutional objection, even though the collection be for a **religious** purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of **religion** or interpose an inadmissible obstacle to its exercise. Although plaintiff **religious** devotees claim that their very act of soliciting is a **religious** belief, the test just enumerated is applicable nonetheless. Furthermore, when speech and nonspeech elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.

**HN12 -** A common-sense test as to whether a court has struck a proper balance of rights is to ask what the effect would be if the right given to plaintiff **religious** devotees should be exercised by all sects and denominations. If each competing sect in the United States went after the householder by the same methods, the court should think it intolerable. If a minority can put on this kind of drive in a community, what can a majority resorting to the same tactics do to individuals and minorities? Can a court give to one sect a privilege that we could not give to all, merely in the hope that most of them will not resort to it? **Religious** freedom in the long run does not come from this kind of license to each sect to fix its own limits, but comes of hard-headed fixing of those limits by neutral authority with an eye to the widest freedom to proselyte compatible with the freedom of those subject to proselytizing pressures.

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22. Utah Gospel Mission v. Salt Lake City Corp.

United States District Court for the District of Utah, Central Division | May 03, 2004 | 316 F. Supp. 2d 1201

**Overview:** City property sold to a church was not a public forum and the church was allowed to control behavior and limit First Amendment activity on the property. Plaintiffs also failed to state an Establishment Clause claim.

**HN40 -** To state a claim under the effect prong of the endorsement test, plaintiffs must allege facts indicating that the government's actions had the principle or primary effect of advancing or endorsing **religion**. Indeed, as the United States Supreme Court has stated: For a law to have forbidden "effects" under the second prong of Lemon, it must be fair to say that the government itself has advanced **religion** through its own activities and influence. For the men who wrote the **Religion** Clauses of the First Amendment the "establishment" of a **religion** connoted sponsorship, financial support, and active involvement in **religious activity**. The United States Court of Appeals for the Tenth Circuit has recognized that United States Supreme Court precedent plainly contemplates that on occasion some advancement of **religion** will result from governmental action. However, not every governmental **activity** that confers a remote, incidental, or indirect benefit upon **religion** is constitutionally invalid. Furthermore, this is an objective inquiry, not an inquiry into whether particular individuals might be offended by the government's actions or consider them to endorse **religion**.

**HN15 -** Generally, free speech rights do not apply to private property. It is, of course, a commonplace that the constitutional guarantee of free speech is a guarantee only against abridgement by government. The First Amendment therefore protects individuals only against government, not private, infringements upon free speech. Further, the First and Fourteenth Amendments are limitations on state action, not on action by the owner of private property used only for private purposes. To find state action based upon the **mere fact** that private property was open to the public, would constitute an unwarranted infringement of long-settled rights of private property owners protected by the Fifth and Fourteenth Amendments. A contrary ruling would **transform** many **religious** property owners into state actors, a conclusion without any support in the case law.

**HN31 -** The Constitution does not require that the purpose of every government-sanctioned **activity** be unrelated to **religion**. Plaintiffs must allege facts indicating that defendants have no "clearly secular purpose" in taking the government action. The government's actions violate the Establishment Clause only if the actions were entirely motivated by a purpose to advance **religion**. As the Supreme Court stated in Lynch, were the test that the government must have "exclusively secular" objectives, much of the conduct and legislation the Court has approved in the past would be invalidated. Thus, mixed-purpose situations--

where the purpose of the government's action is to advance both secular and **religious** goals--still pass muster under the secular purpose inquiry.

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23. Church of Scientology Flag Servs. Org. v. City of Clearwater

United States District Court for the Middle District of Florida, Tampa Division | Feb 04, 1991 | 756 F. Supp. 1498

**Overview:** An ordinance requiring that charitable groups file disclosure statements was not overbroad where it had built in safeguards to prevent unnecessary disclosure, and the requirement of judicial review before action was taken.

**HN2 -** Clearwater, Fla., Ordinance 3479-84 § 100.01 applies to charitable organizations that solicit **funds** or property within the city and to charitable organizations that offer within the city to make sales of property including, but not limited to **books**, tapes, publications and brochures whose proceeds will be used for charitable purposes.

**HN23 -** While freedom to believe is absolute, freedom to act pursuant to one's **religion** cannot be. The government has the inherent police power to regulate **religious** activities in a reasonable and nondiscriminatory manner, to protect the safety, peace, order, and comfort of society. Although the state cannot punish **religious** views and beliefs, the state can punish the external manifestation of those views if the resulting conduct is a clear and present danger to the safety, morals, health or general welfare of the community and is violative of laws enacted for their protection.

**HN24 -** An ordinance directed at conduct rather than belief, with a secular purpose and effect, and justified by governmental interest in public health and safety does not violate First Amendment rights. The right to free exercise does not relieve an individual's obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes or prescribes conduct that his **religion** prescribes or proscribes. An ordinance that could constitutionally apply to a wide range of conduct other than the conduct of the challenging **religious** group does not violate First Amendment rights.

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24. Johnson v. Martin

United States District Court for the Western District of Michigan, Southern Division | Sep 26, 2002 | 223 F. Supp. 2d 820

**Overview:** The Religious Land Use and Institutionalized Persons Act was constitutional, inter alia, because it provided a benefit to both religious and non-religious prisoners and endorsed the free exercise of religion and not religion in general.

**HN16 -** When the government acts to lift burdens on the exercise of **religion**, it does not similarly have to benefit secular **activity**. Therefore, it does not follow that merely because Congress has acted to provide **religious activity** with special protection and has not done the same for secular **activity**, that Congress has advanced **religion**. Congress took no affirmative action to **promote religion** in passing the **Religious**

Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc-1. Rather, Congress forbade the implementation of substantial burdens on **religion**. This neither advances nor inhibits **religion**, but rather allows people to practice **religion** as they choose.

**HN29 -** With respect to the **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc et seq., the conditions imposed by Congress relate to Congress' interest in promoting the free exercise of **religion** and the rehabilitation of prisoners. Congress can certainly restrict prison **funds**, used to support rehabilitation and education programs, with a condition mandating accommodation of **religious activity**.

**HN7 -** The clear language of the **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc et seq., indicates it is intended to protect the free exercise of **religion** from unnecessary governmental interference, not to favor **religious activity** over secular **activity**.

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25. ## Freedom from Religion Found. v. McCallum

United States District Court for the Western District of Wisconsin | Jan 07, 2002 | 179 F. Supp. 2d 950

**Overview:** A state workforce grant to a faith-based substance-abuse program violated the establishment clause of the First Amendment because it constituted unrestricted, direct state funding of an organization that engaged in religious indoctrination.

**HN8 -** The establishment clause of the First Amendment prohibits government-financed or government-sponsored indoctrination into the beliefs of a particular **religious** faith. It is inappropriate to presume inculcation of **religion**. The First Amendment applies to any **religious activity** or institution, whatever it may be called, or whatever form it may adopt to teach or practice **religion**.

**HN13 -** The forum doctrine does not proscribe the regulation of speech where the government itself is the speaker. When the government subsidizes a program to provide social services, it may make viewpoint-based funding decisions or impose content-based restrictions without running afoul of the First Amendment. Under First Amendment analysis, the government's appropriation of **funds** to **promote** its own policy is distinct from the government's appropriation of **funds** to foster public discourse and encourage a diversity of views from private speakers. The government's appropriation of **funds** to advance, communicate and deliver its own policy amounts to governmental speech and it is entitled to say what it wishes. Furthermore, when the government appropriates public **funds** to establish a program, it is entitled to define the limits of that program. In determining the parameters of its programs, the government may choose to encourage or subsidize particular activities appropriately without funding or encouraging alternative activities. By tailoring the legitimate scope and message of its programs, the government does not discriminate on the basis of viewpoint; it merely chooses to fund one **activity** to the exclusion of the other.

**HN4 -** The establishment clause of the First Amendment states that Congress shall make no law respecting an establishment of **religion**. It prevents the government from promoting any **religious** doctrine or organization or affiliating itself with one. It is a specific prohibition on forms of state intervention in **religious** affairs, and its proscription applies equally to state legislatures under the due process clause of the Fourteenth Amendment.

26. Westchester Day Sch. v. Mamaroneck

United States District Court for the Southern District of New York | Mar 02, 2006 | 417 F. Supp. 2d 477

**Overview:** School entitled to relief under the Religious Land Use and Institutionalized Persons Act where a major portion of the proposed facilities would be used for religious education and practice or were inextricably integrated with, and necessary for the school's ability to provide, religious education and practice--i.e., engage in "religious exercise."

**HN11 -** 42 U.S.C.S. § 2000cc-3(g) makes clear that the **Religious** Land Use and Institutionalized Persons Act (RLUIPA) is to be construed in favor of a broad protection of **religious** exercise, to the maximum extent permitted by the terms of the Act and the Constitution. 42 U.S.C.S. § 2000cc-3(g). To that end, RLUIPA broadly defines "**religious** exercise" as any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief, including the use, building, or conversion of real property for the purpose of **religious** exercise. 42 U.S.C.S. § 2000cc-5(7)(A). Accordingly, under RLUIPA, courts no longer need to analyze whether a claimed **religious activity** is an integral part of one's faith.

**HN12 -** Not every **activity** carried out by a **religious** entity or individual constitutes "**religious** exercise." Although "Congress's decision to enact the **Religious** Land Use and Institutionalized Persons Act (RLUIPA) necessarily recognizes the fact that **religious** assembly buildings are needed to facilitate **religious** practice, and the possibility that local governments may use zoning regulations to prevent **religious** groups from using land for such purposes, Congress nevertheless recognized that in many cases, real property is used by **religious** institutions for purposes that are comparable to those carried out by other institutions. While recognizing that these activities or facilities may be owned, sponsored or operated by a **religious** institution, or may permit a **religious** institution to obtain additional **funds** to further its **religious** activities, this alone does not automatically bring these activities or facilities within RLUIPA's definition or "**religious** exercise."

**HN20 -** Courts in the United States Court of Appeals for the Second Circuit have concluded that the regulations must have a "chilling effect" on the exercise of **religion** to substantially burden **religious** exercise. Of course, mere "inconvenience" does not rise to the level of a "substantial burden." Accordingly, for purposes of § 2(a)(1) of the **Religious** Land Use and Institutionalized Persons Act, a "substantial burden" exists when a governmental action seriously impedes **religious** exercise.

27. Follett v. McCormick

Supreme Court of the United States | Mar 27, 1944 | 321 U.S. 573

**Overview:** License tax on the selling of books was unconstitutional as applied to ordained minister that proclaimed his religious beliefs from door to door, making his living by selling religious books; it was a privilege of the free exercise of his religion.

**HN2 -** An "**itinerant** evangelist" does not become a mere book agent by selling the Bible or **religious** tracts to help defray his expenses or to sustain him. Freedom of **religion** is not merely reserved for those

with a long purse. **Preachers** of the more orthodox faiths are not engaged in **commercial** undertakings because they are dependent on their calling for a living. Whether needy or affluent, they avail themselves of the constitutional privilege of a "free exercise" of their **religion** when they enter the pulpit to proclaim their faith. The priest or preacher is as fully protected in his function as the parishioners are in their worship. A flat license tax on that constitutional privilege would be as odious as the early "taxes on knowledge" which the framers of the First Amendment sought to outlaw. A preacher has no less a claim to that privilege when he is not an **itinerant**. The exaction of a tax as a condition to the exercise of the great liberties guaranteed by the First Amendment is as obnoxious as the imposition of a censorship or a previous restraint. For the power to tax the exercise of a privilege is the power to control or suppress its enjoyment.

**HN3 -** If a license tax would be invalid as applied to one who preaches the Gospel from the pulpit, a license tax against one preaching house to house must be reversed. For the Supreme Court of the United States fails to see how such a tax loses its constitutional infirmity when exacted from those who confine themselves to their own village or town and spread their **religious** beliefs from door to door or on the street. The protection of the First Amendment is not restricted to orthodox **religious** practices any more than it is to the expression of orthodox economic views. He who makes a profession of **evangelism** is not in a less preferred position than the casual worker.

**HN1 -** Freedom of press, freedom of speech, freedom of **religion** are in a preferred position. The "inherent vice and evil" of the flat license tax is that it restrains in advance those constitutional liberties and inevitably tends to suppress their exercise.

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28. Gentala v. City of Tucson

United States Court of Appeals for the Ninth Circuit | Mar 30, 2001 | 244 F.3d 1065

**Overview:** City could not provide funding to "events in direct support of religious organizations" generally, or to Prayer Day event in particular, without violating obligations regarding separation of church and state.

**HN10 -** Although neutrality is an important consideration in Establishment Clause cases, that consideration alone is not determinative where government subsidy of **religious activity** is concerned. Thus, "neutrality" (meaning) generality or evenhandedness of **distribution** is relevant but this neutrality is not alone sufficient to qualify the government aid as constitutional. It has to be considered only along with other characteristics of aid, its administration, its recipients, or its potential that have been emphasized over the years as indicators of just how **religious** the intent and effect of a given aid scheme really is.

**HN14 -** The funding concern and the endorsement concern next discussed, while overlapping in some respects, are not one and the same, nor is one a subcategory of the other. The funding concern centers in large part on the interest of citizens in resisting coercion to subsidize **religious** ideas in which they disbelieve. The endorsement concern, in contrast, centers upon the disturbance of **civic** society that occurs when the government appears publicly to favor one **religion** over another, or **religion** over nonreligion. The funding factor would have force, for example, even if the government kept secret the fact that tax **funds** were being funneled directly to churches to finance their services, while the endorsement "theme" would be of concern if the government proclaimed an official **religion** without providing its adherents any funding at all.

**HN12 -** When the government subsidizes **religious activity**, the fact that it is doing so pursuant to a program that treats **religious** speech or association coequally with other speech or association is not, standing alone, determinative in Establishment Clause analysis. Instead, the court is obligated to consider other factors in determining whether the connection between the government subsidy and the **religious activity** is such as to violate the concerns underlying the Establishment Clause.

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29. Catholic Charities of Sacramento, Inc. v. Superior Court

Court of Appeal of California, Third Appellate District | Jul 02, 2001 | 90 Cal. App. 4th 425

**Overview:** Act requiring coverage for women's contraceptives had a secular purpose, did not advance or inhibit religion, and did not foster excessive government entanglement with religion; thus the act did not violate constitutional religious guarantees.

**HN29 -** Activities characteristic of the secular life of the community may properly be a concern of the community even though they are carried on by a **religious** organization. **Religious** organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, industrial and other **commercial** enterprises. Conceivably they may engage in virtually any worldly **activity**, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe.

**HN5 -** The Free Exercise Clause of U.S. Const. amend. I. protects the freedom to believe and profess whatever **religious** doctrine one desires and provides considerable, though not absolute, protection to practice one's **religion**.

**HN8 -** The prescription contraceptive coverage statutes enacted by the legislature to prohibit medical discrimination against women ( Cal. Health & Safety Code §1367.25; Cal. Ins. Code §10123.196) do not require employers to provide prescription contraceptive coverage to their employees. The statutes simply require that, if an employer chooses to provide employee health insurance coverage with prescription drug benefits, it cannot provide coverage that discriminates against women by excluding prescription contraceptive methods. Thus, the requirement that prescription drug benefit packages include coverage for prescription contraceptive methods is a neutral law of general application, and a **religious** exemption from this neutral and generally applied **civic** obligation is not required by the Free Exercise Clause of U.S. Const. amend. I.

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30. Kollasch v. Adamany

Court of Appeals of Wisconsin | Nov 24, 1980 | 99 Wis. 2d 533

**Overview:** Albeit nuns were engaged in a religious activity in providing meals to their guests for consideration, the requirement that they collect a sales tax on the sale of those meals was neither a tax on religion nor a burden on their exercise of religion.

**HN12 -** The test for determining whether the State is violating the free exercise of **religion** is strict. To withstand a free exercise challenge, there must be either no infringement by the State on free exercise, or if free exercise is burdened, the burden must be justified by a compelling state interest in the regulation of a subject within the State's constitutional power to regulate. Even if the burden is "incidental," this test must be met. No mere showing of a rational relationship to some colorable state interest will suffice; in the highly sensitive area of **religious** freedom, only the gravest abuses endangering paramount interests justify state intrusion.

**HN14 -** The Free Exercise Clause withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of **religion**. Its purpose is to secure **religious** liberty in the individual by prohibiting any invasions thereof by civil authority. Hence, it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his **religion**.

**HN6 -** Wis. Stat. § 77.54 provides for general exemptions from the sales tax. Wis. Stat. § 77.54(9a) exempts the gross receipts from sales to any association organized and operated exclusively for **religious**, charitable, scientific or educational purposes.

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31. Committee for Pub. Educ. & Religious Liberty v. Secretary, United States Dep't of Educ.

United States District Court for the Eastern District of New York | Oct 17, 1996 | 942 F. Supp. 842

**Overview:** A program that provided federally-funded remedial instruction and support services to disadvantaged students, including those in religious schools, was upheld as not violating the Establishment Clause of the First Amendment.

**HN9 -** The United States Supreme Court has, under the First Amendment, invalidated statutes which provide public **funds** to pay the costs of running a private school as impermissibly subsidizing the **religious** function of such an institution. If the state **funds** a service for which the private **religious** school is otherwise financially responsible, the effect has been characterized as sponsorship or financial support of **religion**. This line of reasoning led the Supreme Court to invalidate not only state payment of tuition, but public maintenance and repair grants to parochial schools and tax exemptions given to private school parents.

**HN20 -** Establishment Clause cases have affirmed and reaffirmed the proposition that there is nothing per se unconstitutional about the neutral provision of a benefit to **religious** schools. Chapter 1 services under the Elementary and Secondary School Improvement Amendments, at 20 U.S.C.S. § 2722 et seq., are a generally available benefit: they are provided to all educationally deprived children without regard to **religion**. As such, the provision of Chapter 1 benefits is only constitutionally problematic if the benefits can be put to a **religious** use. Also, the provision of public school teachers is constitutionally infirm only when the teachers are under the control of a **religious** institution or when they teach in a **religious** environment. Remedial instruction in public schools is not subject to being used for **religious** indoctrination, even if the classes taught are composed solely of students of one **religion**. The United States Supreme Court has refused to hold that a **religious** student population could create an atmosphere that might pressure a teacher to conform his or her teaching to **religious** purposes. The **mere fact** that Chapter 1 personnel assigned to a mobile instructional unit might enter a sectarian school in between classes to use the

restroom or lunchroom facilities does not convert the secular environment of the mobile instructional unit into a **religious** atmosphere.

**HN22 -** The fact that computers may be located inside a **religious** school does not taint their immutable instructional capacity. Like **books**, immutable secular goods can enter and be used for instruction in a sectarian school, since they are not subject to being used for **religious** indoctrination. That technicians accompany the computer terminals into the private schools is of no constitutional consequence. The United States Supreme Court has dispelled any doubt over whether public employees are permitted to work in private schools. Technicians are not teachers; they do not instruct. Their role is limited to servicing the machines and keeping order in the computer lab. Because of this role, technicians, are not subject to the **religious** pressures of sectarian schools. Indeed, their relationship with **religious** school students is not conducive to **religious** instruction even should the pervasively sectarian environment in which they work suggest that they act according to the particular **religion** involved. Put simply, there is no specifically **religious** way to turn computer terminals on and off.

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32. Proctor v. General Conference of Seventh-Day Adventists

United States District Court for the Northern District of Illinois, Eastern Division | Oct 29, 1986 | 651 F. Supp. 1505

**Overview:** A bookseller could not force Seventh-day Adventist churches to sell religious literature to him at a discount because his antitrust claims were inapplicable to a religious entity holding a lawful monopoly over its own product.

**HN2 - Literature evangelism** is a formal program of the church and is a means of spreading their gospel and gaining converts. A **literature** evangelist, or colporteur, is a credentialed representative of the church and is considered to be engaged in a form of ministry.

**HN9 -** The **distribution** of Seventh-day Adventist **literature** is in competition with other denominations and religions in its ultimate goal to win converts. To achieve this the Church is entitled to distribute its **literature** through its own system. A firm with a **lawful** monopoly has no duty to help its competitors.

**HN1 -** The circulation of **religious literature** is accorded First Amendment protection.

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33. Bowling Green v. Lodico

Supreme Court of Ohio | Jul 12, 1967 | 11 Ohio St. 2d 135

**Overview:** It was improper to affirm a defendant's conviction for soliciting magazine sales without a license as required by a city ordinance. The ordinance was a prior restraint on speech and publication and violated the Ohio and United States Constitutions.

**HN2 -** The constitutional rights of those spreading their **religious** beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of **books**. The right to use the press for expressing one's views is not to be measured by the protection afforded **commercial handbills**. A **religious** organization needs **funds** to remain a going concern. But an **itinerant** evangelist however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or **religious** tracts to help defray expenses or to sustain him. Freedom of speech, freedom of the press, freedom of **religion** are available to all, not merely to those who can pay their own way. Freedom of speech and freedom of the press cannot and must not mean freedom only for those who can distribute their broadsides without charge. There may be others with messages more vital but purses less full, who must seek some reimbursement for their outlay or else forego passing on their ideas.

**HN3 -** A municipality may prohibit house-to-house canvassing in search of sales of encyclopedias, but may not proscribe even house-to-house canvassing when its purpose is the free **distribution** of an invitation to **religious** services.

**HN5 -** The solicitation for, and receipt of, 25 cents for a single copy of a wholly political magazine may not subject its solicitor on a public sidewalk to the penalties of an ordinance proscribing such conduct without a license first obtained and granting unfettered discretion to the licensing official to determine, before issuing the license, the solicitor's **moral** character and whether the enterprise involved is "**lawful**."

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34. Florida v. United States HHS

United States Court of Appeals for the Eleventh Circuit | Aug 12, 2011 | 648 F.3d 1235

**Overview:** Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), Medicaid expansion provision was constitutional because the Act's inducements were not coercive, but the individual mandate provision exceeded Congress's enumerated commerce power and was unconstitutional.

**HN112 -** According to the Raich Court, Wickard established that Congress can regulate **purely** intrastate **activity** that is not itself **commercial**, in that it is not produced for sale, if it concludes that failure to regulate that class of **activity** would undercut the regulation of the interstate market in that commodity. Characterizing the similarities between the plaintiffs' case and Wickard as striking, the Raich Court explained that in both cases, the regulation is squarely within Congress' commerce power because production of the commodity meant for home consumption, be it wheat or marijuana, has a substantial effect on supply and demand in the national market for that commodity.

**HN184 -** The power that Congress has wielded via the Commerce Clause for the life of this country remains undiminished. Congress may regulate **commercial** actors. It may forbid certain **commercial activity**. It may enact hundreds of new laws and federally-funded programs. But what Congress cannot do under the Commerce Clause is mandate that individuals enter into contracts with private insurance companies for the **purchase** of an expensive product from the time they are born until the time they die.

**HN219 -** The congressional findings in the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), amended by Health Care and Education Reconciliation Act of 2010 (HCERA), Pub. L. No. 111-152, 124 Stat. 1029 (2010), speak in broad, general terms except in one place that states

that the individual mandate is essential to creating effective health insurance markets in which **improved** health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be **sold**. 42 U.S.C.S. § 18091(2)(I). The findings in that paragraph add that if there were no mandate, many individuals would wait to **purchase** health insurance until they needed care.

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35. Liberty Univ., Inc. v. Geithner

United States District Court for the Western District of Virginia, Lynchburg Division | Nov 30, 2010 | 753 F. Supp. 2d 611

**Overview:** Challenge to mandatory coverage provisions of the Patient Protection and Affordable Care Act of 2009, Pub. L. No. 111-148, 124 Stat. 119, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, was dismissed because the Act was constitutionally and statutorily valid.

**HN35 -** It is economic **activity** that must substantially affect interstate commerce. The power of Congress to regulate activities that substantially affect interstate commerce extends to regulation of **purely** local activities that are part of an economic class of activities that have a substantial effect on interstate commerce. Local **activity**, regardless of whether it is **commercial** in nature, may still be reached by Congress if it exerts a substantial economic effect on interstate commerce. In addition, Congress can regulate **purely** intrastate **activity** that is not itself **commercial** if it concludes that failure to regulate that class of **activity** would undercut the regulation of the interstate market in that commodity.

**HN76 -** Under equal protection law, all persons similarly circumstanced shall be treated alike. Unless a statute provokes strict judicial scrutiny because it interferes with a fundamental right or discriminates against a suspect class, it will ordinarily survive an equal protection attack so long as the challenged classification is rationally related to a legitimate governmental purpose. Heightened scrutiny is applied to an equal protection challenge to a regulation which applies selectively to **religious activity** only if the plaintiff can show the basis for the distinction was **religious** and not secular in nature. If the justification for the distinction is secular, it need only be rational.

**HN1 -** The Patient Protection and Affordable Care Act of 2009 (Act), Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010), institutes numerous reforms to the national health care market. It removes many barriers to insurance coverage, Act §§ 1101 and 1201, supplies federal **funds** and expands Medicaid to assist the poor with obtaining coverage, Act §§ 1401 - 1402, and encourages small businesses to **purchase** health insurance for their employees through tax incentives, Act § 1421. It creates health benefit exchanges, which are established and operated by states to serve as marketplaces where informed individuals and small businesses can enroll in health plans after comparing their features. Act § 1311. The Act also requires certain large employers to offer health insurance to their employees and requires all individuals who do not meet a statutory exemption to **purchase** and maintain health insurance.

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36. Westfield High Sch. L.I.F.E. Club v. City of Westfield

United States District Court for the District of Massachusetts | Mar 17, 2003 | 249 F. Supp. 2d 98

**Overview:** Distribution of religious messages during non-instructional time was private, school-tolerated speech, so the school had no basis for arguing that allowing distribution of candy canes bearing such messages violated the Establishment Clause.

**HN16 -** When a student walks onto the grounds of a school, she carries constitutional rights to free speech and expression with her. Undoubtedly, the First Amendment protects the peaceful **distribution** of **literature**. Leafletting is an expressive **activity** involving "speech" protected by the First Amendment. First Amendment protections also extend to **religious** speech. The scope of the student's constitutional rights on school grounds, however, is not coterminus with the constitutional rights of adults in other settings. The United States Supreme Court has repeatedly emphasized the need for affirming the comprehensive authority of the states and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. Thus, the court must demarcate the scope of the student's constitutional rights "in light of the special characteristics" of the school's environment.

**HN10 -** According to the United States District Court for the District of Massachusetts, a reasonable construction of the Massachusetts Students' Freedom of Expression Law, Mass. Gen. Laws ch. 71, § 82, would interpret the adjective "any" to include "prospective" disruption or disorder. A school administrator does not have to wait until disorder or disruption actually ensues; in certain circumstances, a school administrator must be able to prevent disorder or disruption. Thus, a school administrator may, under the Act, deny a student permission to distribute **literature** before such **distribution** occurs, but only if the administrator, considering all circumstances known at the time of his or her decision, reasonably forecasts that "any disruption or disorder" will ensue within the school because of the **distribution**.

**HN40 -** A school policy prohibiting **distribution** of any **literature** without prior administrative approval is an unconstitutional prior restraint on speech.

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37. ⚠ New Creation Fellowship of Buffalo v. Town of Cheektowaga

United States District Court for the Western District of New York | Jul 02, 2004 | 2004 U.S. Dist. LEXIS 25431

**Overview:** Magistrate recommended dismissing plaintiffs' free exercise claim for lack of standing or, alternatively, granting summary judgment for defendants because plaintiffs did not establish that they held beliefs entitled to First Amendment protection.

**HN53 -** To avoid summary judgment on a 42 U.S.C.S. § 1983 claim based on the Free Exercise Clause, the essential characteristics qualifying the asserted **religion** as one entitled to the Clause's protection must appear in the record based on standard reference works, an examination of the purported **religion**'s **books** of worship, beliefs, practices, and teachings, or expert testimony. The determination of whether the purported **religion** qualifies for First Amendment protection is a question for the court. As the United States Court of Appeals for the Second Circuit has noted a court's task is to decide whether the **religious** beliefs avowed are (1) sincerely held, and (2) **religious** in nature, in the claimant's scheme of things.

**HN43 -** The Free Exercise Clause of the First Amendment provides that Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof, U.S. Const. amend. I, cl. 1, and is applicable to the states and their subdivisions through the Fourteenth Amendment. The guarantee of

free exercise of **religion** pertains to the right to believe and profess whatever **religious** doctrine one desires, thereby excluding any government regulation of **religious** beliefs as such. Further, the First Amendment prohibits government from compelling a person's affirmation of any **religious** belief, punishing the expression of any **religious** doctrines it believes to be false, imposing special disabilities on the basis of **religious** views or status, or lending its power to one side or another in controversies concerning **religious** authority or dogma. The First Amendment guarantee of free exercise of **religion** protects against government interference not only **religious** beliefs and the profession of such beliefs, but also the performance or abstention from physical acts, and a state's banning of such acts or abstentions when they are engaged in solely for **religious** reasons or for the **religious** beliefs displayed, is equally unconstitutional.

**HN45 -** In general, the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his **religion** prescribes (or proscribes). Thus, generally applicable laws may be applied to **religious** practices even when not supported by a compelling governmental interest.

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38. Ex parte Walrod

Court of Criminal Appeals of Oklahoma | Dec 23, 1941 | 1941 OK CR 186

**Overview:** A municipal ordinance making it illegal to distribute religious pamphlets was unconstitutional and therefore void, and a petitioner who was imprisoned for violation of the statute and sought a writ of habeas corpus was entitled to a discharge.

**HN12 -** Municipal authorities, as trustees for the public, have the duty to keep their communities' **streets** open and available for movement of people and property, the primary purpose to which the **streets** are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the **distribution** of **literature**, it may lawfully regulate the conduct of those using the **streets**. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a, tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing **literature** broadcast in the **streets**. Prohibition of such conduct would not abridge the constitutional liberty since such **activity** bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion.

**HN16 -** The constitutional inhibition of legislation on the subject of **religion** has a double aspect. It forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such **religious** organization or form of worship as the individual may choose cannot be restricted by law. It also safeguards the free exercise of the chosen form of **religion**. The Amendment embraces two concepts, freedom to believe and freedom to act. The first is absolute but the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. The power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. A state may not, by statute, wholly deny the right to preach or to disseminate **religious** views. A state may by general and nondiscriminatory legislation regulate the times, the places, and the manner of soliciting upon its **streets**, and of holding meetings thereon; and may in other respects safeguard the

peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment. The appellants are right in their insistence that the Act in question is not such a regulation.

**HN8 -** The free exercise of a person's **religion** and the practice thereof, and the freedom of speech and freedom of the press which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action, and municipal ordinances adopted under state authority constitute state action and are within the prohibition of the Fourteenth Amendment, and that the constitutional guaranty of freedom of the press embraces **distribution** as well as publication.

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39. Jones v. Opelika

Supreme Court of the United States | Jun 08, 1942 | 316 U.S. 584

**Overview:** It was constitutional to require peddlers, who were Jehovah's Witnesses, to obtain a license and pay a tax in order to sell religious books or pamphlets within municipal limits, even though it possibly interfered with religious beliefs.

**HN4 -** To subject any **religious** or didactic group to a reasonable fee for their money-making activities does not require a finding that the licensed acts are **purely commercial**. It is enough that money is earned by the sale of articles. A book agent cannot escape a license requirement by a plea that it is a tax on knowledge. It would hardly be contended that the publication of newspapers is not subject to the usual governmental fiscal exactions, or the obligations placed by statutes on other business. The Constitution draws no line between a payment from gross receipts or a net income tax and a suitably calculated occupational license. **Commercial** advertising cannot escape control by the simple expedient of printing matter of public interest on the same sheet or handbill. Nor does the fact that to the participants a formation in the **streets** is an "information march," and one of their ways of worship, suffice to exempt such a procession from a city ordinance which, narrowly construed, required a license for such a parade.

**HN5 -** When proponents of **religious** or social theories use the ordinary **commercial** methods of sales of articles to raise propaganda **funds**, it is a natural and proper exercise of the power of the state to charge reasonable fees for the privilege of canvassing.

**HN6 -** The court sees nothing in the collection of a nondiscriminatory license fee, uncontested in amount, from those selling **books** or papers, which abridges the freedoms of worship, speech or press.

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40. Jackson v. Benson

Supreme Court of Wisconsin | Jun 10, 1998 | 218 Wis. 2d 835

**Overview:** A statute that provided money for students to attend sectarian schools was constitutional where it did not have a secular purpose, it did not advance religion, and it would not have led to an excessive entanglement between the state and the schools.

**HN7 -** In an attempt to focus on the three main evils from which the Establishment Clause was intended to afford protection: sponsorship, financial support, and active involvement of the sovereign in **religious activity**, the Supreme Court has promulgated a three-pronged test to determine whether a statute complies with the Establishment Clause. Under this test, a statute does not violate the Establishment Clause if (1) it has a secular legislative purpose, (2) its principal or primary effect neither advances nor inhibits **religion**, and (3) it does not create excessive entanglement between government and **religion**.

**HN10 -** The Establishment Clause is not violated every time money previously in the possession of a state is conveyed to a **religious** institution. The simplistic argument that every form of financial aid to church-sponsored **activity** violates the **religion** clauses was rejected long ago. The constitutional standard is the separation of church and state. The problem, like many problems in constitutional law, is one of degree.

**HN27 -** The language "for the benefit of" in Wis. Const. art. I, § 18 is not to be read as requiring that some shadow of incidental benefit to a church-related institution brings a state grant or contract to **purchase** within the prohibition of the section. Furthermore, the language of art. I, § 18 cannot be read as being so prohibitive as not to encompass the primary-effect test. The crucial question, under art. I, § 18, as under the Establishment Clause, is not whether some benefit accrues to a **religious** institution as a consequence of the legislative program, but whether its principal or primary effect advances **religion**.

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41. Powell v. Bunn

Court of Appeals of Oregon | Dec 11, 2002 | 185 Ore. App. 334

**Overview:** School district's policy of allowing Boy Scouts to make in-school membership presentations to students did not violate Establishment Clause, according to Lemon test. Scouts' presentations did not touch on anything having to do with religion.

**HN40 -** For the men who wrote the **Religion** Clauses of the First Amendment the establishment of a **religion** connotes sponsorship, financial support, and active involvement of the sovereign in **religious activity**.

**HN44 -** The proposition that the Establishment Clause prohibits any program which in some manner aids an institution with a **religious** affiliation is consistently rejected. The crucial question is not whether a government policy provides some aid or benefit to **religion**. Rather, to be unconstitutional, the policy must have a primary effect of advancing **religion**. Whether there is such a primary effect is largely dictated by the nature of the governmental benefit and the nature of the organization benefitted. Aid normally may be thought to have a primary effect of advancing **religion** when it flows to an institution in which **religion** is so pervasive that a substantial portion of its functions are subsumed in the **religious** mission or when it **funds** a specifically **religious activity** in an otherwise substantially secular setting.

**HN15 -** The legislature, in enacting Or. Rev. Stat. § 327.109, makes an explicit policy choice to provide a process by which a complaint can be made to the superintendent alleging that a school district sponsors, financially supports or is actively involved with **religious activity**.

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42. Horace Mann League, Inc. v. Board of Public Works

Court of Appeals of Maryland | Jun 02, 1966 | 242 Md. 645

**Overview:** Statutes that made grants to colleges violated the Establishment Clause because the grants financed the activities of colleges that were sectarian; therefore, dismissal of the action was reversed in part.

**HN10 -** The following factors are significant in determining whether an educational institution is **religious** or sectarian: (1) the stated purposes of the college; (2) the college personnel, which includes the governing board, the administrative officers, the faculty, and the student body; (3) the college's relationship with **religious** organizations and groups, which relationship includes the extent of ownership, financial assistance, the college's memberships and affiliations, **religious** purposes, and miscellaneous aspects of the college's relationship with its sponsoring church; (4) the place of **religion** in the college's program, which includes the extent of **religious** manifestation in the physical surroundings, the character and extent of **religious** observance sponsored or encouraged by the college, the required participation for any or all students, the extent to which the college sponsors or encourages **religious activity** of sects different from that of the college's own church and the place of **religion** in the curriculum and in extra-curricular programs; (5) the result or outcome of the college program, such as accreditation and the nature and character of the activities of the alumni; and (6) the work and image of the college in the community.

**HN6 -** A state cannot pass a law to aid one **religion** or all religions, but state action to **promote** the general welfare of society, apart from any **religious** consideration, is valid, even though **religious** interests may be indirectly benefited. If the primary purpose of the state action is to **promote religion**, that action is in violation of the First Amendment, but if a statute furthers both secular and **religious** ends, an examination of the means used is necessary to determine whether the state could reasonably have attained the secular end by means which do not further the promotion of **religion**.

**HN2 -** In determining a taxpayer's pecuniary injury resulting from the unlawful expenditure of public **funds**, an appellate court may not weigh **lawful** expenditures against unlawful expenditures, because no legal injury results from the **lawful** expenditures of public **funds**.

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43. Grace United Methodist Church v. City of Cheyenne

United States District Court for the District of Wyoming | Dec 16, 2002 | 235 F. Supp. 2d 1186

**Overview:** Genuine issues existed as to whether a church's proposed day care facility was a religious exercise, and if so, whether it was substantially burdened by a city's denial of a license; other claims failed because there was only an incidental burden.

**HN14 -** The second requirement a claimant must demonstrate in order to state a claim under the **Religious** Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C.S. § 2000cc et seq., is that the land use regulation substantially burdens the person or institution's **religious** exercise. **Religious activity** is defined to include any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief. 42 U.S.C.S. § 2000cc-5(7)(A). Additionally, the use, building, or conversion of real property for the purpose of **religious** exercise is considered to be in itself a **religious** exercise. 42 U.S.C.S. § 2000cc-5(7)(B). Under this definition, courts have concluded the following activities constitute "**religious** exercises" for purposes of RLUIPA: (1) pastoral visits by Christian pastors to institutionalized persons, (2) seeking to build a church, and (3) prayer groups at a private residence.

**HN11 -** The United States Supreme Court has articulated the substantial burden test differently over the years. It has stated that for a governmental regulation to substantially burden **religious activity**, it must have a tendency to coerce individuals into acting contrary to their **religious** beliefs. Conversely, a government regulation does not substantially burden **religious activity** when it only has an incidental effect that makes it more difficult to practice the **religion**. Thus, for a burden on **religion** to be substantial, the government regulation must compel action or inaction with respect to the sincerely held belief; mere inconvenience to the **religious** institution or adherent is insufficient.

**HN3 -** Generally, the **Religious** Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C.S. § 2000cc et seq., provides a broad general rule for protection of land use as a **religious** exercise and then limits the application of that general rule to three instances where Congress has the purported power to regulate such **activity** pursuant to the Spending Clause, Commerce Clause, and the Enforcement Clause of the Fourteenth Amendment.

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44. ⚠ Church of Scientology Flag Serv. v. City of Clearwater

United States Court of Appeals for the Eleventh Circuit | Sep 30, 1993 | 2 F.3d 1514

**Overview:** District court erred when it granted summary judgment to city against religious organization when the evidence revealed an underlying objective that city employed the tax laws to unconstitutionally discriminate against religious organization.

**HN22 -** In applying the Free Exercise Clause of U.S. Const. amend. I itself, no flexible analysis of compelling interest justifications may be entertained when the challenger shows either that the law was actually enacted for a sectarian purpose or that the essential effect of the government action is to influence negatively the **pursuit** of **religious activity** or the expression of **religious** belief.

**HN27 -** A system of licensing speech or **religious activity** may be upheld against a U.S. Const. amend. I challenge only if the criteria for denying a license are narrowly tailored to serve compelling governmental interests. Closely related to this requirement, although distinct, is the rule that such a scheme may not delegate overly broad licensing discretion to a government official.

**HN29 -** Solicitation of **funds** by **religious** organizations is protected **religious** expressive **activity** under U.S. Const. amend. I.

45. Santa Fe Indep. Sch. Dist. v. Doe

Supreme Court of the United States | Jun 19, 2000 | 530 U.S. 290

**Overview:** A school district's policy permitting student-led, student-initiated prayer prior to school football games violated the Establishment Clause of the U.S. Constitution.

**HN20 -** The **Religion** Clauses of U.S. Const. amend. I prevent the government from making any law respecting the establishment of **religion** or prohibiting the free exercise thereof. By no means do these commands impose a prohibition on all **religious activity** in our public schools. Indeed, the common purpose of the **Religion** Clauses is to secure **religious** liberty. Thus, nothing in the U.S. Constitution as interpreted by the Supreme Court prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday.

**HN12 -** In cases involving state participation in a **religious activity**, one of the relevant questions is whether an objective observer, acquainted with the text, legislative history, and implementation of the statute, would perceive it as a state endorsement of prayer in public schools.

**HN4 -** The principle that government may accommodate the free exercise of **religion** does not supersede the fundamental limitations imposed by the Establishment Clause of U.S. Const. amend. I. It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in **religion** or its exercise, or otherwise act in a way which establishes a state **religion** or **religious** faith, or tends to do so.

46. County of Allegheny v. ACLU

Supreme Court of the United States | Jul 03, 1989 | 492 U.S. 573

**Overview:** Where respondents challenged petitioners' display of a creche and a Chanukah menorah and alleged violations of the Establishment Clause, the display of the menorah was permitted because it was a symbol that was secular.

**HN6 -** The term endorsement is closely linked to the term promotion, and government may not **promote** one **religion** or **religious** theory against another or even against the militant opposite.

**HN2 -** Government may not **promote** or affiliate itself with any **religious** doctrine or organization, may not discriminate among persons on the basis of their **religious** beliefs and practices, may not delegate a governmental power to a **religious** institution, and may not involve itself too deeply in such an institution's affairs.

**HN3 -** The establishment of **religion** clause of the First Amendment, U.S. Const. amend. I, means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any **religion**.

No person can be punished for entertaining or professing **religious** beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any **religious** organizations or groups and vice versa.

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47. Wollersheim v. Church of Scientology

Court of Appeal of California, Second Appellate District, Division Seven | Jul 18, 1989 | 212 Cal. App. 3d 872

**Overview:** Constitutional guarantee of religious freedom did not shield coercive conduct that church leaders knew resulted in mental injury from civil liability, but no liability could be imposed for inadvertent injuries caused by religious practices.

**HN13 -** To be entitled to constitutional protection under the freedom of **religion** clauses, any course of conduct must satisfy three requirements. First, the system of thought to which the course of conduct relates must qualify as a "**religion**," not a philosophy or science or personal preference. Second, the course of conduct must qualify as an expression of that **religion** and not just an **activity** that **religious** people happen to be doing. Third, the **religious** expression must not inflict so much harm that there is a compelling state interest in discouraging the practice which outweighs the values served by freedom of **religion**.

**HN16 -** Being subject to liability for intentional tortious conduct does not in any way or degree prevent or inhibit practitioners from operating their **religious** communities, worshipping as they see fit, freely associating with one another, selling or distributing **literature**, proselytizing on the street, soliciting **funds**, or generally spreading their message among the population. It certainly does not compel **religious** practitioners to perform acts at odds with fundamental tenets of their **religious** beliefs.

**HN3 - Religious** freedom is guaranteed American citizens in just sixteen words in U.S. Const. amend. I: Congress shall make no law respecting an establishment of **religion** or prohibiting the free exercise thereof.

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48. Gordon v. Board of Education

Court of Appeal of California, Second Appellate District, Division One | Mar 10, 1947 | 78 Cal. App. 2d 464

**Overview:** Municipal school board's plan to comply with California statute allowing pupils, with their parents' consent, to be excused from public school to participate in religious exercises or receive moral and religious instruction was not unconstitutional.

**HN5 -** The problem of defining the word "sectarian" has come before the courts of other jurisdictions in a number of cases. The rulings of the courts vary with the theory adopted as to the purpose of such provisions; i.e., whether they are intended to secularize state **activity**, particularly in the schools; or merely to prevent discriminatory **religious** instruction, leaving room for teaching of **moral** precepts and of the

generally accepted fundamentals of **religion**, and certainly permitting literary and historical uses. Only one state, Washington, unequivocally declares its purpose as complete secularization of school instruction. One other state, Illinois, reaches this result by judicial construction of the usual prohibitions as to using public money for sectarian purposes. Two states, Nebraska and Wisconsin, hold that it is not impossible to use the Bible or parts of it in connection with school work, although the facts presented to the courts in each case were found to show that the use which had been made was sectarian. The leading Michigan decision may imply a similar theory, since it concerns the use of a book of **moral** excerpts embodying **moral** principles set forth in the Bible.

**HN1 -** Cal. Educ. Code § 8286, enacted in 1943, provides that pupils, with the written consent of their parents, may be excused from schools to participate in **religious** exercises or to receive **moral** and **religious** instruction. Upon complying with the provisions of the statute, such absences are not counted in computing average daily attendance. However, allocations of state and county school **funds** are based upon average daily attendance.

**HN4 -** Cal. Const. art. I, § 4; Cal. Const. art. IX, § 8; and Cal. Const. art. IV, § 30 have been considered and applied in several cases in this California involving school affairs. For example, the California Supreme Court has held that the **purchase** of a King James version of the Bible by a school board for library and reference purposes is not prohibited by California law. There is nothing objectionable in the use of **religious books** in California schools. To be objectionable, such **books** must be sectarian, partisan, or denominational in character. The words "sectarian" and "denominational" are defined as follows: "Sect," strictly defined, means a body of persons distinguished by peculiarities of faith and practice from other bodies adhering to the same general system, and "denominational" is given much the same definition. However, the term "sect" frequently has a broader signification, the activities of the followers of one faith being regarded as sectarian as related to those of the adherents of another.

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49. Kendrick v. Bowen

United States District Court for the District of Columbia | Apr 15, 1987 | 657 F. Supp. 1547

**Overview:** A statutory grant of funds that provided funds to secular and religious entities alike was unconstitutional on its face and in substance because it promoted religious beliefs and impermissibly entangled the government with the religious entities.

**HN24 -** Where a connection to **religion** is not apparent on the face of a statute or from the nature of the government act itself, a court must consider whether the intended or actual beneficiary of government favor is an institution in which **religion** is so pervasive that a substantial portion of its functions are subsumed in the **religious** mission. If not, a court must go on to consider whether the statute **funds** a **religious activity** in an otherwise substantially secular setting. Thus, if the entities benefitting from statutory **funds** are either "pervasively sectarian," or if the **funds** are not entirely segregated from **religious activity**, the statute impermissibly advances **religion** and is unconstitutional.

**HN20 -** Courts invalidate legislation or governmental action on the ground that it lacks a valid secular purpose only when the statute or **activity** involved is motivated wholly by **religious** considerations. Even when the benefits to **religion** are substantial, and motivation to advance or benefit **religion** is apparent, courts find no conflict with the Establishment Clause as long as they can discern some intended and valid secular purpose.

**HN27 -** While indirect aid of a **religious** mission is not per se impermissible, where the aid amounts to a subsidy of the **religious** organization, and that subsidy cannot be segregated from **religious activity**, a court will declare the subsidy unconstitutional without hesitation.

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50. Shuttlesworth v. Birmingham

Court of Appeals of Alabama | Nov 02, 1965 | 43 Ala. App. 68

**Overview:** Dismissal of conviction of minister for parading without a permit was proper where the statute was overbroad, it was applied in a pattern that disregarded its meaning, and the activity, walking on a sidewalk, was not a parade requiring a permit.

**HN8 -** Any person engaged in a **lawful pursuit** has the right to pass on the public **streets** without interference, threats or intimidation. Nor is a pedestrian vis a vis a street railway running at grade to be deemed a trespasser.

**HN2 -** Wherever the title of **streets** and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such **use of the streets** and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the **streets** and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

**HN1 -** Birmingham, Ala., Gen. City Code of 1944, § 1159: It shall be unlawful to organize or hold, or to assist in organizing or holding, or to take part or participate in, any parade or procession or other public demonstration on the **streets** or other public ways of the city, unless a permit therefor has been secured from the commission. To secure such permit, written application shall be made to the commission, setting forth the probable number of persons, vehicles and animals which will be engaged in such parade, procession or other public demonstration, the purpose for which it is to be held or had, and the **streets** or other public ways over, along or in which it is desired to have or hold such parade, procession or other public demonstration. The commission shall grant a written permit for such parade, procession or other public demonstration, unless in its judgment the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be refused.

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51. Konikov v. Orange County

United States District Court for the Middle District of Florida, Orlando Division | Dec 31, 2003 | 302 F. Supp. 2d 1328

**Overview:** A rabbi's religious exercise by having religious services several times a week in his home was not sufficient to outweigh the important government interests in zoning thus protecting the nature of a residential area.

**HN12 -** The United States Supreme Court has held that a law burdening **religious** practice that is not neutral or not of general application must undergo the most rigorous of scrutiny, must advance interests of the highest order, and must be narrowly tailored in **pursuit** of those interests. The Court has recognized that a law that targets **religious** conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a **religious** motivation will survive strict scrutiny only in rare cases. The Court thus has clarified that notwithstanding Smith's holding regarding laws of general applicability, laws that are not generally applicable and which burden the practice of **religion** are still subject to strict scrutiny.

**HN23 -** While the procedural requirements of a special exception scheme, as well as scarcity of available land, may contribute to the ordinary difficulties associated with location (by any person or entity, **religious** or nonreligious) in a large city, they do not render impracticable the use of real property in the city for **religious** exercise, much less discourage churches from locating or attempting to locate in the city. Additionally, the **mere fact** that zoning provisions might make **religious** exercise more expensive does not amount to a substantial burden under the **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. §§ 2000cc to 2000cc-5; otherwise, compliance with RLUIPA would require municipal governments not merely to treat **religious** land uses on an equal footing with nonreligious land uses, but rather to favor them in the form of an outright exemption from land-use regulations.

**HN3 -** "**Religious** organization" is not defined in the Orange County, Fla. Code, but the list of definitions does include an entry for "**religious** institution," providing that "**religious** institution" means a premises or site which is used primarily or exclusively for **religious** worship and related **religious** activities. Orange County, Fla. Code § 38-1. **Religious** organizations are permitted without the need for obtaining a special exception in six types of zones, and such organizations are allowed as special uses in all but six other types of zones. Orange County, Fla. Code § 38-77. While "**religious** organizations" and many other uses are allowed to operate in an R-1A zone if a special exception is obtained, hundreds of other specific uses are prohibited in R-1A zones; i.e., those uses are not allowed even by special exception. Orange County, Fla. Code § 38-77.

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52. Griffin v. Coughlin

Court of Appeals of New York | Jun 11, 1996 | 88 N.Y.2d 674

**Overview:** Commissioner of correctional services violated Establishment Clause of First Amendment by denying inmate participation in family visitation program due to inmate's refusal to participate in drug program with required religious practices.

**HN1 -** The Establishment Clause prohibits the use of the state's power to force one to profess a **religious** belief or participate in a **religious activity**. The establishment of **religion** clause of U.S. Const. amend. I means that neither a state nor the federal government can set up a church. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any **religion**. No person can be punished for entertaining or professing **religious** beliefs or disbeliefs.

**HN3 -** Pursuant to U.S. Const. amend. I, the state cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored **religious** practice. Coerced attendance at a **religious** exercise is invariably sufficient to establish an Establishment Clause violation: although precedents make clear that proof of government coercion is not necessary to prove an Establishment Clause violation, it is sufficient. Government pressure to participate in a **religious activity** is an obvious indication that the government is endorsing or promoting **religion**. The Establishment Clause bars coercion by "force of law and threat of penalty" to engage in a **religious activity**, such as requiring a person to "attend church and observe the Sabbath."

**HN4 -** State-coerced adherence to a **religious** sect is not necessary to prove an Establishment Clause violation. State action is invalid if its "primary effect" is to advance or **promote religion**.

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53. Fellowship of Humanity v. County of Alameda

Court of Appeal of California, First Appellate District, Division One | Sep 11, 1957 | 153 Cal. App. 2d 673

**Overview:** Church's practice of humanism, under which belief in and reverence of God was not essential to membership, qualified as religion for tax exemption purposes under objective test.

**HN8 -** Under the constitutional provision the state has no power to decide the validity of the beliefs held by the group involved. Men may believe what they cannot prove. They may not be put to the proof of their **religious** doctrines or beliefs. The only valid test a state may apply in determining the tax exemption is a **purely** objective one. Once the validity or content of the belief is considered, the test becomes subjective and invalid. Thus the only inquiry in such a case is the objective one of whether or not the belief occupies the same place in the lives of its holders that the orthodox beliefs occupy in the lives of believing majorities, and whether a given group that claims the exemption conducts itself the way groups conceded to be **religious** conduct themselves. The content of the belief, under such test, is not a matter of governmental concern.

**HN9 -** **Religion** simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of **moral** practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets of belief. The content of the belief is of no moment.

**HN11 -** Neither a state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. No tax in any amount, large or small, can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**.

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54. Doe v. Wilson County Sch. Sys.

United States District Court for the Middle District of Tennessee, Nashville Division | May 29, 2008 | 564 F. Supp. 2d 766

**Overview:** The parents of an elementary student were entitled to injunctive relief because they had proved that they suffered a constitutional violation and they would suffer a continuing irreparable injury if they were not able to enroll their children in a school because it was not complying with First Amendment religious freedoms.

**HN24 -** The degree of school involvement in **religious activity** determines the extent of the perceived and actual endorsement of or entanglement with **religion**.

**HN1 -** Tenn. Code Ann. § 49-6-2904(b) states that students may pray in public school vocally or silently, alone or with other students; express **religious** viewpoints; speak to and attempt to share **religious** viewpoints with other students; and possess or distribute **religious literature** subject to reasonable time, place and manner restrictions; and be absent to observe **religious** holidays and participate in **religious** practices, all to the same extent and under the same circumstances as non-**religious** speech so long as the **activity** does not infringe on the rights of the school to maintain order and discipline, prevent disruption of the educational process, and determine educational curriculum and assignments; harass other persons or coerce other persons to participate in the **activity**; or otherwise infringe on the rights of other persons.

**HN22 -** Undertaking steps to encourage parents to be involved in their children's education is a laudable goal, and certainly parents have a right to pray for the students. However, this freedom of parents to exercise their **religion** does not permit a public school through its officials to endorse **religion**, align itself with **religious** beliefs or practices, or **promote** a particular **religious** organization or its activities.

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55. Legacy Church, Inc. v. Kunkel

United States District Court for the District of New Mexico | Apr 17, 2020 | 455 F. Supp. 3d 1100

**Overview:** A church's motion for a TRO against a public health order restricting gatherings at places of worship was denied as the Eleventh Amendment prohibited the suit against New Mexico, it was not substantially likely to succeed on the merits of its Free Exercise or assembly claims, and it had not met the other requirements for a TRO.

**HN41 -** Parties bringing an expressive-association claim under the First Amendment must demonstrate that they are asserting their right to associate for the purpose of engaging in those activities protected by the First Amendment: speech, assembly, petition for the redress of grievances, and the exercise of **religion**. **Religious** gatherings in which individuals come together for the purpose of engaging in **religious** activities, are recognized as an **activity** protected by the First Amendment.

**HN8 -** The First Amendment's **Religion** Clause states that Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof. U.S. Const. amend. I. The earliest decision on the Free Exercise Clause recognized that **religious** freedom does not act as an absolute shield against generally applicable laws.

**HN10 -** Not all governmental actions which make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their **religious** beliefs, require government to bring forward a compelling justification for its otherwise **lawful** actions. The First Amendment's key word is

prohibit because the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from government.

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56. ## Holloman v. Harland

United States Court of Appeals for the Eleventh Circuit | May 28, 2004 | 370 F.3d 1252

**Overview:** A teacher was not entitled to summary judgment on qualified immunity grounds against a student's Establishment Clause claim, as she did not establish that, in holding her daily moment of silent prayer, she was engaged in a discretionary job function.

**HN38 -** Notwithstanding supposedly secular justifications offered by the school district, the pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly **religious** in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposedly secular purpose can blind a court to that fact. Because prayer is a primary **religious activity** in itself, a teacher or administrator's intent to facilitate or encourage prayer in a public school is per se an unconstitutional intent to further a **religious** goal.

**HN9 -** In many areas other than qualified immunity, a "discretionary function" is defined as an **activity** requiring the exercise of independent judgment, and is the opposite of a "ministerial task." In the qualified immunity context, however, the United States Court of Appeals for the Eleventh Circuit appears to have abandoned this "discretionary function/ministerial task" dichotomy, and has interpreted the term "discretionary authority" to include actions that do not necessarily involve an element of choice, and emphasized that, for purposes of qualified immunity, a governmental actor engaged in **purely** ministerial activities can nevertheless be performing a discretionary function. Instead of focusing on whether the acts in question involved the exercise of actual discretion, the Eleventh Circuit assesses whether they are of a type that fell within the employee's job responsibilities. The inquiry is two-fold. The court asks whether the government employee was (a) performing a legitimate job-related function (that is, pursuing a job-related goal), (b) through means that were within his power to utilize.

**HN11 -** After determining that an official is engaged in a legitimate job-related function, it is then necessary to turn to the second prong of the discretionary function test for qualified immunity and determine whether he is executing that job-related function--that is, pursuing his job-related goals--in an authorized manner. The primary purpose of the qualified immunity doctrine is to allow government employees to enjoy a degree of protection only when exercising powers that legitimately form a part of their jobs. Each government employee is given only a certain "arsenal" of powers with which to accomplish her goals. For example, it is not within a teacher's official powers to sign her students up for the Army to **promote** patriotism or **civic** virtue, or to compel them to bring their property to school to redistribute their wealth to the poor so that they can have firsthand experience with altruism.

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57. ## EEOC v. Preferred Mgmt. Corp.

United States District Court for the Southern District of Indiana, Indianapolis Division | Mar 01, 2002 | 216 F. Supp. 2d 763

**Overview:** The EEOC presented sufficient evidence to raise a genuine issue of material fact that the work environment was hostile and abusive for the named complainants and to support its pattern or practice claim.

**HN9 -** Title VII of the Civil Rights Act (Title VII), 42 U.S.C.S. § 2000e et seq., prohibits an employer from discriminating against employees on the basis of **religion**. 42 U.S.C.S. § 2000e-2(a)(1). The statute defines "**religion**" to include all aspects of **religious** observance and practice, as well as belief. 42 U.S.C.S. § 2000e(j). Title VII prohibits employers from taking adverse employment actions against employees on the basis of **religious** criteria; this includes prohibiting employers from harassing employees on the basis of **religion**. Additionally, just as it empowers the U.S. Equal Employment Opportunity Commission (EEOC) to investigate and conciliate race and sex discrimination (among others), Title VII also authorizes the EEOC to investigate and conciliate complaints of **religious** discrimination, and it empowers the EEOC to sue on its own behalf as well as on behalf of complaining parties. 42 U.S.C.S. § 2000e-5(b).

**HN24 -** An individual has an "absolute" freedom to believe and profess whatever **religious** doctrines one desires and the broad, though not absolute freedom to practice (through the performance or non-performance of certain actions) one's **religion**.

**HN26 -** Under the **Religious** Freedom restoration Act, 42 U.S.C.S. § 2000bb et seq., laws that substantially burden the free exercise of **religion** cannot be enforced unless the burden furthers a compelling government interest and is the least restrictive means of furthering that interest.

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58. Myers v. Loudoun County Sch. Bd.

United States District Court for the Eastern District of Virginia, Alexandria Division | Feb 21, 2003 | 251 F. Supp. 2d 1262

**Overview:** Virginia's pledge statute requiring recitation of pledge of allegiance in schools was not unconstitutional because recitation of pledge was secular and statute stated no student would be compelled to recite pledge if he or his parent objected.

**HN12 -** Va. Code Ann. §22.1-202(C) has a secular purpose, namely the fostering and inspiration of (1) patriotism, (2) love of country and (3) respect for constitutional principles. Indeed, these goals are necessary to the preservation of democracy, and are not attempts to justify the existence of that democracy by invoking the imprimatur of the Divine. Even accounting for the inclusion of a reference to the Deity, the recitation of the pledge is a secular **activity**, not a **religious activity**.

**HN19 -** Courts have refused to recognize that schools must shelter students from curricular messages to which the students have a **religious** objection. Moreover, the United States Supreme Court has affirmatively stated that in many circumstances students may be subjected to hearing messages authorized by the school, to which the students have **moral** and **religious** objections. Specifically, the Court has stated that it does not hold that every state action implicating **religion** is invalid if one or a few citizens find it offensive. People may take offense at all manner of **religious** as well as nonreligious messages, but offense alone does not in every case show a violation. We know too that sometimes to endure social isolation or even anger may be the price of conscience or nonconformity.

**HN5 -** The First Amendment to the Federal Constitution provides in relevant part that the government shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof. U.S. Const. amend. I. Although originally applicable only to the federal government, the First Amendment and its protection for the freedom of **religious** worship is now applicable to the states by operation of the Fourteenth Amendment. In fact, the First Amendment guarantees two distinct rights with respect to free **religious** worship. Specifically, the First Amendment guarantees that the government shall not (1) establish a **religion** (the Establishment Clause); and (2) prevent a citizen from freely exercising the **religion** of the citizen's choosing (the Free Exercise Clause). Broadly stated, both clauses are designed to protect **religious** liberty.

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59. Lindell v. Casperson

United States District Court for the Western District of Wisconsin | Mar 16, 2005 | 360 F. Supp. 2d 932

**Overview:** Where the inmate's religious requirements for his Wotanist religion were idiosyncratic and inconsistent, no reasonable jury could find his sincere religious beliefs were substantially burdened under the Religious Land Use and Institutionalized Persons Act by refusing a group practice of Wotanism, a special diet, or the requested ceremonial items.

**HN19 -** The acquisition, storage, and **distribution** of **religious** texts has no secular purpose. Nevertheless, it is permissible under the United States Constitution when it is done in institutions in which **religious** adherents could not practice their **religion** without assistance by the government. Patients in public hospitals, members of the armed forces in some circumstances (e.g., the crew of a ballistic missile submarine on duty) -- and prisoners -- have restricted or even no access to **religious** services unless government takes an active role in supplying those services. That role is not an interference with, but a precondition of, the free (or relatively free) exercise of **religion** by members of these groups. The **religious** establishments that result are minor and seem consistent with, and indeed required by, the overall purpose of the First Amendment's **religion** clauses, which is to **promote religious** liberty. Prisons are entitled to employ chaplains and need not employ chaplains of each and every faith to which prisoners might happen to subscribe, but may not discriminate against minority faiths except to the extent required by the exigencies of prison administration.

**HN9 -** The United States District Court for the Western District of Wisconsin agrees with those courts that have imported the sincere belief requirement into cases brought under the **Religious** Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C.S. §§ 2000cc-2000cc-5. It makes no sense to say that a particular regulation imposes a burden of any kind, much less a substantial one, on a prisoner's exercise of his **religion** unless it is the prisoner's sincere beliefs that are at stake. If a prisoner is contending that he must have a plethora of apparently preposterous objects and opportunities in order to practice his **religion** and if his list of alleged necessities changes for no apparent reason, it is reasonable to infer that he is more interested in exercising his ability to tie up the courts and prison officials than in exercising his **religion**. Congress enacted RLIUPA to protect the rights of prisoners seeking to exercise their **religious** beliefs, not to protect prisoners who misuse the Act to make life as difficult as possible for their jailors. At the same time, courts must be cautious in attempting to separate real from fictitious **religious** beliefs.

**HN12 -** Where a district court has before it one who swears or (more likely) affirms that he sincerely and truthfully holds certain beliefs which comport with the general definition of **religion**, it can be comfortable that those beliefs represent his "**religion**." Thus, even if a court assumes that the prohibition of certain

**religious** texts substantially burdens a plaintiff inmate's exercise of his **religion**, the prohibition is allowable under the **Religious** Land Use and Institutionalized Persons Act, 42 U.S.C.S. §§ 2000cc-2000cc-5, if it meets a compelling state interest. Defendant prison officials have a heavier burden under the Act than under the United States Constitution's Free Exercise Clause. If the defendants meet their burden under the Act, they will meet the less stringent burden of showing that their conduct was reasonably related to a legitimate penological interest under the First Amendment.

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60. Hsu by & Through Hsu v. Roslyn Union Free Sch. Dist. No. 3

United States Court of Appeals for the Second Circuit | May 15, 1996 | 85 F.3d 839

**Overview:** A preliminary injunction was required under the Equal Access Act against school district to allow students an exemption from the school's policy against religious discrimination to form a Bible club in which certain officers had to be Christians.

**HN30 -** Allowing people with **religious** faith to advance their religions is not what is meant by the establishment of **religion**, under U.S. Const. amend. I. The establishment of **religion** connotes sponsorship, financial support, and active involvement of the sovereign in **religious activity**. In other words, the state action itself must constitute an endorsement of **religion**.

**HN36 -** If authorized by the school, private act of invidious discrimination by a student club also constitutes a state act of invidious discrimination prohibited under the equal protection clause of U.S. Const. amend. XIV. Treating one **religion** differently than another will almost always be invidious. But determining whether discrimination is invidious in a particular case depends on an **understanding** of the context that informs and characterizes that discrimination. **Understanding** this context requires consideration of who is discriminating.

**HN16 -** The U.S. Const. amend. I's command that the state may not prohibit the free exercise of **religion** requires the court to ask whether a belief is **religious** and sincerely held.

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61. Wigg v. Sioux Falls Sch. Dist. 49-5

United States District Court for the District of South Dakota, Southern Division | Jul 02, 2003 | 274 F. Supp. 2d 1084

**Overview:** A school district's policy preventing teachers from attending religious meetings held at district facilities after school constituted viewpoint discrimination in violation of the First Amendment.

**HN25 -** The First Amendment protects speech and **religion** by quite different mechanisms. Speech is protected by insuring its full expression even when the government participates, for the very object of some of our most important speech is to persuade the government to adopt an idea as its own. In **religious** debate or expression the government is not a prime participant, for the Framers deemed **religious** establishment antithetical to the freedom of all. The Establishment Clause is a specific prohibition on forms of state intervention in **religious** affairs with no precise counterpart in the speech provisions.

**HN34 -** To establish that her free exercise rights have been violated, the plaintiff must first show that the government action complained of substantially burdened her **religious** activities. Government significantly burdens the exercise of **religion** if it significantly constrains conduct or expression that manifests a central tenet of a person's **religious** beliefs, meaningfully curtails the ability to express adherence to a particular faith, or denies reasonable opportunities to engage in fundamental **religious** activities.

**HN1 -** There is no right to a trial by jury in **purely** equitable actions. The determination of equitable remedies is a matter for the court to decide, not the jury. It is equally clear that actions for injunctions are equitable in nature.

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62. Commonwealth v. Murdock

Superior Court of Pennsylvania | Jul 23, 1942 | 149 Pa. Super. 175

**Overview:** Jehovah's Witnesses' summary convictions for violating ordinance prohibiting unlicensed door-to-door sale of religious books were upheld where the ordinance was nondiscriminatory and did not infringe on their freedom of religion or freedom of speech.

**HN8 -** There is a distinction between non-discriminatory regulation of operations which are incidental to the exercise of **religion** or the freedom of speech or the press and those which are imposed upon the **religious** rite itself or the unmixed dissemination of information. Both teachers and **preachers** need to receive support for themselves as well as alms and benefactions for charity and the spread of knowledge, but when the practitioners of these noble callings choose to utilize the vending of their **religious books** and tracts as a source of **funds**, the financial aspects of their transactions need not be wholly disregarded.

**HN10 -** When proponents of **religious** or social theories use the ordinary **commercial** methods of sales of articles to raise propaganda **funds**, it is a natural and proper exercise of the power of the state to charge reasonable fees for the privilege of canvassing. Careful as the courts may and should be to protect the freedoms safeguarded by the Bill of Rights, it is difficult to see in such enactments a shadow of prohibition of the exercise of **religion** or of abridgment of the freedom of speech or the press. It is prohibition and unjustifiable abridgment which is interdicted, not taxation. That such proper charges may be expanded into unjustifiable abridgments does not make them invalid on their face. The freedoms guaranteed against abridgment by the Fourteenth Amendment commands protection of **religious** or social proponents' rights. The legislative power of municipalities must yield when abridgment is shown.

**HN9 -** To subject any **religious** or didactic group to a reasonable fee for their moneymaking activities does not require a finding that the licensed acts are **purely commercial**. A book agent cannot escape a license requirement by a plea that it is a tax on knowledge. It would hardly be contended that the publication of newspapers is not subject to the usual government fiscal exactions, or the obligations placed by statutes on other business.

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63. International Soc. for Krishna Consciousness, Inc. v. Barber

United States Court of Appeals for the Second Circuit | Jun 03, 1981 | 650 F.2d 430

**Overview:** State fair rule prohibiting the solicitation of funds from persons other than booth licensees was unconstitutional because it substantially infringed upon a religious group's right to the free exercise of its religion.

**HN1 -** The availability of a free exercise defense cannot depend on the objective truth or verity of a defendant's **religious** beliefs. Courts will investigate an adherent's sincerity and will then invoke free exercise analysis where a belief is asserted and acted upon in good faith. One consequence of the adoption of the subjective test is the abandonment of any requirement that the **religion** include a traditional concept of "God."

**HN2 -** The test for identifying an individual's belief in a relation to a Supreme Being is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God by other persons. A functional, phenomenological investigation of an individual's "**religion**" applies. In the absence of a requirement of "God," this approach treats an individual's "ultimate concern" whatever that concern be as his "**religion**." A concern is "ultimate" when it is more than "intellectual." A concern is more than intellectual when a believer would categorically disregard elementary self-interest in preference to transgressing its tenets.

**HN4 -** Actions and practices falling within the bounds of the free exercise clause can only be overcome by governmental interests of the highest order. **Religious** expression, including solicitation, is subject to reasonable time, place and manner regulation, but such limitations are justified only by a compelling interest in public safety, peace, or order, which must be demonstrated by the state. The government must also show that no less restrictive means to achieve its end are available.

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64. ⚠ Zummo v. Zummo

Superior Court of Pennsylvania | May 17, 1990 | 394 Pa. Super. 30

**Overview:** Order prohibiting a divorced father from taking children to non-Jewish religious services during visitation pursuant to an oral prenuptial agreement was constitutionally impermissible because religious freedom may not be bargained away.

**HN3 -** Pennsylvania, more than any other sovereignty in history, traces its origins directly to the principle that the fundamental right of conscience is inviolate. In general, thus, the Commonwealth is neutral regarding **religion**. It neither encourages nor discourages **religious** belief. It neither favors nor disfavors **religious activity**. A citizen of the Commonwealth is free, of longstanding right, to practice a **religion** or not, as he sees fit, and whether he practices a **religion** is strictly and exclusively a private matter, not a matter for inquiry by the state.

**HN27 -** There are several persuasive grounds upon which to deny legal effect to a pre-divorce agreement regarding the **religious** upbringing of children: 1) such agreements are generally too vague to demonstrate a meeting of minds, or to provide an adequate basis for objective enforcement; 2) enforcement of such an agreement would **promote** a particular **religion**, serve little or no secular purpose, and would excessively entangle the courts in **religious** matters; and, 3) enforcement would be contrary to a public policy

embodied in the U.S. Const. amend. I's Establishment and Free Exercise Clauses (as well as their state equivalents) that parents be free to doubt, question, and change their beliefs, and that they be free to instruct their children in accordance with those beliefs.

**HN2 -** Precisely because of the **religious** diversity that is the United States' national heritage, the Founders added to the Constitution a Bill of Rights, the very first words of which declare that Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof. Perhaps in the early days of the Republic these words were understood to protect only the diversity within Christianity, but today they are recognized as guaranteeing **religious** liberty and equality to the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism. It is settled law that no government official in the nation may violate these fundamental constitutional rights regarding matters of conscience.

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65. Cantrell v. Rumman

United States District Court for the Northern District of Illinois, Eastern Division | Feb 09, 2005 | 2005 U.S. Dist. LEXIS 9512

**Overview:** State regulations requiring citizens to obtain permits for distribution of leaflets or exhibits at government buildings were in violation of the First Amendment on their face because they contained content-based restrictions that were not narrowly tailored to protect only compelling state interests and left too much discretion for permit denials.

**HN5 -** The hand **distribution** of **religious** tracts is an age-old form of missionary **evangelism**--as old as the history of printing presses. It has been a potent force in various **religious** movements down through the years. This form of **religious activity** occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits.

**HN4 -** Private **religious** speech is at the core of First Amendment protections. Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at **religious** speech that a free-speech clause without **religion** would be Hamlet without the prince. Accordingly, we have not excluded from free-speech protections **religious** proselytizing or even acts of worship.

**HN20 -** Ill. Admin. Code tit. 44, § 5000.950(c) is unconstitutional on its face to the extent that it prohibits displays that **promote religious** philosophies or political candidates or philosophies.

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66. Rivera v. East Otero School Dist.

United States District Court for the District of Colorado | Sep 14, 1989 | 721 F. Supp. 1189

**Overview:** A school district's policy that prohibited extracurricular material that proselytized a particular religious or political belief was unconstitutional on its face.

**HN3 -** Writing is pure speech. The government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word. Peaceful **distribution** of **literature** is protected speech. Leafleting is protected speech. Free speech includes the right to distribute **literature**.

**HN11 -** A policy of not suppressing student speech neither advances nor inhibits **religion** within the meaning of the law. A law is not unconstitutional simply because it allows churches to advance **religion**, which is their very purpose. For a law to have forbidden effects under case law, it must be fair to say that the government itself advances **religion** through its own activities and influence. By hypothesis, a governmental decision to remain uninvolved in **religious** matters cannot result in governmental advancement of **religion**. First, the policy must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits **religion**; finally, the policy must not foster an excessive government entanglement with **religion**.

**HN12 -** Permitting all **lawful** speech presents fewer entanglement risks than is created by a policy of monitoring student speech and determining what was **religious** and suppressing that speech.

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67. ⚠ Grosz v. Miami Beach

United States Court of Appeals for the Eleventh Circuit | Dec 19, 1983 | 721 F.2d 729

**Overview:** Law prohibiting organized, publicly attended religious services in single-family residential zone protected zoning interest by least restrictive means, where there was total inconsistency between government policy objectives and resident's conduct.

**HN4 -** Before a court balances competing governmental and **religious** interest, the challenged government action must pass two threshold tests. The first test distinguishes government regulation of **religious** beliefs and opinions from restrictions affecting **religious** conduct. The government may never regulate **religious** beliefs; but, the United States Constitution does not prohibit absolutely government regulation of **religious** conduct. Given a regulation's focus on conduct, government action passes this first threshold. The second threshold principle requires that a law have both a secular purpose and a secular effect to pass constitutional muster. First, a law may not have a sectarian purpose; governmental action violates the Constitution if it is based upon disagreement with **religious** tenets or practices, or if it is aimed at impeding **religion**. Second, a law violates U.S. Const. amend. I. if the "essential effect" of the government action is to influence negatively the **pursuit** of **religious activity** or the expression of **religious** belief.

**HN5 -** To say that a law violates the free exercise clause if the "essential effect" of the government action is to influence negatively the **pursuit** of **religious activity** or the expression of **religious** belief is not to say that any government actions significantly affecting **religion** fail this threshold test. Rather, any nonsecular effect, regardless of its significance, must be only an incident of the secular effect.

**HN9 -** **Religious** doctrine may exist, to a large extent, as a reflection of individual adherents' interpretations. Reliable indicia of the importance of particular **religious** conduct may be hard to find. Courts, therefore, often restrict themselves to determining whether the challenged conduct is rooted in **religious** belief or involves only secular, philosophical or personal choices. Only conduct flowing from **religious** belief merits free exercise protection; no weight measures on the side of **religion** unless the

government action ultimately affects a **religious** practice. Finer distinctions, as to the weight of the burden, must usually be based upon the degree of interference element in the formula.

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68. Tenafly Eruv Ass'n v. Borough of Tenafly

United States District Court for the District of New Jersey | Aug 09, 2001 | 155 F. Supp. 2d 142

**Overview:** Borough council's decision to take down lechis that delineated a boundary of an eruv did not violate plaintiffs' rights where it was enforcing a reasonable, neutral access restriction of general applicability to utility poles.

**HN16 -** Just because a municipality allows **commercial** speech in a nonpublic forum does not mean that it must subsequently permit **religious** or political speech in that same nonpublic forum.

**HN19 -** Although normally, the First Amendment forbids an official purpose to disapprove of a particular **religion** or of **religion** in general, and normally the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all **religious** beliefs or regulates or prohibits conduct because it is undertaken for **religious** reasons, a law which targets **religion** in a non-neutral manner may be valid if it is justified by a compelling interest and is narrowly tailored to advance that interest.

**HN4 -** Lechis are properly classified as symbolic speech: they are intended to convey a particular message and in the context and the surrounding circumstances in which they are used, the message will be understood by those who view them. That the symbolic speech is also **religious** exercise is not relevant; the Free Speech Clause, U.S. Const. amend. I, not only protects secular private speech but also private **religious** expression.

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69. Fortress Bible Church v. Feiner

United States District Court for the Southern District of New York | Aug 11, 2010 | 734 F. Supp. 2d 409

**Overview:** Defendants violated RLUIPA and the New York SEQRA because there was evidence of defendants' intentional delay, hostility, and bias toward the church's application and defendants failed to demonstrate any compelling governmental interests sufficient to justify the denial of the church's SEQRA application.

**HN9 -** The **Religious** Land Use and Institutionalized Persons Act (RLUIPA) broadly defines "**religious** exercise" as any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief, including the use, building, or conversion of real property for the purpose of **religious** exercise. 42 U.S.C.S. § 2000cc-5(7)(A). That is, RLUIPA does not protect buildings or structures per se, but rather protects their use for the purpose of **religious** exercise. 42 U.S.C.S. § 2000cc-5(7)(B). Thus, the Second Circuit has observed that not every **activity** carried out by a **religious** entity or individual constitutes a "**religious** exercise." Instead, RLUIPA requires inquiring whether the facilities to be constructed are to be devoted to a **religious** purpose. Such **religious** purpose need not implicate core **religious** practice, or an integral part of one's faith.

**HN12 -** The **Religious** Land Use and Institutionalized Persons Act purposely does not define "substantial burden." Rather, the legislative history indicates that Congress intended the term substantial burden to be interpreted by reference to U.S. Supreme Court jurisprudence. Under Supreme Court precedents, a substantial burden on **religious** exercise exists when an individual is required to choose between following the precepts of her **religion** and forfeiting benefits, on the one hand, and abandoning one of the precepts of her **religion** on the other hand. In the context of land use applications, however, when there has been a denial of a **religious** institution's building application, courts appropriately speak of government action that directly coerces the **religious** institution to change its behavior, rather than government action that forces the **religious** entity to choose between **religious** precepts and governmental benefits. In evaluating whether plaintiffs' **religious** exercise has been substantially burdened, the court must evaluate both the nature of the denial and the effect of the denial on the **religious** institution. The Second Circuit has also considered relevant when a court finds that denial of an application was arbitrary and capricious under New York law.

**HN18 -** Section 2(b)(2) of the **Religious** Land Use and Institutionalized Persons Act, the Nondiscrimination provision, provides that no government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of **religion** or **religious** denomination. 42 U.S.C.S. § 2000cc(b)(2).

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70. Midrash Sephardi, Inc. v. Town of Surfside

United States Court of Appeals for the Eleventh Circuit | Apr 21, 2004 | 366 F.3d 1214

**Overview:** Including private clubs and lodges as permitted business district uses while excluding religious assemblies violated RLUIPA's neutrality and general applicability principles. RLUIPA was a proper exercise of Congress's Fourteenth Amendment powers.

**HN61 -** The United States Court of Appeals for the Eleventh Circuit agrees with the observation that the **Religion** Clauses--the Free Exercise Clause, the Establishment Clause, the **Religious** Test Clause, and the Equal Protection Clause as applied to **religion**--all speak with one voice on this point: Absent the most unusual circumstances, one's **religion** ought not affect one's legal rights or duties or benefits. On the face of the equal terms provision of **Religious** Land Use and Institutionalized Persons Act of 2000, 114 Stat. 803-807 (codified at 42 U.S.C.S. § 2000cc et seq.), the echoes of these constitutional principles are unmistakable. Simply put, to deny equal treatment to a church or a synagogue on the grounds that it conveys **religious** ideas is to penalize it for being **religious**. Such unequal treatment is impermissible based on the precepts of the Free Exercise, Establishment and Equal Protection Clauses.

**HN63 -** The three-part test provided by Lemon helps determine whether a statute achieves neutrality towards **religion** by avoiding sponsorship, financial support, and active involvement of the sovereign in **religious activity**. A statute will survive an Establishment Clause attack if (1) it has a secular legislative purpose, (2) its primary effect neither advances nor inhibits **religion**, and (3) it does not foster excessive government entanglement with **religion**. State action violates the Establishment Clause if it fails to satisfy any of these prongs.

**HN69 -** Under Lemon's third prong, a statute must not result in excessive entanglement between church and state. The **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 114 Stat. 803-807 (codified at 42 U.S.C.S. § 2000cc et seq.), does not require "pervasive monitoring" to prevent the government from indoctrinating **religion**. RLUIPA does not call on the government to supervise land use regulations to make sure governmental **funds** do not sponsor **religious** practice, nor does it require state or local officials to develop expertise on **religious** worship or to evaluate the merits of different **religious** practices or beliefs. RLUIPA requires only that states avoid discriminating against or among **religious** institutions. As such, RLUIPA passes muster under Lemon's third prong.

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71. DeStefano v. Emergency Hous. Group, Inc.

United States Court of Appeals for the Second Circuit | Apr 20, 2001 | 247 F.3d 397

**Overview:** Summary judgment for defendants in plaintiff's suit alleging improper state funding of religion by funding an alcohol treatment facility promoting AA programs was vacated and reversed for further determinations.

**HN18 -** Determining that the supervision of meetings and reading of **religious literature** by the staff of a private organization constitute indoctrination does not mean such activities are "governmental indoctrination" because they are supported directly and almost entirely by state **funds**.

**HN8 -** Although the presence or absence of compulsion is an important part of the analysis, the Establishment Clause prohibits the expenditure of public **funds** to aid in the establishment of **religion** even if the only coercion involved is in the collection of taxes to be used for that purpose.

**HN11 -** At the heart of Establishment Clause doctrine lies the principle that government may not coerce anyone to support or participate in **religion** or its exercise. It follows from this prohibition that when state **funds** are used to coerce worship or prayer, the Establishment Clause has been violated. What the U.S. Const. amend. I precludes the government from commanding directly, it also precludes the government from accomplishing indirectly.

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72. Olmer v. City of Lincoln

United States District Court for the District of Nebraska | Nov 04, 1998 | 23 F. Supp. 2d 1091

**Overview:** The public interest in avoiding violation of the protestors' First Amendment free-speech rights while the court considered the protestors' request for a permanent injunction weighed in favor of issuing a preliminary injunction.

**HN5 -** As used in Lincoln, Nebraska Municipal Code § 9.20.090, the term "focused picketing" shall mean the act of one or more persons stationing herself, himself or themselves outside **religious** premises on the exterior grounds, or on the sidewalks, **streets** or other part of the right of way in the immediate vicinity of **religious** premises, or moving in a repeated manner past or around **religious** premises, while displaying a

banner, placard, sign or other demonstrative material as a part of their expressive conduct. The term "focused picketing" shall not include **distribution** of **leaflets** or **literature**.

**HN4 -** As used in Lincoln, Nebraska Municipal Code § 9.20.090, the term "**religious** premises" shall mean the property on which is situated any synagogue, mosque, temple, shrine, church or other structure regularly used for the exercise of **religious** beliefs, whether or not those **religious** beliefs include recognition of a God or other supreme being; the term "scheduled **religious activity**" shall mean an assembly of five or more persons for **religious** worship, wedding, funeral, memorial service, other sacramental ceremony, **religious** schooling or **religious** pageant at a **religious** organization's premises, when the time, duration and place of the assembly is made known to the public, either by a notice published at least once within 30 days but not less than 3 days before the day of the scheduled **activity** in a legal newspaper of general circulation in the city or in the alternative by posting the information in a reasonably conspicuous manner on the exterior premises for at least 3 days prior to and on the day of the scheduled **activity**.

**HN6 -** Lincoln, Nebraska Municipal Code § 9.20.090 provides that it shall be deemed an unlawful disturbance of the peace for any person intentionally or knowingly to engage in focused picketing of a scheduled **religious activity** at any time within the period from one-half hour before to one-half hour after the scheduled **activity**, at any place on the **religious** organization's exterior premises, including its parking lots; or on the portion of the right of way including any sidewalk on the same side of the street and adjoining the boundary of the **religious** premises, including its parking lots; or on the portion of the right of way adjoining the boundary of the **religious** premises which is a street or roadway including any median within such street or roadway; or on any public property within 50 feet of a property boundary line of the **religious** premises, if an entrance to the **religious** organization's building or an entrance to its parking lot is located on the side of the property bounded by that property line. Notwithstanding the foregoing description of areas where focused picketing is restricted, it is hereby provided that no restriction in this ordinance shall be deemed to apply to focused picketing on the right of way beyond the curb line completely across the street from any such **religious** premises.

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73. Christ Church Pentecostal v. Tenn. State Bd. of Equalization

Court of Appeals of Tennessee, At Nashville | Mar 21, 2013 | 428 S.W.3d 800

**Overview:** Evidence did not preponderate against State Board of Equalization's finding that bookstore/cafe area contained in church family life center facility did not qualify for tax exemption under former Tenn. Code Ann. § 67-5-212 because bookstore/cafe area was nothing short of retail establishment housed within walls of center.

**HN18 -** The First Amendment does not relieve **religious** groups from all the financial burdens of government. For purposes of a property tax exemption, situations will arise where it will be difficult to determine whether a particular **activity** is **religious** or **purely commercial**. The distinction at times is vital.

**HN5 -** Pursuant to the authority granted to it by the Tennessee Constitution, the General Assembly has exempted from taxation properties that are owned and occupied by **religious**, charitable, scientific or nonprofit educational institutions and used by them **purely** and exclusively for carrying out one or more of the purposes for which the institution was created and exists. Tenn. Code Ann. § 67-5-212. The former Tenn. Code. Ann. § 67-5-212(a)(1)(A) (2003) (now § 67-5-212(a)(3)(B) (2011)) provided no property shall

be totally exempted, nor shall any portion thereof be pro rata exempted, unless such property or portion thereof is actually used **purely** and exclusively for **religious**, charitable, scientific or educational purposes. Unlike similar exemptions granted in other states, the exemption granted by the Tennessee statute is construed liberally in favor of the **religious**, charitable, scientific or educational institution. Nevertheless, the one claiming such exemption has the burden of showing his right to it. The purposes of the exemption must be balanced against the need for an equitable **distribution** of the tax burden.

**HN8 -** That the activities of a charitable institution are similar to or compete with a tax-paying business does not, by itself, render the charitable institution's property taxable. Conversely, property owned and used by a charitable institution is not automatically exempt from taxation merely because the use may be characterized as generally promoting the institution's purpose in some way, particularly where the use is a revenue-generating one. The primary inquiry is whether the non-profit, educational, charitable, or **religious** institution or hospital uses the property exclusively and **purely** for the purpose(s) for which the institution was created or exists, or for a purpose directly incidental to the institutional purpose(s).

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74. Lown v. Salvation Army, Inc.

United States District Court for the Southern District of New York | Sep 30, 2005 | 393 F. Supp. 2d 223

**Overview:** Employees could not maintain a religious discrimination action against a church employer that contracted with government entities, but an alleged diversion of contract revenues to religious purposes was sufficient to confer taxpayer standing on the employees as to an Establishment Clause, U.S. Const. amend. I, claim against the government entities.

**HN13 -** Government aid to **religious** organizations may not be diverted to **religious** uses. Case law maintains a historical prohibition on government directly providing **funds** to organizations that use those **funds** to support **religious activity**.

**HN37 -** **Religious** organizations undoubtedly forfeit certain free exercise interests when they agree to provide social services on behalf of the government. For example, the Establishment Clause requires that such organizations not possess unfettered discretion over the content of the services provided with public **funds**. Nevertheless, the Establishment Clause does not mandate that such organizations abandon all free exercise interests. Nothing in the Constitution precludes Congress from accommodating a **religious** organization's residual free exercise interest in selecting and managing its employees with reference to **religion**.

**HN38 -** Establishment Clause concerns are implicated by government actions that directly advance **religion**, not by government actions that merely accommodate the free exercise interests of **religious** organizations. For a law to have forbidden effects, it must be fair to say that the government itself has advanced **religion** through its own activities and influence. Establishment is caused by sponsorship, financial support, and active involvement of the sovereign in **religious activity**.

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75. McRae v. Califano

United States District Court for the Eastern District of New York | Jan 15, 1980 | 491 F. Supp. 630

**Overview:** Hyde-Conte amendment to Medicaid Act that forbade use of federal funds for abortions except where life of mother was endangered was irrational in not being based on medical standards and violated indigent women's fundamental right of choice.

**HN36 -** The distinction drawn in the Hyde amendment is to be tested by seeing whether it is rationally related to a constitutionally permissible purpose. The purposes of amendments, inferred from consideration of the debates in Congress would not be constitutionally permissible: the dominant purpose inferable was to prevent exercise of the right to decide to terminate pregnancy, to prevent the **funds** of taxpayers who disapproved of abortion on **moral** grounds from being used to finance abortions that were abhorrent to them.

**HN47 -** A woman's conscientious decision, in consultation with her physician, to terminate her pregnancy because that is medically necessary to her health, is an exercise of the most fundamental of rights, nearly allied to her right to be, surely part of the liberty protected by U.S. Const. amend. V, doubly protected when the liberty is exercised in conformity with **religious** belief and teaching protected by U.S. Const. amend. I. To deny necessary medical assistance for the **lawful** and medically necessary procedure of abortion is to violate the pregnant woman's U.S. Const. amend. I and V rights.

**HN7 -** The 1976 Hyde-Conte amendment forbade the use of any Department of Health, Education and Welfare appropriated **funds** for the performance of abortions except where the life of the mother would be endangered if the fetus were carried to term. The amendment did not provide funding for abortions for rape or incest victims, nor did it provide funding for any therapeutic abortions other than those in which the physician certified that the abortion was necessary because the life of the mother would be endangered if the fetus were carried to term. The 1977 and 1978 forms of the restriction added to the life endangerment exception from the restriction an exception for instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians; the 1977 and 1978 enactments also excepted such medical procedures necessary for victims of rape or incest, when such rape or incest was reported promptly to a law enforcement agency or public health service.

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76. Kitzmiller v. Dover Area Sch. Dist.

United States District Court for the Middle District of Pennsylvania | Dec 20, 2005 | 400 F. Supp. 2d 707

**Overview:** Application of both the endorsement and Lemon tests made it very clear that a school board's policy requiring presentation of the concept of intelligent design to ninth grade students in biology class violated the Establishment Clause. The religious nature of intelligent design would be readily apparent to an objective observer, adult or child.

**HN9 -** As the endorsement test is designed to ascertain the objective meaning of a statement that the state actor's conduct communicated in the community by focusing on how the members of the listening audience perceived the conduct, in an Establishment Clause analysis of a school board's action two inquiries must be made based upon the circumstances of the case. First, the court will consider the message conveyed by the disclaimer to the students who are its intended audience, from the perspective of an objective student. At a minimum, the pertinent inquiry is whether an "objective observer" in the position

of a student of the relevant age would "perceive official school support" for the **religious activity** in question. Further, it is incumbent upon the court to additionally judge the Boards' conduct from the standpoint of a reasonable, objective adult observer.

**HN19 -** When parents must give permission for their children to participate in an **activity**, the United States Supreme Court has held that the parents are the relevant audience for purposes of a **religious** endorsement analysis. The converse must also be true, when parents must decide whether to withhold permission to participate in an **activity** or course of instruction, they remain the relevant audience for ascertaining whether government is communicating a message favoring **religion**.

**HN25 -** On an Establishment Clause analysis, the central inquiry is whether a government entity has shown favoritism toward **religion** generally or any set of **religious** beliefs in particular: The touchstone for the analysis is the principle that the First Amendment mandates governmental neutrality between **religion** and **religion**, and between **religion** and nonreligion. When the government acts with the ostensible and predominant purpose of advancing **religion**, it violates the central Establishment Clause value of official **religious** neutrality, there being no neutrality when the government's ostensible object is to take sides. As the United States Supreme Court has instructed, Lemon's purpose prong asks whether government's actual purpose is to endorse or disapprove of **religion**. A governmental intention to **promote religion** is clear when the state enacts a law to serve a **religious** purpose.

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77. Texas Monthly, Inc. v. Bullock

Supreme Court of the United States | Feb 21, 1989 | 489 U.S. 1

**Overview:** Sales tax exemption for periodicals published or distributed by religious faith and consisting wholly of writings promulgating the teaching of the faith lacked sufficient breadth to pass scrutiny under Establishment Clause.

**HN3 -** To the extent that **religious** institutions sponsor the secular activities that legislation is designed to **promote**, it is consistent with neutrality to grant them an exemption just as other organizations devoting resources to these projects receive exemptions. As long as the breadth of exemption includes groups that pursue cultural, **moral**, or spiritual improvement in multifarious secular ways, including groups whose avowed tenets may be antitheological, atheistic, or agnostic, there is not lack of neutrality in extending the benefit of the exemption to organized **religious** groups.

**HN1 -** In proscribing all laws respecting an establishment of **religion**, the Constitution prohibits, at the very least, legislation that constitutes an endorsement of one or another set of **religious** beliefs or of **religion** generally. It is part of settled jurisprudence that the Establishment Clause prohibits government from abandoning secular purposes in order to put an imprimatur on one **religion**, or on **religion** as such, or to favor the adherents of any sect or **religious** organization.

**HN2 -** The provision of benefits to so broad a spectrum of groups is an important index of secular effect. The primary effect of an open forum would not be to advance **religion**, at least in the absence of empirical evidence that **religious** groups will dominate it.

78. Skoros v. City of New York

United States Court of Appeals for the Second Circuit | Feb 02, 2006 | 437 F.3d 1

**Overview:** City did not violate First Amendment when, in pursuing secular goal of promoting respect for diverse cultural traditions in schools, it did not include a creche in such displays, representing Christmas through a variety of holiday's well-recognized secular symbols, even though Chanukah was represented by menorah and Ramadan by star and crescent.

**HN5 -** In recently reiterating that neutrality is the "touchstone" of First Amendment analysis, McCreary County v. ACLU, the United States Supreme Court noted that the principle provides a "sense of direction" in evaluating the variety of problems that can arise under the Establishment of **Religion** Clause. Specifically, neutrality serves to guard against the **civic** divisiveness that follows when the Government weighs in on one side of **religious** debate. At the same time, however, the Court has acknowledged that, because "neutrality" is a general principal, it cannot possibly lay every issue to rest, or tell us what issues on the margins are substantial enough for constitutional significance. In making this point, McCreary cited approvingly to the observation that "neutrality" is not so narrow a channel that the slightest deviation from an absolutely straight course leads to condemnation" by the First Amendment.

**HN24 -** Like the "objective observer" whose perception of purpose is at issue at the first step of Lemon analysis, the "reasonable observer" employed in the endorsement test, is not a particular individual, but a personification of a community ideal of reasonable behavior. A court reviewing an Establishment of **Religion** Clause challenge to a particular holiday display is not required to ask whether there is any person who could find an endorsement of **religion**, whether some people may be offended by the display, or whether some reasonable person might think the State endorses **religion**. Rather, it considers whether a reasonable observer aware of the history and context of the community and forum in which the **religious** display appears, would understand it to endorse **religion** or one **religion** over another.

**HN4 -** In addressing Establishment of **Religion** Clause challenges, the United States Supreme Court has observed that the First Amendment contains no textual definition of "establishment," and that the term itself is not self-defining. Most obviously, the Clause prohibits the establishment of a national or state church, but the Court has never construed its mandate to apply only to this most obvious proscription. It has long been accepted that the Establishment Clause prohibits government from officially preferring one **religious** denomination over another: The clearest command of the Establishment Clause is that one **religious** denomination cannot be officially preferred over another.

79. Chandler v. James

United States District Court for the Middle District of Alabama, Northern Division | Dec 17, 1997 | 998 F. Supp. 1255

**Overview:** Injunction barring enforcement of state "school prayer" law was not unconstitutionally vague as injunction did not limit exercise of personal religious beliefs but only prohibited school-organized or -sanctioned religious activity.

**HN12 -** Under the First Amendment, U.S. Const. amend. I, students may engage in **religious-activity** that is not officially sanctioned or coerced and that does not infringe on the rights of others.

**HN3 -** Public school officials are prohibited by the Establishment Clause of the First Amendment, U.S. Const. amend. I, from inserting **religious** exercises into school activities. These unconstitutional school-sponsored activities are not transformed into constitutional activities by the involvement of willing students.

**HN6 -** The First Amendment, U.S. Const. amend. I, requires the states to pursue a course of complete neutrality toward **religion**. The exercise of free expression rights do not justify violations of the Establishment Clause, U.S. Const. amend. I..

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80. ## Inst. in Basic Youth Conflicts v. State Bd. of Equalization

Court of Appeal of California, Second Appellate District, Division Seven | Apr 16, 1985 | 166 Cal. App. 3d 1093

**Overview:** Nonprofit religious organization which sold its religious literature was exempt from sales tax because it could not be taxed for the privilege of engaging in religious activities, but it was liable for use taxes which were not a privilege tax.

**HN3 -** The Sales and Use Tax Law imposes upon all retailers a sales tax for the privilege of selling tangible personal property at retail. Cal. Rev. & Tax. Code § 6051. A "sale" includes any transfer of title of tangible personal property in any manner, Cal. Rev. & Tax. Code § 6006, and the fact that the billing rendered the customer does not show the sales price separately is immaterial. To be a "retailer," the particular individual need not be otherwise engaged in any **commercial activity** and the primary **activity** may be the rendering of services.

**HN8 -** An ad valorem personal property tax on stored **religious literature** is valid.

**HN9 -** A tax may not be imposed or exacted for the privilege of engaging in the exercise of one's **religion** under the Free Exercise Clause.

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81. ## Vineyard Christian Fellowship of Evanston, Inc. v. City of Evanston

United States District Court for the Northern District of Illinois, Eastern Division | Mar 31, 2003 | 250 F. Supp. 2d 961

**Overview:** No rational explanation existed for treating the church differently from similarly situated institutions such as cultural and membership organizations; thus, the church's equal protection rights were violated by a city zoning ordinance.

**HN27 -** According to the United States District Court for the Northern District of Illinois, Eastern Division, a history of the **Religious** Land Use and Institutionalized Persons Act, 42 U.S.C.S. § 2000cc, demonstrates that Congress did not intend to change traditional Supreme Court jurisprudence on the definition of substantial burden. "Substantial burden" has been defined or explained in various ways. It is well established that there is no substantial burden placed on an individual's free exercise of **religion** where a law or policy merely operates so as to make the practice of an individual's **religious** beliefs more expensive.

**HN29 -** The **Religious** Land Use and Institutionalized Persons Act, 42 U.S.C.S. § 2000cc, provides that no government shall impose or implement a land use regulation in a manner that treats a **religious** assembly or institution on less than equal terms with a nonreligious assembly or institution, 42 U.S.C.S. § 2000cc(b)(1), and such governments shall not impose or implement a land use regulation that discriminates against any assembly or institution on the basis of **religion** or **religious** denomination. 42 U.S.C.S. § 2000cc(b)(2). Furthermore, governments shall not impose or implement a land use regulation that unreasonably limits **religious** assemblies, institutions, or structures within a jurisdiction. 42 U.S.C.S. § 2000cc(b)(3).

**HN4 -** An ordinance that distinguishes between **religious** assembly uses and non-**religious** assembly uses classifies on the basis of **religion**.

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82. Malyon v. Pierce County

Court of Appeals of Washington, Division Two | Oct 10, 1995 | 79 Wn. App. 452

**Overview:** A sheriff department's chaplaincy program was facially constitutional, but the description of the organization running the program as a Christian ministry raised questions as to whether the program violated the Establishment Clause.

**HN11 -** By contrast, the Washington State Constitution implicitly recognizes a diffuse divine or **moral** presence in the universe, but specifically prohibits the application or appropriation of public **funds** and property to specific **religious** acts.

**HN12 -** Volunteer chaplains may inquire whether a person in crisis has spiritual or **religious** needs. Inquiries about **religion** do not constitute **religious** worship, exercise or instruction. If the person expresses spiritual or **religious** needs, the chaplains may attend to those needs if they deem themselves qualified, or may refer the person to another spiritual or **religious** counselor.

**HN15 -** If there is to be assurance that the Establishment Clause retains its force in guarding against those governmental actions it was intended to prohibit, a court must in each case inquire first into the purpose and object of the governmental action in question. Second, the program must be neutral to all religions: a central lesson is that a significant factor in upholding governmental programs in the face of Establishment Clause attack is their neutrality towards **religion**. Third, there must be no real likelihood that the speech or **religious** practice in question is being either endorsed or coerced by the state.

83. Resnick v. East Brunswick Township Board of Education

Supreme Court of New Jersey | Jul 11, 1978 | 77 N.J. 88

**Overview:** Religious groups who fully reimbursed school boards for related out-of-pocket expenses could use school facilities on a temporary basis for religious services as well as educational classes.

**HN13 -** The test for measuring a governmental enactment against Establishment Clause prohibitions, U.S. Const. amend. I, may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of **religion** then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits **religion**. In addition, the statute must not foster "an excessive entanglement with **religion**." The objective of these tests has been well summarized as protection against sponsorship, financial support, and active involvement of the sovereign in **religious activity**. To uphold the use of school premises by **religious** groups for instruction and worship, the court must assure itself that all of these tests are met.

**HN2 -** Pursuant to N.J. Stat. Ann. § 18A:20-34, boards of education are permitted to adopt rules by which school properties may be used when not in use for school purposes. That statute provides in part that the board of education of any district may, pursuant to rules adopted by it, permit the use of any schoolhouse and rooms therein, and the grounds and other property of the district, when not in use for school purposes, for any of the following purposes: (a) the assembly of persons for the purpose of giving and receiving instruction in any branch of education, learning, or the arts, including the science of agriculture, horticulture, and floriculture; and (c) the holding of such social, **civic**, and recreational meetings and entertainments and such other purposes as may be approved by the board. The statute contemplates **religious** educational programs as well as secular ones.

**HN12 -** The "establishment of **religion**" clause of U.S. Const. amend. I means at least this: neither a state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. No tax in any amount, large or small, can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**. U.S. Const. amend. I requires the state to be neutral in its relations with groups of **religious** believers and non-believers; it does not require the state to be their adversary.

84. Saieg v. Haddad

United States District Court for the Eastern District of Michigan, Southern Division | Jun 07, 2010 | 720 F. Supp. 2d 817

**Overview:** The public streets on which an annual festival was held were not serving that function during the festival, rather, they comprised part of a fairground. A ban on handbilling in the inner and outer perimeters qualified as a valid time, place, and manner restriction and did not violate plaintiff's First Amendment free speech rights.

**HN8 -** Spreading one's **religious** beliefs or preaching the Gospel through **distribution** of **religious literature** and through personal visitations is an age-old type of **evangelism** with as high a claim to constitutional protection as the more orthodox types of **religious** practices.

**HN19 -** The Free Exercise Clause is invoked in several situations. One is when the government prohibits behavior that a person's **religion** requires. The Free Exercise Clause also is invoked when the government requires conduct that a person's **religious** prohibits. Additionally, the Free Exercise Clause is invoked when individuals claim that laws burden or make more difficult **religious** observances.

**HN9 -** Public **streets** are traditional public fora and are thus held in public trust as proper places for the dissemination of information and opinion.

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85. Freedom from Religion Found., Inc. v. Lew

United States District Court for the Western District of Wisconsin | Nov 21, 2013 | 983 F. Supp. 2d 1051

**Overview:** 26 U.S.C.S. § 107(2) violates the Establishment Clause because the exemption provides a benefit to religious persons and no one else, even though doing so was not necessary to alleviate a special burden on religious exercise.

**HN21 -** Every tax exemption constitutes a subsidy that affects nonqualifying taxpayers, forcing them to become indirect and vicarious donors. Insofar as that subsidy is conferred upon a wide array of nonsectarian groups as well as **religious** organizations in **pursuit** of some legitimate secular end, the fact that **religious** groups benefit incidentally does not deprive the subsidy of the secular purpose and primary effect mandated by the Establishment Clause. However, when government directs a subsidy exclusively to **religious** organizations that is not required by the Free Exercise Clause and that either burdens nonbeneficiaries markedly or cannot reasonably be seen as removing a significant state-imposed deterrent to the free exercise of **religion**, it provides unjustifiable awards of assistance to **religious** organizations and cannot but convey a message of endorsement to slighted members of the community.

**HN23 -** A tax exemption limited to the sale of **religious literature** by **religious** organizations violates the Establishment Clause because it results in preferential support for the communication of **religious** messages. A statutory preference for the dissemination of **religious** ideas offends the most basic **understanding** of what the Establishment Clause is all about and hence is constitutionally intolerable.

**HN5 -** Under the First Amendment, everyone is free to worship or not worship, believe or not believe, without government interference or discrimination, regardless what the prevailing view on **religion** is at any particular time, thus preserving **religious** liberty to the fullest extent possible in a pluralistic society.

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86. E. Bay Asian Local Dev. Corp. v. Cal.

Supreme Court of California | Dec 21, 2000 | 24 Cal. 4th 693

**Overview:** Notwithstanding establishment clause challenges, statutes granting religious organizations an exemption from landmark designation had a secular purpose and relieved religious entities of a potential burden on free exercise of religion.

**HN19 -** The United States Supreme Court does not require that all laws imposing any burden on **religious activity** be justified by a compelling state interest. Whether an accommodation to **religion** is appropriate is best left to the political process.

**HN23 -** Permitting a **religious** body to use its noncommercial property in the manner it did before a restrictive law was imposed on it does not constitute an impermissible advancement of **religion** by the state simply because some such property may be used to propagate the owner's **religious** message. That the owner may enjoy an economic advantage over secular owners of landmark properties is not relevant. Unlike an exemption from taxes, an exemption from landmark status does not create a subsidy for **religious activity** by forcing other property owners to be vicarious donors or, since it does no more than permit use of the property as it was before landmark designation, convey any message of governmental endorsement of **religion**.

**HN4 -** Not every law that confers an "indirect," "remote," or "incidental" benefit upon **religious** institutions is, for that reason alone, constitutionally invalid. Careful examination of any law challenged on establishment grounds is required with a view to ascertaining whether it furthers any of the evils against which the establishment clause protects. Primary among those evils are sponsorship, financial support, and active involvement of the sovereign in **religious activity**.

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87. Brown v. City of Pittsburgh

United States Court of Appeals for the Third Circuit | Oct 30, 2009 | 586 F.3d 263

**Overview:** Although a city ordinance that implemented both a buffer zone and a bubble zone outside of health care facilities providing abortions served important government interests, the layering of two types of prophylactic measures was substantially broader than necessary to achieve those interests and therefore violated the First Amendment.

**HN24 -** Not all burdens on the exercise of **religion** trigger the heightened scrutiny of Pennsylvania's **Religious** Freedom Protection Act (RFPA), 71 Pa. Stat. Ann. §§ 2401-2407. In a modern regulatory state, virtually all legislation imposes an incidental burden at some level by placing indirect costs on an individual's **activity**. Pennsylvania has identified a substantiality threshold as the tipping point for requiring heightened justifications for governmental action. In addition, the RFPA requires as a threshold matter that persons invoking its protections prove that their free exercise of **religion** has or will likely be substantially burdened by clear and convincing evidence; only after that showing is made is the government obliged to demonstrate that the challenged law or **activity** is the least restrictive means of advancing a compelling interest. By requiring proof of a substantial burden by clear and convincing evidence, Pennsylvania appears to have set a higher threshold than other **religious** restoration statutes. The standard of clear and convincing evidence means testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.

**HN25 -** According to Pennsylvania's **Religious** Freedom Protection Act (RFPA), 71 Pa. Stat. Ann. §§ 2401-2407, a law substantially burdens **religious** exercise if it (1) Significantly constrains or inhibits conduct or expression mandated by a person's sincerely held **religious** beliefs; (2) Significantly curtails a person's ability to express adherence to the person's **religious** faith; (3) Denies a person a reasonable opportunity to engage in activities which are fundamental to the person's **religion**; or (4) Compels conduct or expression which violates a specific tenet of a person's **religious** faith. 71 Pa. Stat. Ann. § 2403.

**HN22 -** Generally applicable laws burdening **religion** are subject only to rational-basis scrutiny under the Federal Constitution's Free Exercise Clause. Pennsylvania's **Religious** Freedom Protection Act (RFPA), 71 Pa. Stat. Ann. §§ 2401-2407, by contrast, prohibits any law from substantially burdening a person's free exercise of **religion**, even if the burden results from a rule of general applicability, unless the law is the least restrictive means of furthering a compelling state interest. 71 Pa. Stat. Ann. § 2404.

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88. Int'l Church of the Foursquare Gospel v. City of San Leandro

United States District Court for the Northern District of California | Dec 22, 2008 | 632 F. Supp. 2d 925

**Overview:** In the absence of a showing that a city acted arbitrarily in ways suggesting actual discrimination, the fact that there may have been no other properties available to which a church could expand its operations in the specific way it wanted did not mean that the city's zoning code imposed a substantial burden on the church in violation of RLUIPA.

**HN8 -** If the plaintiff establishes that the land use regulation or denial of conditional use permit imposes a substantial burden, the governmental authority must then show that the restrictions are narrowly tailored to accomplish a compelling government interest. Generally, in considering the nature and context of the challenged governmental actions, the court must consider whether the action is specifically targeted at core **religious** activities, or whether it is **purely** arbitrary or fails to serve any valid purpose. In such cases, the action will likely be found to impose a substantial burden. At the other extreme, the burdens imposed by facially neutral regulations of general applicability, which were adopted for purposes unrelated to **religion**, are considered incidental burdens that must be borne by **religious** organizations and by non-**religious** organizations alike. Zoning regulations, absent abuse or arbitrary application, generally fall within the generally applicable category of regulation.

**HN18 -** Under the Free Exercise Clause, where there are no individualized assessments on **religious** exercise, the rational basis test generally applies. Under that test, so long as the challenged zoning actions are of general application and are neutral toward **religious activity** itself, they need not be narrowly tailored nor justified by a compelling governmental interest, regardless of any incidental restrictions they may impose on **religious** activities.

**HN6 -** The plaintiff in a land use case challenging the denial of a conditional use permit bears the burden of proving that the governmental authority's denial of the application imposes a substantial burden on its **religious** exercise. It is generally agreed that the term "substantial burden" in the **Religious** Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C.S. § 2000cc et seq., is to be construed in light of federal Supreme Court and appellate jurisprudence involving the Free Exercise Clause of the First Amendment.

89. Congregation Kol Ami v. Abington Twp.

United States District Court for the Eastern District of Pennsylvania | Aug 12, 2004 | 2004 U.S. Dist. LEXIS 16397

**Overview:** Zoning ordinance that prevented location of a synagogue in a town's residential areas did not meet the free exercise substantial burdens test, as it did not restrict plaintiffs' beliefs, but only their conduct. However, it did violate the RLUIPA.

**HN28 -** To run afoul of the second prong of the Lemon test, it must be fair to say that the government itself has advanced **religion** through its own activities and influence. For the men who wrote the **Religion** Clauses of the First Amendment the "establishment" of **religion** connoted a sponsorship, financial support, and active involvement of the sovereign in **religious activity**.

**HN2 -** Because the First Amendment only forbids the making of laws which "prohibit" free exercise, it is a basic precept of free exercise jurisprudence that not every governmental act that effects **religion** violates the First Amendment. The First Amendment is only offended if there is a substantial burden on **religious** exercise. In deciding what burdens amount to a prohibition of free exercise, the nature and centrality of the **religious activity** is a major consideration. The free exercise inquiry asks whether government has placed a substantial burden on the observation of a central **religious** belief or practice and, if so, whether a compelling governmental interest justifies the burden. Free exercise is substantially burdened, in a First Amendment context, when the government coerces a person not to engage in **activity** that is warranted by a fundamental tenet of his **religious** beliefs. There is no substantial burden when the plaintiffs are neither compelled to engage in conduct proscribed by their **religious** beliefs, nor forced to abstain from any action which their **religion** mandates that they take.

**HN33 -** The **Religious** Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.S. § 2000cc et seq., only requires a zoning board to consider whether the reasons behind their decisions are the least restrictive means of achieving a compelling government interest. This determination is not entanglement because that decision turns **purely** on the government's secular motivation and means. It neither requires oversight of **religious** beliefs nor creates situations where the government could be accused of endorsing particular **religious** beliefs or **religion** in general.

90. Hale v. Everett

Superior Court of Judicature of New Hampshire | Dec 01, 1868 | 53 N.H. 9

**Overview:** Majority of members of religious society could not use meeting-house for teaching of doctrine which opposed Unitarian Christian doctrine because meeting-house was held in trust to be used for inculcation of fundamental Unitarian doctrine.

**HN2 -** By N.H. Const. arts. XIV, XXIX, XLII, and LXI (1792), a **religious** test is instituted as a qualification for holding certain civil offices. Every member of the house of representatives shall be of the Protestant **religion**. No person shall be capable of being elected a senator or councillor who is not of the Protestant **religion**. And no person shall be eligible to the office of governor unless he shall be of the Protestant **religion**.

**HN4 -** The right of the people, which is declared in N.H. Const. art. VI, to support, and to empower the legislature to authorize towns and **religious** societies to support, teachers of the Protestant **religion**, is, in substance, only the same right which it is declared in N.H. Const. art. V that every individual has a natural and unalienable right to do, in regard to the teachers of any and all other religions or systems of **religious** doctrine. People of the Protestant faith would have had just the same **religious** rights and been entitled to the same **religious** privileges by virtue of the general provisions of art. V, that they are declared to be entitled to in art. VI. There is nothing, then, in art. VI that can be construed as forbidding, by any implication, the exercise or enjoyment of any right which is declared and asserted as belonging to all men equally in art. V.

**HN5 -** It would not be repugnant or contrary to the state constitution for the legislature to give to towns, parishes, bodies corporate, and **religious** societies, the same powers in regard to any or all "**religious** sects," as well as to any or all "denominations of Christians," that are conferred, in regard to Protestants, by N.H. Const. art. VI in the bill of rights. The legislature may, therefore, grant to "any **religious** sect," or to "any denomination of Christians," whether Protestant or Catholic, the same rights that are granted to Protestants; or, rather, the legislature may grant to towns, parishes, bodies corporate, or **religious** societies, the power, the right, and the privilege of making "adequate provision, at their own expense, for the support and maintenance" of public teachers of any "denomination of Christians," whether Romanist or Protestant, and not only so, but of any "**religious** sect," whether of the Christian **religion** or of any other.

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91. Medlock v. Medlock

Supreme Court of Nebraska | Apr 12, 2002 | 263 Neb. 666

**Overview:** In a dissolution of marriage, a tax exempt non-profit corporation was found to be the alter ego of the husband and the corporation's assets should have been included in the marital estate for the purposes of the division of property.

**HN13 -** The primary distinction between nonprofit corporations and for-profit corporations is found in the nondistribution constraint, which bars the nonprofit corporation from distributing profits or net earnings to those who control the corporation. Neb. Rev. Stat. § 21-19,127 provides that nonprofit **religious** corporations shall not make any distributions; Neb. Rev. Stat. § 21-1914(10) defines "**distribution**" as the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers; and I.R.C. § 501(c)(3) defines a "corporation exempt from taxation" as corporation no part of the net earnings of which inures to the benefit of any private shareholder or individual.

**HN14 -** The nondistribution constraint does not preclude nonprofit corporations from engaging in **commercial activity**. The term "**commercial** nonprofit" is broadly used by commentators to describe any nonprofit corporation engaged in significant **commercial activity**, even when the **commercial activity** is an ancillary endeavor used to subsidize noncommercial activities that are the nonprofit's principal mission.

**HN26 -** Where a nominally **religious** nonprofit corporation is engaged in a discrete **commercial** enterprise, it subjects itself to the same general rules of law otherwise applicable to such enterprises.

92. Daughters of St. Paul, Inc. v. Zoning Bd. of Appeals

Appellate Court of Connecticut | Oct 21, 1988 | 17 Conn. App. 53

**Overview:** A zoning board abused its discretion in denying application for special zoning exception filed by nuns because the board could not have reasonably concluded that the proposed convent and chapel did not constitute a church or other place of worship.

**HN9 -** The United States Supreme Court has noted that the **mere fact** that **religious literature** is "**sold**" rather than "**donated**" does not **transform evangelism** into a **commercial enterprise.**

**HN1 -** Trumbull, Conn., Zoning Regulations art. II, § 1B provides, in part: The following uses may be permitted as special exceptions provided that the Zoning Board of Appeals finds that adequate off-street parking facilities are provided; that the existing public **streets** are suitable to handle any additional traffic generated by the use; that no hazard to the public health or safety will result from the use or the traffic generated thereby; that the land is landscaped and the buildings are so designed that reasonable harmony with surrounding residential structures is maintained; that said land and buildings will not detract from the residential character of the neighborhood and will not adversely affect property values; and that the use will not contravene the purposes of Conn. Gen. Stat. § 8-2 (1958) and provided further that the Board shall determine the minimum yards and maximum lot coverage to be applied, which shall in no event be less than is prescribed in the Schedule under Trumbull, Conn., Zoning Regulations art. III, and may impose such further conditions in connection with the use as it shall deem necessary to satisfy the conditions and standards set forth herein: Churches and other places of worship, including parish houses and Sunday School buildings; non-profit primary and secondary schools; and buildings housing personnel affiliated with said churches and schools.

**HN4 -** Farms, hospitals and convalescent homes may be **commercial** enterprises, whether they are operated for profit, or are nonprofit in nature, while at the same time being allowable uses in residential zones. Trumbull, Conn., Zoning Regulations art. II, §§ 1A(6) and 1B(5).

93. Stark Appeal

Common Pleas Court of Allegheny County, Pennsylvania | Jun 26, 1950 | 1950 Pa. Dist. & Cnty. Dec. LEXIS 166

**Overview:** Board of Adjustment properly issued occupancy permit to Franciscan monks permitting them to use building as dormitory during closed spiritual retreats where denial upon petition of neighboring property owners would have violated freedom of religion.

**HN6 -** Where **religious** beliefs or practices are involved, the constitutional principle of freedom of **religion** demands that courts do not concern themselves with what is required by other **religious** sects, or even by the **religious** authorities of the same church, or what is the usual practice in performing certain **religious** activities. **Religious** freedom, as that term is used in the State and Federal Constitutions, means that the individual group or sect is free to deviate from what is customary or done "in most instances," or from what is approved by others.

**HN1 -** The power of the individual to act in the exercise of his **religious** freedom is not absolute, and neither is the power of the State to regulate such action.

**HN2 -** The State has the power to make war, raise armies and draft its citizens for military service and despite their **religious** objections citizens may be subjected to military training.

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94. In re Westboro Baptist Church

Court of Appeals of Kansas | Jul 25, 2008 | 40 Kan. App. 2d 27

**Overview:** Church truck used to transport signs to various religious and political events was not exempt from taxation under Kan. Stat. Ann. § 79-201 because the truck was not used for only religious activities when the church truck transported the signs to political conventions so that its members could picket before convention attendees.

**HN23 -** Because Kan. Stat. Ann. § 79-201(2) does not define **religious** use, Kansas case law has attempted to define the statutory term. Kansas case law definitions have not discussed the content of a **religious** organization's doctrinal beliefs. Kansas case law has recognized preaching ministry and evangelical outreach as **religious** uses within the meaning of the tax exemption statute. Kansas has rejected characterization of a use as **religious** if it involves **commercial activity**. Moreover, Kansas has not sanctioned political action or activities as a **religious activity**.

**HN29 -** There is no doubt that only beliefs rooted in **religion** are protected by the Free Exercise Clause. Moreover, **purely** secular views do not meet this requirement, nor do the courts underestimate the difficulty of distinguishing between **religious** and secular convictions and in determining whether a professed belief is sincerely held. States are clearly entitled to assure themselves that there is an ample predicate for invoking the Free Exercise Clause.

**HN11 -** Not every **activity** in use of property of a **religious** or educational organization has been determined to be solely for **religious** or educational purposes.

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95. Carlino v. Gloucester City High Sch.

United States District Court for the District of New Jersey | Aug 02, 1999 | 57 F. Supp. 2d 1

**Overview:** A principal's significant involvement with a baccalaureate service was an Establishment Clause violation, and plaintiff parent's speech against the school board, by whom she was employed, was protected as a matter of First Amendment public concern.

**HN18 -** A **religious activity** is "state-sponsored" under the Establishment Clause, U.S. Const. amend. I, if an objective observer in the position of a secondary school student will perceive official school support for such **religious activity**. The law applies an "objective observer" standard, because this standard

determines whether the state action at issue sends a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.

**HN16 -** The Establishment Clause, U.S. Const. amend. I, means that the government may not **promote** or affiliate itself with any **religious** doctrine or organization, may not discriminate among persons on the basis of their **religious** beliefs and practices, may not delegate a governmental power to a **religious** institution, and may not involve itself too deeply in such an institution's affairs. The Establishment Clause, U.S. Const. amend. I, forbids a state-created orthodoxy, because such orthodoxy puts at grave risk that freedom of belief and conscience which are the sole assurance that **religious** faith is real, not imposed. If citizens are subjected to state-sponsored **religious** exercises, the State disavows its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people.

**HN20 -** It is not enough that the government restrain from compelling **religious** practices; it must not engage in them either. The mixing of government and **religion** can be a threat to free government, even if no one is forced to participate. When the government puts its imprimatur on a particular **religion**, it conveys a message of exclusion to all those who do not adhere to the favored beliefs. Thus, a violation of the Free Exercise Clause, U.S. Const. amend. I, is predicated on coercion while the Establishment Clause, U.S. Const. amend. I., violation need not be so attended.

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96. Sasnett v. Sullivan

United States District Court for the Western District of Wisconsin | Dec 01, 1995 | 908 F. Supp. 1429

**Overview:** Prison regulation prohibiting wearing of religious jewelry violated Religious Freedom Restoration Act because it imposed a substantial burden on prison inmates' free exercise of religion when religious jewelry held great significance among religions.

**HN1 -** Under Wisconsin Department of Corrections, Division of Adult Institutions, Internal Management Procedure DOC 309 IMP #1-D, inmates are forbidden to wear earrings, necklaces, bracelets, ankle bracelets, and pins, including **religious** jewelry such as crucifixes. Wisconsin Department of Corrections, Division of Adult Institutions, Internal Management Procedure DOC 309 IMP #4 prohibits inmates from possessing more than 25 **books**, magazines, newspapers, or periodicals, including **religious** publications, and requires that inmates **purchase** all reading materials through approved retail outlets or publishers. Inmates cannot receive publications that do not come from a publisher or other **commercial** source. Wis. Admin. Code § DOC 309.06(2)(a).

**HN5 -** A prisoner's **Religious** Freedom Restoration Act claim can be analyzed in two parts: first, by determining whether the prisoner's exercise of **religion** is substantially burdened by a prison's property regulations and then by determining whether the prison employs the least restrictive means possible to achieve the compelling state interests the regulations seek to **promote**.

**HN7 -** The United States Court of Appeals for the Ninth Circuit has held that, under the **Religious** Freedom Restoration Act, a **religious** adherent has the obligation to prove that a governmental action burdens the adherent's practice of his or her **religion** by preventing him or her from engaging in conduct or having a **religious** experience which the faith mandates. This interference must be more than an

inconvenience; the burden must be substantial and an interference with a tenet or belief that is central to **religious** doctrine.

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97. Lee v. Weisman

Supreme Court of the United States | Jun 24, 1992 | 505 U.S. 577

**Overview:** The inclusion of clerical members who offered prayers as part of official public school graduation ceremonies was inconsistent with the Establishment Clause of the First Amendment of the Constitution.

**HN4 -** Supreme Court precedents do not permit school officials to assist in composing prayers as an incident to a formal exercise for their students. And these same precedents caution the court to measure the idea of a **civic religion** against the central meaning of the **Religion** Clauses of the First Amendment, which is that all creeds must be tolerated and none favored. The suggestion that government may establish an official or **civic religion** as a means of avoiding the establishment of a **religion** with more specific creeds strikes the court as a contradiction that cannot be accepted.

**HN2 -** The principle that government may accommodate the free exercise of **religion** does not supersede the fundamental limitations imposed by the Establishment Clause. It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in **religion** or its exercise, or otherwise act in a way which establishes a state **religion** or **religious** faith, or tends to do so.

**HN5 -** The First Amendment protects speech and **religion** by quite different mechanisms. Speech is protected by ensuring its full expression even when the government participates, for the very object of some of the most important speech is to persuade the government to adopt an idea as its own. The method for protecting freedom of worship and freedom of conscience in **religious** matters is quite the reverse. In **religious** debate or expression the government is not a prime participant, for the Framers deemed **religious** establishment antithetical to the freedom of all. The Free Exercise Clause embraces a freedom of conscience and worship that has close parallels in the speech provisions of the First Amendment, but the Establishment Clause is a specific prohibition on forms of state intervention in **religious** affairs with no precise counterpart in the speech provisions.

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98. Smith v. Board of Sch. Comm'rs

United States District Court for the Southern District of Alabama, Southern Division | Mar 04, 1987 | 655 F. Supp. 939

**Overview:** Teachers and parents of students were granted injunctive relief prohibiting the advancement of secular humanism in violation of the First Amendment in public schools. Secular humanism was held to be a religion.

**HN3 -** First, the requirement of neutrality means that the Constitution protects every **religious** belief without regard to its theological foundations or idiosyncrasies. Second, what is **religious** is largely dependent on the way people in America currently think of **religion**, and this is a product of our past as a people. Third, the government cannot hinder or prohibit the growth of new beliefs by its definition of **religion**, since this growth is a product of the fundamental rights guaranteed by the first amendment. Fourth, the government is still obligated to perform its essential functions, thus reasonable boundaries may circumscribe acts performed in the name of **religious** freedom.

**HN4 -** Overt sponsorship that, as much for appearances as in reality, seems to place the state's imprimatur on specific **religious** acts, contravenes the establishment clause. Laws of general application that incidentally agree with or assist a particular **religion** are a legitimate acknowledgment of the central importance of **religious** free exercise to our history and present society. Any state action generally designed to encourage free exercise or allow **religious** expression in an open, public forum does not equal an establishment of **religion**. Finally, the government should not accept or deny the validity of **religious** beliefs, regardless of the nature of them. This has been expressed a number of times by stating that the government may not "establish" a **religion** or a secular belief system hostile to **religion**.

**HN5 -** A state may not decide the question of what constitutes a **religion** under the First Amendment by reference to the validity of the beliefs or practices involved. Any content-based decision must inevitably result in showing favoritism to some religions and disapproval of others. The purpose of the first amendment, particularly as expressed by the free exercise clause, would be thwarted. The state must instead look to factors common to all **religious** movements to decide how to distinguish those ideologies worthy of the protection of the **religion** clauses from those which must seek refuge under other constitutional provisions.

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99. Versatile v. Johnson

United States District Court for the Eastern District of Virginia, Richmond Division | Oct 26, 2011 | 2011 U.S. Dist. LEXIS 124541

**Overview:** Claim that prison officials unlawfully impeded inmate's exercise of his religion, the Nation of Gods and Earths (NGE), by banning its texts and periodicals was unsuccessful because, for limited purposes of case at bar, inmate did not establish beyond a preponderance of evidence that NGE was a "religion" such that it triggered RLUIPA's protections.

**HN3 -** The **Religious** Land Use and Institutionalized Persons Act (RLUIPA) provides considerably more protection for an inmate's **religious** exercise than does the Free Exercise Clause of the Constitution of the United States. RLUIPA prohibits prisons from imposing a substantial burden on an inmate's **religious** exercise unless prison officials can demonstrate that the burden (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. 42 U.S.C.S. § 2000cc-1(a)(1)-(2). Furthermore, **religious** exercise includes any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief. 42 U.S.C.S. § 2000cc-5(7)(A). A plaintiff bears the initial burden of showing by a preponderance of the evidence the following: (1) he or she seeks to engage in an exercise of **religion**; and, (2) the challenged practice substantially burdens that exercise. 42 U.S.C.S. § 2000cc-2(b). Once a plaintiff establishes a prima facie case, the defendants bear the burden of persuasion on whether their practice is the least restrictive means of furthering a compelling governmental interest.

**HN8 -** The United States Court of Appeals for the Tenth Circuit has applied the following five-part test, essentially adding two factors to the Africa v. Pennsylvania three-part test, to determine whether a belief system at issue is **religious** in nature: (1) ultimate ideas: **religious** beliefs often address fundamental questions about life, purpose, and death; (2) metaphysical beliefs: **religious** beliefs often are "metaphysical," that is, they address a reality which transcends the physical and immediately apparent world; (3) **moral** or ethical system: **religious** beliefs often prescribe a particular manner of acting, or way of life, that is **moral** or ethical; (4) comprehensiveness of beliefs: another hallmark of "**religious**" ideas is that they are comprehensive, forming an overreaching array of beliefs that coalesce to provide the believer with answers to many, if not most, of the problems and concerns that confront humans; and, (5) accoutrements of **religion**: by analogy to many of the established or recognized religions, these may include the presence of external signs such as a founder, prophet or teacher, important writings, gathering places, ceremonies and rituals, holidays, and/or diet or fasting.

**HN9 -** To make the determination whether beliefs are **religious** in nature, the United States District Court for the Eastern District of Virginia utilizes a hybrid Africa v. Pennsylvania/United States v. Meyers test, using the following four factors: (1) whether the alleged **religion** espouses a comprehensive belief system that speaks to ultimate questions; (2) whether the alleged **religion** expresses metaphysical ideas or beliefs; (3) whether the alleged **religion** maintains an ethical or **moral** code; and, (4) whether the alleged **religion** utilizes external signs that suggest it is a **religion**.

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100. Heritage Village Church & Missionary Fellowship, Inc. v. State

Supreme Court of North Carolina | Mar 05, 1980 | 299 N.C. 399

**Overview:** Certain provisions of the Solicitation of Charitable Funds Act were found to be unconstitutional because they imposed more rigid requirements on certain religious organizations thereby depriving the Act of neutrality toward religion.

**HN5 -** Charitable organizations subject to the provisions of the Solicitation of Charitable **Funds** Act, N.C. Gen. Stat. § 108-75.1 et seq., include those organizations operated for "**religious**" purposes. N.C. Gen. Stat. § 108-75.3(1) and (2). However, N.C. Gen. Stat. § 75.7(a)(1) specifically exempts from the licensing requirements: A **religious** corporation, trust, or organization incorporated or established for **religious** purposes, or other **religious** organizations which serve **religion** by the preservation of **religious** rights and freedom from persecution or prejudice or by the fostering of **religion**, including the **moral** and ethical aspects of a particular **religious** faith: Provided, however, that such **religious** corporation, trust or organization established for **religious** purposes shall not be exempt from filing a license application if its financial support is derived primarily from contributions solicited from persons other than its own members, excluding sales of printed or recorded **religious** materials.

**HN1 -** The North Carolina Supreme Court holds that Section 75.7(a)(1) of the Solicitation of Charitable **Funds** Act (Act), specifically N.C. Gen. Stat. § 108-75.7(a)(1), which exempts from compliance all **religious** organizations except those whose financial support is derived primarily from contributions solicited from persons other than its own members deprives the Act of that neutrality toward **religion** required by the Establishment Clause of the First Amendment of the United States Constitution, U.S. Const. amend. I, and N.C. Const. art. I, § 13 and 19. The court also holds that other provisions of the Act generally cause the state to become excessively entangled with **religion** so as to violate these same constitutional provisions.

**HN4 -** Section 75.18 of the Solicitation of Charitable **Funds** Act, specifically N.C. Gen. Stat. § 108-75.18, specifies that the Secretary of the Department (Secretary) shall revoke, suspend, or deny issuance of a license to solicit charitable **funds** upon a finding of one or more of the following: (1) One or more of the statements in the application are not true. (2) The applicant is or has engaged in a fraudulent transaction or **enterprise.** (3) A solicitation would be a fraud upon the public. (4) An unreasonable percentage of the contributions solicited, or to be solicited, is not applied, or will not be applied to a charitable purpose. (5) The contributions solicited, or to be solicited, are not applied, or will not be applied to the purpose or purposes as represented in the license application. (6) Solicitation and fund-raising expenses will exceed thirty-five percent (35%) of the total received by reason of any solicitation and/or fund-raising activities or campaigns. (7) The applicant has failed to comply with any of the provisions of this part, or with any rules and regulations adopted by the Commission pursuant to this part.

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101. Korte v. Sebelius

United States Court of Appeals for the Seventh Circuit | Nov 08, 2013 | 735 F.3d 654

**Overview:** Preliminary injunctive relief for business owners and their companies was warranted under Religious Freedom Restoration Act of 1993 because contraception mandate imposed substantial burden on plaintiffs' religious exercise; religious-liberty violation inhered in coerced coverage of contraception, abortifacients, sterilization, and related services.

**HN38 -** Construing the parallel provision in the **Religious** Land Use and Institutionalized Persons Act, 42 U.S.C.S. § 2000cc et seq., the United States Court of Appeals for the Seventh Circuit has held that a law, regulation, or other governmental command substantially burdens **religious** exercise if it bears direct, primary, and fundamental responsibility for rendering a **religious** exercise effectively impracticable. The same **understanding** applies to claims under the **Religious** Freedom Restoration Act of 1993 (RFRA), 42 U.S.C.S. § 2000bb et seq. Importantly, the substantial-burden inquiry does not **invite** the court to determine the centrality of the **religious** practice to the adherent's faith; RFRA is explicit about that. And free-exercise doctrine makes it clear that the test for substantial burden does not ask whether the claimant has correctly interpreted his **religious** obligations. Indeed, that inquiry is prohibited. In this sensitive area, it is not within the judicial function and judicial competence to inquire whether the adherent has correctly perceived the commands of his faith. Courts are not arbiters of scriptural interpretation. It is enough that the claimant has an "honest conviction" that what the government is requiring, prohibiting, or pressuring him to do conflicts with his **religion**.

**HN32 -** The term "exercise of **religion**" in the **Religious** Freedom Restoration Act of 1993, 42 U.S.C.S. § 2000bb et seq., is now defined by cross-reference to the definition of "**religious** exercise" in the **Religious** Land Use and Institutionalized Persons Act, 42 U.S.C.S. § 2000cc et seq.: The term "**religious** exercise" includes any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief. 42 U.S.C.S. §§ 2000cc-5(7)(A), 2000bb-2(4). This definition is undeniably very broad, so the term "exercise of **religion**" should be understood in a generous sense.

**HN1 -** The **Religious** Freedom Restoration Act of 1993, 42 U.S.C.S. § 2000bb et seq., prohibits the federal government from placing substantial burdens on a person's exercise of **religion**, 42 U.S.C.S. § 2000bb-1(a), unless it can demonstrate that applying the burden is the least restrictive means of furthering a compelling governmental interest, 42 U.S.C.S. § 2000bb-1(b).

102. Bowen v. Kendrick

Supreme Court of the United States | Jun 29, 1988 | 487 U.S. 589

**Overview:** A statute that provided grants for programs concerning adolescent sexuality to religious organizations was not unconstitutional on its face, as those organizations were not disabled from participation in public social welfare programs.

**HN12 -** The AFLA is not invalid because it authorizes teaching by **religious** grant recipients on matters that are elements of **religious** doctrine, such as the harm of premarital sex and reasons for choosing adoption over abortion. The possibility or even the likelihood that some of the **religious** institutions who receive AFLA funding will agree with the message that Congress intended to deliver is insufficient to warrant a finding that the statute on its face has the primary effect of advancing **religion**, nor does the alignment of the statute and the **religious** views of the grantees run afoul of the proscription against funding a specifically **religious activity** in an otherwise substantially secular setting. The facially neutral projects authorized by the AFLA are not themselves "specifically **religious** activities," and they are not converted into such activities when carried out by organizations with **religious** affiliations.

**HN6 -** Putting aside the possible role of **religious** organizations as grantees, the provisions of the AFLA reflect at most Congress' considered judgment that **religious** organizations can help solve the problems to which the AFLA is addressed. Nothing prevents Congress from making such a judgment or from recognizing the important part that **religion** or **religious** organizations may play in resolving certain secular problems. When, as Congress found, prevention of adolescent sexual **activity** and adolescent pregnancy depends primarily upon developing strong family values and close family ties, 42 U.S.C.S. § 300z(a)(10)(A), it seems quite sensible for Congress to recognize that **religious** organizations can influence values and can have some influence on family life, including parents' relations with their adolescent children. To the extent that this congressional recognition has any effect of advancing **religion**, the effect is at most incidental and remote.

**HN17 -** Evidence that views espoused on questions such as premarital sex, abortion, and the like happen to coincide with the **religious** views of an AFLA grantee are not sufficient to show that the grant **funds** are being used in such a way as to have a primary effect of advancing **religion**.

103. City of Dublin v. State

State of Ohio, Court of Common Pleas, Franklin County | Apr 01, 2002 | 118 Ohio Misc. 2d 18

**Overview:** Statute enacted as rider on biennial appropriations bill violated both one-subject rule and Home Rule Amendment to Ohio Constitution. Municipalities could enact reasonable, non-discriminatory regulations governing use of their public ways.

**HN49 -** The nature of the trust, in which the fee to **streets** within municipalities in Ohio rests in trust in the municipality for street purposes, does permit, but does not require, that the municipality allow municipal **streets** to be used in manners consistent with the public's **use of the streets** for ordinary transportation.

The use of municipal **streets** by utility companies for purposes of installing their equipment and supplies falls within this second category of uses unless their use becomes inconsistent with the public's ordinary transportation use. Thus, municipalities are generally able to exercise their power of local self-government as the owner of municipal public ways to reasonably regulate the use of its public ways by utility service providers and cable operators except, in matters of statewide concern, any municipal regulation must be consistent with state law.

**HN62 -** **Streets** and highways are public and governmental institutions, maintained for the free use of all citizens of the state, and municipalities while engaged in the improvement of **streets** are engaged in the performance of a governmental function.

**HN67 -** A municipality cannot reasonably ban the use of its street by all utility service providers and cable operators. Hence, the municipal obligation to keep the **streets** open includes the obligation to administer the use of its **streets** by such companies. Thus, a municipality is engaging in a governmental function when it administers the use of its **streets** by utility service providers and cable operators. Consequently, the power of local self-government by which municipalities control the use of municipal **streets** by such businesses is a "**purely** governmental" power.

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104. Weinbaum v. Las Cruces Pub. Schs

United States District Court for the District of New Mexico | Nov 09, 2006 | 465 F. Supp. 2d 1116

**Overview:** In an Establishment Clause challenge, defendants' Fed. R. Civ. P. 56 motion was granted in part because a policy regarding religion in public schools was facially neutral, and reasonable observer of sculpture would understand that the crosses in the artwork symbolically represented the town of Las Cruces, rather than an endorsement of Christianity.

**HN4 -** The **Religion** Clauses of the First Amendment provide: Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof. U.S. Const. amend. I. The First Amendment expresses our nation's fundamental commitment to **religious** liberty by means of two provisions--one protecting the free exercise of **religion**, the other barring establishment of **religion**. With the **Religion** Clauses, the framers intended not only to protect the integrity of individual conscience in **religious** matters, but to guard against the **civic** divisiveness that follows when the government weighs in on one side of **religious** debate. The First Amendment was meant to endure, and to meet exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur.

**HN7 -** When defining the contours of the **Religious** Clauses, the touchstone for analysis is the principle that the First Amendment mandates governmental neutrality between **religion** and **religion**, and between **religion** and nonreligion. However, adherence to neutrality must be tempered by a mindfulness of the basic purposes of the **Religion** Clauses; namely, to assure the fullest possible scope of **religious** liberty and tolerance for all and to avoid that divisiveness based upon **religion** that promotes social conflict, sapping the strength of government and **religion** alike.

**HN34 -** Entanglement analysis typically is applied to circumstances in which the state is involving itself with a recognized **religious activity** or institution.

105. Gallo v. Salesian Soc'y

Superior Court of New Jersey, Appellate Division | May 17, 1996 | 290 N.J. Super. 616

**Overview:** New Jersey age and sex discrimination law did not violate the establishment and free exercise clause in the first amendment to the federal constitution, with regard to the dismissal of a teacher of English and history in a parochial school.

**HN4 -** Only when the underlying dispute turns on doctrine or polity should courts abdicate their duty to enforce secular rights. Judicial deference beyond that demarcation would **transform** our courts into rubber stamps invariably favoring a **religious** institution's decision regarding even primarily secular disputes.

**HN5 -** Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e-1, exempts a **religious** institution's employment decisions regarding individuals of a particular **religion** performing work connected with the institution's activities.

**HN8 -** The **mere fact** that the faculty members are expected to serve as exemplars of practicing Christians does not make the terms and conditions of their employment matters of church administration and thus **purely** of ecclesiastical concern.

106. Big Sky Colony, Inc. v. Mont. Dep't of Labor & Indus.

Supreme Court of Montana | Dec 31, 2012 | 2012 MT 320

**Overview:** Requirement of workers' compensation coverage for a religious colony's members engaged in the commercial activities of agricultural production, manufacturing, or construction did not violate the colony's rights under the Free Exercise Clause and the Establishment Clause of U.S. Const. amend. I, nor the colony's right to equal protection.

**HN9 -** Courts uniformly have rejected the notion that a party's **religious** motivation for undertaking an act can **transform** a generally applicable regulation into a prohibition on **religious** conduct. This logic, taken to its extreme, would subsume every facet of a **religious** organization into a **religious activity**.

**HN7 -** Mont. Code Ann. § 39-71-117(1)(a) captures **religious** employers who engage in **commercial** activities. Subsection (a) includes within the definition of "employer" all public corporations and quasi-public corporations, **religious** or otherwise. Subsection (a) further includes within the definition of "employer" each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, **religious** or otherwise. Finally, subsection (c) defines employer to include any non-profit association, limited liability company, limited liability partnership, or corporation or other entity, **religious** or otherwise, that receives federal, state, or local government **funds** to be used for community service programs.

**HN20 -** The legislature has chosen to include **religious** corporations that engage in **commercial** activities with nonmembers for remuneration in the workers' compensation system. The workers' compensation system applies to many other types of corporations and other entities organized in various fashions that engage in **commercial** activities. Mont. Code Ann. § 39-71-117(a), (b), and (c). No reasonable observer would construe the legislature's explicit inclusion in the workers' compensation system of **religious** corporations that engage in **commercial** activities with nonmembers for remuneration, along with various other types of corporations and entities, as sending a message of disapproval of **religion**.

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107. ## Americans United for Separation of Church & State v. School Dist.

United States District Court for the Western District of Michigan | Aug 16, 1982 | 546 F. Supp. 1071

**Overview:** The state funded programs offered in sectarian schools violated the Establishment Clause because they had the primary effect of advancing religion and involved excessive government entanglement.

**HN7 -** The First Amendment states in part that Congress shall make no law respecting the establishment of **religion**. U.S. Const. amend. I. This prohibition, which is applied to the states through the Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, is subject to a decidedly flexible and constantly evolving interpretation by the courts. Due to the flexible construction of the clause, and in the absence of rigid, precisely stated constitutional prohibitions, it is necessary to appreciate the primary evils against which it was intended to afford protection: sponsorship, financial support, and active involvement of the sovereign in **religious activity**.

**HN17 -** Created out of a desire to minimize government intrusion into the realm of **religion**, the third aspect of the constitutional standard requires that the program under scrutiny must avoid an excessive government entanglement with **religion**. Generally, excessiveness is a question of degree and is often referred to as "administrative entanglement." Some governmental **activity** that does not have an impermissible **religious** effect may nevertheless be unconstitutional, if in order to avoid the **religious** effect government must enter into an arrangement that requires it to monitor the **activity**.

**HN12 -** A law found to have a primary effect to **promote** some legitimate end under the state's police power is not immune from further examination to ascertain whether it also has the direct and immediate effect of advancing **religion**.

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108. ## Skoros v. City of New York

United States District Court for the Eastern District of New York | Feb 18, 2004 | 2004 U.S. Dist. LEXIS 2234

**Overview:** The principal effect of a school policy permitting Christmas trees, Menorahs, and the Star and Crescent, but forbidding creches, was the advancement of its secular purpose of promoting multiculturalism; thus, there was no establishment of religion.

**HN17 -** Although classroom activities including the coloring of a picture of a menorah and learning from the teacher the **religious** origins of the symbol may be distasteful to the parent of a Christian child or to the child itself, such activities do not constitute a violation of the Establishment Clause. By no means do the **Religion** Clauses of the First Amendment impose a prohibition on all **religious activity** in public schools. Study of **religion** in the public schools, when presented objectively as part of a secular program of education, does not offend the Establishment Clause. Courts have long held that teaching about **religion** may be part of a secular program of education, so long as instruction is presented objectively as part of an appropriate study of secular subjects such as **literature**, history, civilization, ethics, or comparative **religion**. Moreover, when the primary purpose served by a given school **activity** is secular, that **activity** is not made unconstitutional by the inclusion of some **religious** content.

**HN7 -** The second prong of the Lemon test requires a court to determine whether the principal or primary effect of the policy advances or inhibits **religion**. The Establishment Clause forbids a State to hide behind the application of formally neutral criteria and remain studiously oblivious to the effects of its actions. However, laws that merely have an indirect, remote or incidental benefit upon **religion**, do not advance **religion** in violation of the Establishment Clause. Accordingly, when courts adjudicate claims that some governmental **activity** violates the Establishment Clause, they must be careful not to invalidate **activity** that has a primary secular purpose and effect and only incidental **religious** significance.

**HN2 -** The United States Supreme Court, in Lemon, has held that, in determining whether a governmental action violates the Establishment Clause, courts must consider: (1) whether the challenged practice has a secular purpose; (2) whether the practice either advances or inhibits **religion** in its principal or primary effect; and (3) whether the practice fosters excessive government entanglement with **religion**. Although Lemon still governs facial challenges to government policy, the second prong has evolved into an independent test for challenges to government-sponsored policies regarding displays of **religious** symbols as they are applied in particular situations.

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109. Fifth Ave. Coach Co. v. New York

Supreme Court of New York, Special Term, New York County | Mar 01, 1908 | 58 Misc. 401

**Overview:** Injunction was not issued to enjoin city's interference with advertising signs displayed on exterior of business' stages because the business failed to establish a clear legal right to display that was a condition indispensable to equitable relief.

**HN5 -** N.Y.C., N.Y., Greater New York Charter § 1229 empowers the board of aldermen to regulate the use of **streets** and sidewalks by foot passengers, animals or vehicles; to regulate the speed at which vehicles shall be driven or ridden and at which vehicles shall be propelled in the **streets**. To regulate the exhibition of advertisements or **handbills** along the **streets**; and to make all such regulations in reference to the running of stages, omnibuses, trucks and cars as may be necessary for the convenient use and the accommodation of the **streets**, piers, wharves or stations.

**HN16 -** N.Y.C., N.Y., Greater New York Charter § 50 empowers that board of alderman to regulate the use of **streets** and sidewalks by foot passengers, animals and vehicles as well as the exhibition of advertisements or **handbills** along the **streets**, and to make, establish, alter, modify, amend and repeal all ordinances necessary to that end.

**HN3 -** A common or public nuisance is that which affects the people and is a violation of a public right either by direct encroachment upon public property or by doing some act which tends to a common injury or by the omitting of that which the common good requires, and which it is the duty of a person to do. Public nuisances are founded upon wrongs that arise from the unreasonable, unwarrantable or unlawful use of property, or from improper, indecent or unlawful conduct working an obstruction or injury to the public and producing material annoyance, inconvenience and discomfort. Founded upon a wrong it is indictable and punishable as for a misdemeanor. It is the duty of individuals to observe the rights of the public and to refrain from the doing of that which materially injures and annoys or inconveniences the people, and this extends even to business which would otherwise be **lawful**, for the public health, safety, convenience, comfort or morals, is of paramount importance, and that which affects or impairs it must give way for the general good.

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110. Roberts v. Madigan

United States District Court for the District of Colorado | Jan 05, 1989 | 702 F. Supp. 1505

**Overview:** School officials could not remove Bible from school library but could remove religious books from classroom library and could order teacher to refrain from silently reading his personal Bible during school hours.

**HN4 -** The Establishment Clause mandates government neutrality concerning **religion** while unequivocally separating the reaches of church and state. The clause prohibits state or federal support of **religion** and defines the parameters of the relation between government and **religion**. Government in our democracy, state and national, must be neutral in matters of **religious** theory, doctrine, and practice. It may not be hostile to any **religion** or to the advocacy of non-**religion**; and it may not aid, foster, or **promote** one **religion** or **religious** theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between **religion** and **religion**, and between **religion** and non-**religion**.

**HN5 -** State **activity** in **religious** matters must pass a three-part test in order to comport with the Establishment Clause. The **activity** must: (1) reflect a clearly secular purpose; (2) have a primary, as opposed to incidental, effect which neither promotes nor inhibits **religion**; (3) not foster excessive government entanglement with **religion**. If the **activity** fails any one of the three parts, then a constitutional violation has taken place. At times it may appear that the above test results in uncertainty and ambiguous answers. However, it provides a workable analytic framework by which to review **religious** activities in public education.

**HN2 -** The goal of the Free Exercise Clause is to keep **religious** faith voluntary -- free from government coercion -- while the goal of the Establishment Clause is to prevent excessive government involvement in **religion**.

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111. Child Evangelism Fellowship v. Minneapolis Special Sch. Dist. No. 1

United States District Court for the District of Minnesota | Sep 30, 2011 | 822 F. Supp. 2d 878

**Overview:** Student Christian organization's Motion for Preliminary Injunction requiring school district to allow it involvement with the district's After-School Program with full access to benefits provided to those programs was denied; organization was unlikely to prevail because at least some of its activities were directed towards teaching religion.

**HN2 -** Minn. Stat. § 124D.19 further provides: Subd. 12. Youth after-school enrichment programs. Each district operating a community education program under this section may establish a youth after-school enrichment program to maintain and expand participation by school-age youth in supervised activities during nonschool hours. The programs must include activities that support development of social, mental, physical, and creative abilities of school-age youth; provide structured youth programs during high-risk times; and design programming to **promote** youth leadership development and **improved** academic performance. Subd. 13. Youth after-school enrichment program goals. The goals of youth after-school enrichment programs are to: (1) collaborate with and leverage existing community resources that have demonstrated effectiveness; (2) reach out to children and youth, including at-risk youth, in the community; (3) increase the number of children participating in adult-supervised programs during nonschool hours; (4) support academic achievement; and (5) increase skills in technology, the arts, sports, and other activities.

**HN11 -** Under the Supreme Court's jurisprudence, a government entity such as a school board has the opportunity to open its facilities to **activity** protected by the First Amendment, without inviting political or **religious** activities presented in a form that would disserve its efforts to maintain neutrality.

**HN13 -** In discussing the Establishment Clause of U.S. Const. amend. I, , the Supreme Court has stated: In the course of adjudicating specific cases, the Court has come to understand the Establishment Clause to mean that government may not **promote** or affiliate itself with any **religious** doctrine or organization, may not discriminate among persons on the basis of their **religious** beliefs and practices, may not delegate a governmental power to a **religious** institution, and may not involve itself too deeply in such an institution's affairs.

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112. Perumal v. Saddleback Valley Unified Sch. Dist.

Court of Appeal of California, Fourth Appellate District, Division Three | Jan 29, 1988 | 198 Cal. App. 3d 64

**Overview:** School district's policy prohibiting off-campus groups from advertising at school was valid and applied to students' religious group because the group was organized "off-campus" and did not violate the Constitution's Establishment Clause.

**HN2 -** California's constitutional provisions are more comprehensive than those of the federal Constitution, particularly so in the area of involvement of **religion** in schools. Thus Cal. Const. art. XVI, § 5, in providing that neither the legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any **religious** sect, church, creed, or sectarian purpose to help or to support or to sustain any school, college, university, forbids more than the appropriation or payment of public **funds** to support sectarian institutions. It bans any official involvement, whatever its form, which has the direct, immediate, and substantial effect of promoting **religious** purposes.

**HN6 -** Under the free exercise clause of U.S. Const. amend. I, freedom of conscience and freedom to adhere to such **religious** organizations or beliefs as the individual may choose is secured against governmental interference. However, the inevitable consequence of the establishment clause when applied to **religious** ritual on school property is to restrict that **activity** to preserve the wall between church and state. The Constitution does not deny the value or the necessity for **religious** training, teaching or observance. Rather it secures free exercise. But to that end it does deny that the state can undertake or sustain them in any form or degree. For this reason the sphere of **religious activity**, as distinguished from the secular intellectual liberties, has been given the twofold protection and, as the state cannot forbid, neither can it perform or aid in performing the **religious** function. The dual prohibition makes that function altogether private.

**HN7 -** In determining whether a school district's policy violates a student **religious** group's rights, the Court of Appeals of California applies a tripartite test. To pass constitutional muster the state **activity** must satisfy three conditions: (1) it must have a secular legislative purpose; (2) its primary effect must neither advance nor inhibit **religion**; and (3) it must not foster excessive governmental entanglement with **religion**. Failure to meet any one of the three conditions is fatal to the constitutionality of state action.

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113. ## Founding Church of Scientology v. United States

United States Court of Appeals for the District of Columbia Circuit | Feb 05, 1969 | 409 F.2d 1146

**Overview:** A verdict that literature related to instruments used by a church was "false and misleading labeling" under the Food, Drug and Cosmetic Act was overturned because the First Amendment prohibited the trial of the truth or falsity of religious beliefs.

**HN14 -** The word "accompanying" in the Food, Drug and Cosmetic Act, 21 U.S.C.S. § 301 et seq., is construed to give broad remedial effect to the purposes of the Act. In order to be considered "labeling" of a drug, promotional pamphlets need not be shipped together with the drug. One article or thing is accompanied by another when it supplements or explains it, in the manner that a committee report of the Congress accompanies a bill. No physical attachment one to the other is necessary. **Literature** designed for use in the **distribution** and sale of a drug or device can be false and misleading. The fact that the **literature** is **sold** does not prevent it from being "labeling" if the **literature** and the drugs or devices are nonetheless interdependent and are parts of an integrated **distribution** program. The Act cannot be circumvented by the easy device of a "sale" of the advertising matter where the advertising performs the function of labeling.

**HN16 -** Nothing in the history or interpretation of the Food, Drug and Cosmetic Act, 21 U.S.C.S. § 301 et seq., indicates that it is meant to deal with the special problem of **religious** healing, a problem often given legislative treatment separate from that imposed upon the general area of public health and medical practice. The court interprets the Act as not including within its concept of "labeling" the **literature** developing the doctrines of a **religion**.

**HN17 -** Not every enterprise cloaking itself in the name of **religion** can claim the constitutional protection conferred by that status. It might be possible to show that a self-proclaimed **religion** is merely a **commercial** enterprise, without the underlying theories of man's nature or his place in the universe that characterize recognized religions. Though litigation of the question whether a given group or set of beliefs is

or is not **religious** is a delicate business, our legal system sometimes requires it so that secular enterprises may not unjustly enjoy the immunities granted to the sacred.

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114. ## Teen Ranch v. Udow

United States District Court for the Western District of Michigan, Southern Division | Sep 29, 2005 | 389 F. Supp. 2d 827

**Overview:** Because the ability of a youth to opt out of placement at a faith-based "teen ranch" with religious programming was not sufficient to constitute private choice, the state's moratorium against further juvenile placements at the ranch did not violate 2004 Mich. Pub. Acts 344, § 202, and avoided Establishment Clause concerns.

**HN18 -** The U.S. Supreme Court has repeatedly upheld programs against Establishment Clause challenges where the state funding of the programs arose out of true private choice or the genuine and independent choices of private individuals. Under our Establishment Clause precedent, the link between government **funds** and **religious** training is broken by the independent and private choice of recipients. When public funding flows to faith-based organizations solely as a result of the genuinely independent and private choices of individuals, the funding is considered indirect. When a program receives indirect funding, it is the individual participant, and not the state, who chooses to support the **religious** organization, reducing the likelihood that the public funding has the primary effect of advancing **religion** in violation of the establishment clause.

**HN24 -** The Free Exercise Clause's protection of **religious** beliefs and practices from direct government encroachment does not translate into an affirmative requirement that public entities fund **religious activity** simply because they choose to fund the secular equivalents of such **activity**.

**HN15 -** Although **religious** organizations have been eligible to receive government aid under certain government programs for many years, charitable choice is unique in that it does not require participating faith-based organizations to "secularize" themselves as a condition to receiving public **funds**. To the contrary, the charitable choice statute allows publicly funded **religious** organizations to retain their **religious** character and to employ their **religious** faith in carrying out secular social service programs, as long as the programs are administered in conformance with the establishment clause of the First Amendment.

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115. ## Child Evangelism Fellowship of N.J., Inc. v. Stafford Twp. Sch. Dist.

United States Court of Appeals for the Third Circuit | Oct 15, 2004 | 386 F.3d 514

**Overview:** Preliminary injunction properly ordered a school district to treat a child evangelism group like other community groups with regard to distribution of literature; group was likely to succeed on viewpoint discrimination claim under Free Speech Clause.

**HN12 -** The provision of benefits to a broad a spectrum of groups is an important index of secular effect. A **religious** organization's enjoyment of merely "incidental" benefits does not violate the prohibition against the "primary advancement" of **religion**.

**HN4 -** When a school district establishes a limited public fora, it is bound to respect the **lawful** boundaries it has itself set. It may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum, nor may it discriminate against speech on the basis of its viewpoint.

**HN8 -** Private **religious** speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. Cases such as Lamb's Chapel, Rosenberger, and Good News Club establish that if government permits the discussion of a topic from a secular perspective, it may not shut out speech that discusses the same topic from a **religious** perspective.

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116. ⚠ State v. Arlene's Flowers, Inc.

Supreme Court of Washington | Jun 06, 2019 | 193 Wn.2d 469

**Overview:** Adjudicatory bodies did not act with religious animus when they ruled that florist and her corporation violated Wash. Rev. Code § 49.60.215(1) by refusing to provide custom floral arrangements for a same-sex wedding, because adjudicatory bodies remained neutral in all of the circumstances in which this case was presented, considered, and decided.

**HN5 -** It can be assumed that a member of the clergy who objects to gay marriage on **moral** and **religious** grounds could not be compelled to perform the ceremony without denial of his or her right to the free exercise of **religion**. Yet if that exception were not confined, then a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations.

**HN36 -** Under Wash. Rev. Code § 26.04.010(6), a **religious** organization shall be immune from any civil claim or cause of action, including a claim pursuant to Wash. Rev. Code ch. 49.60 based on its refusal to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage. "**Religious** organization" is defined as including, but not limited to, churches, mosques, synagogues, temples, nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of **religion**. Wash. Rev. Code § 26.04.010(7)(b).

**HN1 -** The adjudicatory body tasked with deciding a particular case must remain neutral; that is, the adjudicatory body must “give full and fair consideration” to the dispute before it and avoid animus toward **religion**. Disputes like those presented in Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n and Arlene’s Flowers, Inc. v. Washington must be resolved with tolerance, without undue disrespect to sincere **religious** beliefs, and without subjecting gay persons to indignities when they seek goods and services in an open market.

117. ## Altman v. Bedford Cent. Sch. Dist.

United States Court of Appeals for the Second Circuit | Mar 27, 2001 | 245 F.3d 49

**Overview:** Parents lacked standing to challenge certain school activities as their children did not attend schools and there was no loss of attributable revenue. Earth Day celebration was not violative First Amendment as it was not religious ceremony.

**HN9 -** The requirements for standing to challenge state action under the Establishment Clause of U.S. Const. amend. I, unlike those relating to the Free Exercise Clause of U.S. Const. amend. I, do not include proof that particular **religious** freedoms are infringed. Thus, standing to assert an Establishment Clause claim may rest either on the plaintiff's direct exposure to the challenged **activity** or, in certain situations, on the plaintiff's status as a taxpayer.

**HN20 -** The Free Exercise Clause, U.S. Const. amend. I, has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such **religious** organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of **religion**. Thus U.S. Const. amend. I embraces two concepts, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.

**HN8 -** To have standing to pursue a claimed violation of the Free Exercise Clause of U.S. Const. amend. I, a plaintiff must allege that her own particular **religious** freedoms are infringed.

118. ## Quappe v. Endry

United States District Court for the Southern District of Ohio, Eastern Division | Sep 10, 1991 | 772 F. Supp. 1004

**Overview:** A school system's motion for summary judgment was granted because it did not violate elementary school students' First, Ninth, and Fourteenth Amendment rights when it required a student bible study club to meet at 6:30 p.m. instead of 3:45 p.m.

**HN8 -** State law identifies four distinct activities to which its school properties may be put: entertainment, education, general discussion promoting personal character and **civic** duty, and **religious** exercises. Though broadly stated, the Ohio legislature has indicated its preference for **religious** activities within its schools, subject of course to constitutional parameters. More important, the sweep of the statutory language encompasses virtually all kinds of expressive **activity**. The facial preference evinced by Ohio Rev. Code Ann. § 3313.76 suggests that the policy of Ohio is to designate its schools as public fora as to each of the enumerated categories.

**HN11 -** Ohio Rev. Code Ann. § 3313.77, in practice, established limits on the time, place, and manner of the expressive activities that could occur on school property. The policy and practice of Ohio is to allow a broad spectrum of **religious activity** on public school property, subject to the limitation that such **activity** take place only during those times the building is not being used for school purposes.

**HN16 -** Under strict scrutiny, a school system's actions in restricting **religious activity** on its property will be upheld by a court only if it can show that the content-based restrictions are necessary to serve a compelling state interest and narrowly tailored to achieve that end.

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119. ## First Covenant Church v. City of Seattle

Supreme Court of Washington | Nov 20, 1992 | 120 Wn.2d 203

**Overview:** The municipal regulation of a church's architectural exterior impermissibly infringed on a church's right to the free exercise of religion and free speech.

**HN8 -** The State may impose on **religious activity** a neutral, generally applicable tax that does not act as a prior restraint on **religious** conduct. It is clear, however, that a financial burden on **religious activity**, if too gross, may unconstitutionally infringe on free exercise.

**HN1 -** Under U.S. Const. amend. I, the First Amendment provides that Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof. The First Amendment absolutely prohibits the regulation of beliefs "as such" and the government may not compel or punish the expression of **religious** belief.

**HN13 -** Wash.. Const. art. 1, § 11 absolutely protects freedom of conscience in all matters of **religious** sentiment, belief, and worship and guarantees that no one shall be molested or disturbed in person or property on account of **religion**. If the coercive effect of an enactment operates against a party in the practice of his **religion**, it unduly burdens the free exercise of **religion**. A facially neutral, even-handedly enforced statute that does not directly burden free exercise may, nonetheless, violate the constitution if it indirectly burdens the exercise of **religion**.

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120. ## Tenafly Eruv Ass'n v. Borough of Tenafly

United States Court of Appeals for the Third Circuit | Oct 24, 2002 | 309 F.3d 144

**Overview:** A borough's selective, discretionary application of an ordinance not allowing lechis to remain on utility poles in order to form an eruv violated plaintiff Orthodox Jews' Free Exercise rights; allowing the lechis would be neutral, not an endorsement.

**HN18 -** The Free Exercise Clause's mandate of neutrality toward **religion** prohibits government from deciding that secular motivations are more important than **religious** motivations. Accordingly, in situations where government officials exercise discretion in applying a facially neutral law, so that whether they enforce the law depends on their evaluation of the reasons underlying a violator's conduct, they contravene the neutrality requirement if they exempt some secularly motivated conduct but not comparable religiously motivated conduct.

**HN25 -** The United States Supreme Court has explained that judging the centrality of different **religious** practices violates the principle that courts must not presume to determine the place of a particular belief in a **religion**. Evaluating the extent of a burden on **religious** practice is equally impermissible because it entails a forbidden inquiry into **religious** doctrine. "Constitutionally significant burden" would seem to be "centrality" under another name, and inquiry into "severe impact" is no different from inquiry into centrality.

**HN31 -** While the United States Supreme Court's Establishment Clause jurisprudence consistently emphasizes neutrality toward **religion**, it allows government to accommodate **religious** needs by alleviating special burdens on **religious** practice unless the accommodation delegates political power to a particular **religious** group or otherwise singles out a particular **religious** sect for special treatment.

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121. McKelvey v. Pierce

Supreme Court of New Jersey | Jul 10, 2002 | 173 N.J. 26

**Overview:** Former seminarian's tort and contract claims that he had been driven from his vocation by acts of homosexual sexual harassment were not all necessarily precluded from a hearing in New Jersey courts.

**HN6 -** The Establishment Clause of the First Amendment prohibits states from promoting **religion** or becoming too entangled in **religious** affairs, such as by enforcing **religious** law or resolving **religious** disputes. "Establishment" of **religion** means sponsorship, financial support, and active involvement of the sovereign in **religious activity**.

**HN18 -** There are two overarching purposes for which the **religion** clauses of the First Amendment stand: (1) preventing sponsorship, financial support, and active involvement of the sovereign in **religious activity**; and (2) promoting the freedom of an individual to believe and profess whatever **religious** doctrine he or she desires, and of churches to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.

**HN17 -** Before barring a specific cause of action pursuant to the **religion** clauses of the First Amendment, a court first must analyze each element of every claim and determine whether adjudication would require the court to choose between competing **religious** visions, or cause interference with a church's administrative prerogatives, including its core right to select, and govern the duties of, its ministers. In so doing, a court may interpret provisions of **religious** documents involving property rights and other nondoctrinal matters as long as the analysis can be done in **purely** secular terms. The court next examines the remedies sought and decides whether enforcement of a judgment would require excessive procedural or substantive interference with church operations. If the answer to either of those inquiries is in the affirmative, then the dispute is truly of a **religious** nature, rather than theoretically and tangentially touching upon **religion**, and the claim is barred from secular court review. If, however, the dispute can be resolved by the application of **purely** neutral principles of law and without impermissible government intrusion, there is no First Amendment shield to litigation.

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122. Blackwelder v. Safnauer

United States District Court for the Northern District of New York | Jun 16, 1988 | 689 F. Supp. 106

**Overview:** A state's regulation of homeschools did not violate the parents' constitutional rights because their religious rights were subject to proper regulation of childrens' education, and on-site inspections were not unreasonable searches.

**HN57 -** The First Amendment forbids the enactment of any law respecting an establishment of **religion**. The United States Supreme Court has identified the primary evils this clause was designed to prevent as the sponsorship, financial support, and active involvement of the sovereign in **religious activity**. With this in mind, the Court has formulated a three-part test for assessing establishment clause challenges to legislation: First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits **religion**; finally, the statute must not foster an excessive governmental entanglement with **religion**.

**HN58 -** The first part of the Lemon test asks whether government's actual purpose is to endorse or disapprove of **religion**. The relevant inquiry is whether the state has abandoned neutrality and acted with the intent of promoting a particular point of view in **religious** matters. While a governmental action motivated in part by some **religious** purpose may satisfy the "purpose" test if some other secular purpose exists, it is required that the statement of such purpose be sincere and not a sham.

**HN19 -** Abstention seems particularly inappropriate when a constitutional challenge is made to a statute that has been on the **books** for such a substantial period, has not become dormant through lack of enforcement, and has been the subject of a number of largely consistent state court decisions. Under such circumstances, the state law implicated by the constitutional challenge cannot be fairly deemed "unsettled."

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123. ## The Gospel Army v. Los Angeles

Supreme Court of California | Nov 20, 1945 | 27 Cal. 2d 232

**Overview:** An ordinance which regulated solicitation that did not involve any religious test nor unreasonably obstructed or delayed the collection of funds was not a prohibited restraint on the free exercise of religion and was constitutional.

**HN13 -** The Board of Social Service Commissioners has no authority to appraise the nature or worthiness of a **religious** cause. Even the solicitation of **funds** for the support of a **religious** organization is subject to reasonable regulation: The general regulation, in the public interest, of solicitation, which does not involve any **religious** test and does not unreasonably obstruct or delay the collection of **funds**, is not open to any constitutional objection, even though the collection be for a **religious** purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of **religion** or interpose an inadmissible obstacle to its exercise.

**HN10 -** Solicitations upon premises owned or occupied by the association upon whose behalf the solicitation is made, and the soliciting of **funds** solely from members of the soliciting association are not subject to the provisions concerning promoters and solicitors or to certain other regulatory provisions of the ordinance. Solicitations made solely for evangelical missionary or **religious** purposes are also exempted. If they are conducted in such a manner as in the opinion of the Board of Police Commissioners (board) may

give the persons solicited or the public the impression that the purpose of the solicitation is in whole or in part charitable, the board may investigate the matter and give such publicity to its findings as it may deem best to advise the public of the facts.

**HN11 -** The constitutional guarantee of **religious** liberty protects the profession of a **religious** belief by word of mouth or in writing, the dissemination of the doctrines of a **religious** organization by preaching from the pulpits or other methods of **evangelism**, or the right to refuse to state beliefs against the dictates of one's conscience.

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124. Watchtower Bible & Tract Soc. v. Metropolitan Life Ins. Co.

Supreme Court of New York, Special Term, New York County | Mar 12, 1947 | 188 Misc. 978

**Overview:** A landlord's rules restricting tenant solicitation by a religious society did not violate First Amendment speech, press, or religious rights, because the rule was not unreasonable, arbitrary, capricious, or unduly burdensome.

**HN3 -** The inner hallways of apartment houses are not to be regarded in the same light as public roads, **streets** or highways, even when the naked fee of the latter is privately owned. Wherever the title of **streets** and parks may rest, they are held in trust for the use of the public and are used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such **use of the streets** and public places is a part of the privileges, immunities, rights and liberties of citizens. Does the foregoing mean that the inner hallways of apartment houses, merely because they must be traversed from the street in order to reach the actual apartments wherein the tenants reside, likewise are burdened with the rights which the public has in **streets**? Do such inner hallways constitute places of public assembly, or for communicating thoughts one to another, or for the discussion of public questions? The answer to those questions is clearly "no."

**HN4 -** When the owner of a house rents it to another he thereby confers upon the tenant the right to use the building, or such part of it as is rented, and this includes an easement of ingress and egress by the usual way. This easement, however, is for the tenant, and third parties, except upon the invitation, either express or implied, of the landlord or tenant, have no more right to enter the building than they would if it were vacant. There is no invitation, either express or implied, to the public to enter into the common hallways of an apartment house for the purpose of using them as a forum in which to air one's views on any subject, be it **religious**, political or anything else.

**HN5 -** Landlord rules that leave to each tenant the right to determine for himself whether he wishes to receive visits or **literature** at his home from Jehovah's Witnesses, that require such wish be in writing and either furnished or exhibited to the landlord's resident manager, are not unreasonable, arbitrary or capricious, and do not impose any undue burdens upon either the Jehovah's Witnesses or any tenant desiring visits from them.

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125. International Soc. for Krishna Consciousness, Inc. v. Rochford

United States District Court for the Northern District of Illinois, Eastern Division | Jan 21, 1977 | 425 F. Supp. 734

**Overview:** While airport regulations purported to balance public's rights with those of persons seeking to enjoy First Amendment freedoms in airports' public areas, they were unconstitutional as they were municipal mode of regulating and controlling speech.

**HN4 -** Hand **distribution** of **religious** tracts is an age-old form of missionary **evangelism** and is more than preaching or the **distribution** of **religious literature**. Thus, as a form of **religious activity**, it occupies the same estate under the First Amendment as do worship in churches and preaching from pulpits. And the **mere fact** that **religious literature** is **sold**, or contributions solicited, does not put such form of **evangelism** outside the pale of constitutional protection.

**HN3 -** The United States Constitution, through the First and Fourteenth Amendments, establishes that neither Congress nor the legislature of a state, can make any law respecting an establishment of **religion**, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press.

**HN5 -** A municipality has the power to protect its citizens from undue annoyance by regulating the solicitation of contributions and canvassing for **religious** converts.

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126. State ex rel. Wisconsin Health Facilities Authority v. Lindner

Supreme Court of Wisconsin | Jun 29, 1979 | 91 Wis. 2d 145

**Overview:** Act creating Wisconsin Health Facilities Authority did not violate Establishment Clause of First Amendment where there was no excessive entanglement between church and state and where Act did not have primary effect of advancing religion.

**HN9 -** State aid to institutions may have the "primary effect" of advancing **religion** in the following circumstances: (1) where the aid is granted to an institution so pervasively **religious** that a substantial portion of its functions are subsumed in the **religious** mission; or (2) where it **funds** a "specifically **religious activity**" in an otherwise substantially secular setting.

**HN6 -** The emphasis has been moved from "a wall" of absolute separation between church and state to a scrupulous neutrality by the State, as among religions: Neutrality is what is required. The State must confine itself to secular objectives, and neither advance nor impede **religious activity**. Of course, that principle is more easily stated than applied. A secular purpose and a facial neutrality may not be enough, if in fact the State is lending direct support to a **religious activity**. The State may not, for example, pay for what is actually a **religious** education, even though it purports to be paying for a secular one, and even though it makes its aid available to secular and **religious** institutions alike. The State's efforts to perform a secular task, and at the same time avoid aiding in the performance of a **religious** one, may not lead it into such an intimate relationship with **religious** authority that it appears either to be sponsoring or to be excessively interfering with that authority.

**HN17 -** Wis. Const. art. I, § 18 provides: Freedom of worship; liberty of conscience; state **religion**; public **funds**. Section 18. The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any **religious** establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of **religious** societies, or **religious** or theological seminaries.

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127. First Unitarian Church of Salt Lake City v. Salt Lake City Corp.

United States District Court for the District of Utah, Central Division | May 04, 2001 | 146 F. Supp. 2d 1155

**Overview:** A property owner's restriction on the use of a municipal corporation's pedestrian easement did not violate religious organizations' freedom of speech, freedom of religion, or right to equal protection.

**HN20 -** To state a claim under the effects component of the endorsement test, a plaintiff must allege facts indicating the sale has a principle or primary effect of advancing or endorsing **religion**. United States Supreme Court precedent plainly contemplates that on occasion some advancement of **religion** will result from governmental action. However, not every governmental **activity** that confers a remote, incidental or indirect benefit upon **religion** is constitutionally invalid. Thus the Constitution does not forbid all mention of **religion** in public schools. The Establishment Clause prohibits only those school activities which, in the eyes of a reasonable observer, advance or **promote religion** or a particular **religious** belief. This is an objective inquiry, not an inquiry into whether particular individuals might be offended by the content or location of a performance, or consider such performances to endorse **religion**.

**HN22 -** The entanglement analysis typically is applied to circumstances in which the state is involving itself with **religious activity** or **religious** institutions.

**HN18 -** The government impermissibly endorses **religion** if its conduct has either (1) the purpose or (2) the effect of conveying a message that **religion** or a particular **religious** belief is favored or preferred. The purpose component of the endorsement test should evaluate whether the government's actual purpose is to endorse or disapprove of **religion** (i.e., did the government intend to endorse or disapprove of **religion**). The effect component, on the other hand, should evaluate whether a reasonable observer, aware of the history and context of the community in which the conduct occurs, would view the practice as communicating a message of government endorsement or disapproval.

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128. Traditionalist Am. KKK v. City of Desloge

United States District Court for the Eastern District of Missouri, Eastern Division | Dec 27, 2012 | 914 F. Supp. 2d 1041

**Overview:** Entity's members were entitled to preliminary injunction enjoining enforcement of Desloge, Mo., Code of Ordinances § 615.070; members were likely to prevail on U.S. Const. amend. I claim because

they sought to distribute handbills, § 615.070 reached activities other than solicitation, and a violation resulted in a fine or imprisonment.

**HN6 -** U.S. Const. amend. I provides that the government shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or a right of the people peaceably to assemble, and to petition the Government for redress of grievances. These protections, at the core of our democratic society, are applicable to the states and include an ability to petition the government, to follow one's own **religious** beliefs, and to associate with others. The **distribution** of **handbills** and **leaflets** is expressive conduct that falls within the core protections of U.S. Const. amend. I., and our nation has a profound national commitment to a principle that debate on public issues should be uninhibited, robust, and wide-open. Under U.S. Const. amend. I, citizens have the right to attempt to persuade others to change their views which may not be curtailed simply because a speaker's message may be offensive to his or her audience. But that right is not absolute. Government may restrict disruptive and unwelcome speech to protect unwilling listeners when there are other important interests at stake.

**HN10 -** For U.S. Const. amend. I purposes, **streets** are quintessential public forums. **Streets** are immemorially held in trust for the use of the public and are used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. The United States Supreme Court repeatedly refers to public **streets** as an archetype of a traditional public forum, noting that "time out of mind" public **streets** and sidewalks are used for public assembly and debate. One who is rightfully on a street which the state leaves open to the public carries with him or her there as elsewhere a constitutional right to express his or her views in an orderly **fashion**. This right extends to a communication of ideas by **handbills** and **literature** as well as by a spoken word.

**HN16 -** The **distribution** of **leaflets** and **handbills** on public sidewalks is protected **activity** under U.S. Const. amend. I.

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129. Child Evangelism Fellowship of Md., Inc. v. Montgomery County Pub. Schs

United States Court of Appeals for the Fourth Circuit | Jun 30, 2004 | 373 F.3d 589

**Overview:** Religious organization was entitled to a preliminary injunction where its participation in an elementary school take-home flyer forum did not violate Establishment Clause and exclusion constituted viewpoint discrimination.

**HN12 -** Receipt of an invitation to a **religious activity** (with the hope that students will deliver the invitation to their parents) simply does not rise to the level of support or participation in **religion** or its exercise.

**HN9 -** The United States Supreme Court has only found unconstitutional government coercion when the government singled out a **religious** group for a special benefit not afforded to other similarly situated non-**religious** groups and advanced an inherently **religious activity**, such as prayer. Conversely, when the government has merely provided a **religious** group with access equal to that afforded similar non-**religious** groups and has not advanced an inherently **religious activity**, the Court has uniformly refused to find unconstitutional government coercion.

**HN10 -** In drawing the line between the competing constitutional guarantees of permissible accommodation of private **religious** beliefs and impermissible government establishment of **religion**, first, and perhaps most importantly, courts look to the context in which the assertedly coerced **activity** occurs: in particular, whether the government is granting preferential treatment to a **religious** organization or merely providing equal access. Second, courts must also examine the character of the **activity** itself.

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130. ## Johnson v. Huntington Beach Union High Sch. Dist.

Court of Appeal of California, Fourth Appellate District, Division Two | Mar 11, 1977 | 68 Cal. App. 3d 1

**Overview:** Both the federal and state constitutions prohibited school officials of a tax-supported high school to permit a student Bible study club to meet and conduct its activities on the school campus during the school day.

**HN8 -** The crucial inquiry is not whether some benefit accrues to a **religious** institution as a consequence of state action, but whether its primary effect advances **religion**. Aid may be said to have an impermissible primary effect of advancing **religion** when it **funds** a specifically **religious activity** in an otherwise substantially secular setting.

**HN5 -** Although our heritage and culture is in part grounded in the belief in the Almighty, the Constitution mandates governmental neutrality which neither prefers one **religion** over another nor advances all **religion** but instead creates a sanctuary where all religions may flourish without governmental interference. Governmental neutrality and **religious** freedom can be preserved only by the segregation of secular **activity** from **religious pursuit** through the banishment of all governmental allegiance with **religion**.

**HN9 -** The primary effect test bespeaks not only of financial assistance but also necessarily inquires whether the consequence of state action is to place its imprimatur upon the **religious activity**. This aspect of the effect test reaches the essence of the establishment clause proscription. The U.S. Const. amend. I purpose is not to strike merely at the official establishment of a single sect, creed, or **religion**, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object is broader than separating church and state in this narrow sense. It is to create a complete and permanent separation of the spheres of **religious activity** and civil authority by comprehensively forbidding every form of public aid or support for **religion**. The point is that impermissible governmental support is present when the weight of secular authority is behind the dissemination of **religious** tenets.

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131. ## Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona

United States District Court for the Southern District of New York | Dec 07, 2017 | 280 F. Supp. 3d 426

**Overview:** Plaintiffs, who sought to build a rabbinical college, successfully challenged zoning and environmental ordinances as unconstitutional and in violation of the RLUIPA and the FHA where, inter alia,

the challenged laws substantially burdened plaintiffs' religious exercise and defendants offered no compelling governmental interest justifying the laws.

**HN16 -** **Commercial** building construction is **activity** affecting interstate commerce for purposes of applicability of the **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

**HN19 -** The **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA) defines "**religious** exercise" to include any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief, and provides further that the use, building, or conversion of real property for the purpose of **religious** exercise shall be considered **religious** exercise. 42 U.S.C.S. § 2000cc-5(7)(A), (B). "**Religious** exercise" under RLUIPA is defined broadly to the maximum extent permitted by the terms of this chapter and the Constitution. 42 U.S.C.S. § 2000cc-3(g). It is not for a court to say that plaintiffs' **religious** beliefs are mistaken or insubstantial. Instead, the court's narrow function in this context is to determine whether the line drawn reflects an honest conviction.

**HN22 -** While the **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA) does not exempt **religious** institutions from complying with facially neutral permit and variance applications procedures, it does not wholly exempt zoning laws from scrutiny. Rather, RLUIPA protects **religious** institutions from land use regulations that substantially affect their ability to use their property in the sincere exercise of their **religion**. For example, courts have held zoning ordinances, or zoning decisions, that significantly lessen the prospect of a **religious** institution's being able to use the property to further its **religious** mission can contravene RLUIPA. Zoning schemes that impose conditions on the use of the property, such as limitations on the size of the facilities that can permissibly be used by the **religious** institution, also may impose a substantial burden.

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132. Child Evangelism Fellowship of N.J. v. Stafford Twp. Sch. Dist.

United States District Court for the District of New Jersey | Dec 10, 2002 | 233 F. Supp. 2d 647

**Overview:** A preliminary injunction was granted to religious organizations who provided voluntary religious instruction allowing their materials and parental permission slips to be distributed; a school district's previous denials were viewpoint discrimination.

**HN5 -** The extent of a particular entity's right to free speech depends upon the nature of the government forum at issue. Government fora have been divided along a continuum on the basis of a state's right to limit expressive **activity**. At one end of the spectrum are traditional public fora, such as **streets** and parks which have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. In such quintessential public forums the state may not exclude communicative **activity** based on its content, unless it can show that its regulation is necessary to serve a compelling state interest and that it is narrowly tailored to achieve that end.

**HN20 -** The United States Supreme Court has held that a public elementary school would not violate the Establishment Clause by allowing a **religious** group to use facilities after school hours. The Court found unpersuasive the argument that elementary school children would misperceive a state endorsement of **religion** or feel coercive pressure to participate in **religious** activities.

**HN4 -** The Free Speech Clause of the First Amendment requires a state to provide private citizens access to its property for expressive purposes in certain circumstances. It is well established that free speech rights are implicated in public schools; it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. In addition, **religious** speech is protected to the same degree as other types of speech.

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133. Stevens v. Berger

United States District Court for the Eastern District of New York | Mar 03, 1977 | 428 F. Supp. 896

**Overview:** Denying to parents and their children public assistance benefits for which they otherwise qualified solely because they refused, for religious reasons, to obtain social security numbers for the children was improper. Injunctive relief was warranted.

**HN9 -** In order to determine if First Amendment rights of free exercise of **religion** have been or are being infringed upon, a court must initially determine whether or not a **religion** or **religious** beliefs are actually involved. The task is, of course, greatly simplified where an historically established and recognized **religion** such as Islam, Judaism or Catholicism is involved. But where a newly established allegedly legitimate **religion** is involved the court is necessarily put to the difficult task of determining whether a **religion** or **religious activity** is in fact involved.

**HN5 -** Not every belief put forward as "**religious**" is elevated to constitutional status. As a threshold requirement, there must be some reasonable possibility (1) that the conviction is sincerely held and (2) that it is based upon what can be characterized as theological, rather than secular e.g., **purely** social, political or **moral** views.

**HN6 -** Under the United States Constitution, an individual's right to believe in anything he or she chooses is unquestioned. **Religious** beliefs are not required to be consistent, or logical, or acceptable to others. Governmental questioning of the truth or falsity of the beliefs themselves is proscribed by the First Amendment. A **religious** belief can appear to every other member of the human race preposterous, yet merit the protections of the Bill of Rights. Popularity, as well as verity, are inappropriate criteria.

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134. Montrose Christian Sch. Corp. v. Walsh

Court of Appeals of Maryland | Apr 12, 2001 | 363 Md. 565

**Overview:** Montgomery County, Maryland, ordinance prohibiting employment discrimination based on religion violated the First Amendment and was ruled unconstitutional. Offensive language limiting exception for religious organizations was severable.

**HN24 -** Montgomery County, Md., Code § 27-19(a) makes it unlawful, inter alia, for an employer to discharge any individual because of **religious** creed. Montgomery County, Md., Code § 27-19(d)(2), however, contains an exception to this prohibition which allows "**religious**" organizations to employ persons

of a particular **religion**. Nevertheless, the last five words of § 27-19(d)(2) limit the exception to employees hired to perform **purely religious** functions. Consequently, because of this limitation, churches, **religious** schools, and other **religious** organizations in Montgomery County are expressly prohibited from making employment decisions based on "**religious** creed" except for employees hired to perform **purely religious** functions.

**HN25 -** The limitation in Montgomery County, Md., Code § 27-19(d)(2), "to perform **purely religious** functions," on its face violates the Free Exercise Clause of the First Amendment and Md. Const. Decl. Rts., art. 36. The limitation is severable from the remaining language of § 27-19(d)(2). As a result, the viable portion of § 27-19(d)(2) will provide: it shall not be an unlawful employment practice for a **religious** corporation, association, or society to hire and employ employees of a particular **religion**.

**HN30 -** The Free Exercise Clause of the First Amendment and Md. Const. Decl. Rts. art. 36 ordinarily do not grant to an individual or a **religious** organization a constitutional right to ignore neutral laws of general applicability even when such laws have an incidental effect of burdening a particular **religious activity**.

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135. ⚠ Catholic Charities of Sacramento, Inc. v. Superior Court

Supreme Court of California | Mar 01, 2004 | 32 Cal. 4th 527

**Overview:** The court rejected an employer's challenge to the Women's Contraception Equity Act because the Act was facially neutral towards religion and under either the rational basis or strict scrutiny test, the Act passed constitutional muster.

**HN11 -** **Religious** beliefs do not excuse compliance with otherwise valid laws regulating matters the state is free to regulate. The government may not regulate **religious** beliefs as such by compelling or punishing their affirmation. Nor may it target conduct for regulation only because it is undertaken for **religious** reasons. But the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his **religion** prescribes (or proscribes). To permit **religious** beliefs to excuse acts contrary to law would be to make the professed doctrines of **religious** belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.

**HN28 -** Strongly enhancing the state's interest is the circumstance that any exemption from the Women's Contraception Equity Act, Cal. Health & Safety Code § 1367.25 and Cal. Ins. Code § 10123.196, sacrifices the affected women's interest in receiving equitable treatment with respect to health benefits. The court is unaware of any decision in which the court, or the United States Supreme Court, has exempted a **religious** objector from the operation of a neutral, generally applicable law despite the recognition that the requested exemption would detrimentally affect the rights of third parties. Congress and the courts have been sensitive to the needs flowing from the Free Exercise Clause, but every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice **religious** beliefs. When followers of a particular sect enter into **commercial activity** as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that **activity**. The court sees no reason why a different rule should apply when a nonprofit corporation enters the general labor market. Nor are any less restrictive (or more narrowly tailored) means readily available for achieving the state's interest in eliminating gender discrimination.

**HN6 -** Whenever questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of the church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. Two reasons have been offered for deferring to **religious** authorities on **religious** questions. The first justification was that civil courts are simply incompetent to decide matters of faith and doctrine. Courts have no expertise in **religious** matters, and courts so unwise as to attempt to decide them would only involve themselves in a sea of uncertainty and doubt. The second reason was that the members of a church, by joining, implicitly consent to the church's governance in **religious** matters; for civil courts to review the church's judgments would deprive these bodies of the right of construing their own church laws, and, thus, impair the right to form voluntary **religious** organizations. This reasoning has a clear constitutional ring and the holding was compelled by the **religion** clauses of the First Amendment. The United States Supreme Court has also held that legislatures are bound by the same constitutional limitations articulated for the courts.

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136. ⚠ Johnson v. Economic Dev. Corp.

United States Court of Appeals for the Sixth Circuit | Feb 27, 2001 | 241 F.3d 501

**Overview:** Plaintiff had standing to challenge issuance of tax-exempt revenue bonds for Catholic school; however, as program did not have secular purpose and primary effect neither advanced nor inhibited religion, it did not violate Establishment clause.

**HN13 -** The United States Supreme Court has consistently rejected the argument that any and all government aid to a religiously affiliated institution violates the Establishment Clause. What the Establishment Clause prohibits is not aid to all sectarian schools, but aid to an institution in which **religion** is so pervasive that a substantial portion of its functions are subsumed in the **religious** mission or when it **funds** a specifically **religious activity** in an otherwise substantially secular setting.

**HN16 -** The Establishment Clause simply requires neutrality. The State must confine itself to secular objectives, and neither advance nor impede **religious activity**. This requirement of neutrality is expressed in the Lemon Test, which requires that (1) the challenged government practice have a secular legislative purpose; (2) its principal or primary effect neither advances nor inhibits **religion**; and (3) it does not foster an excessive government entanglement with **religion**. The Lemon test was refined by the United States Supreme Court. The first prong of the Lemon test remained the same; however, the court reformulated the excessive entanglement prong of the test to include it in the inquiry into the second prong--the primary effect test.

**HN19 -** The question whether governmental aid to **religious** schools results in governmental indoctrination is ultimately a question whether any **religious** indoctrination that occurs in those schools could reasonably be attributed to governmental action. In distinguishing between indoctrination that is attributable to the state and indoctrination that is not, the court must turn to the principle of neutrality, upholding aid that is offered to a broad range of groups or person without regard to their **religion**. If the **religious**, irreligious, and areligious are all alike eligible for governmental aid, no one would conclude that any indoctrination that any particular recipient conducts has been done at the behest of the government. If the government, seeking to further some legitimate secular purpose, offers aid on the same terms, without regard to **religion**, to all who adequately further that purpose, then it is fair to say that any aid going to a **religious** recipient only has the effect of furthering that secular purpose.

137. Christofferson v. Church of Scientology

Court of Appeals of Oregon | May 03, 1982 | 57 Ore. App. 203

**Overview:** Scientology was a religion, and an ex-Scientologist did not show that actions of separate Scientologist organizations were fraudulent or outrageous.

**HN17 -** The trial court should remove from the jury's consideration only those items which make "**purely religious**" appeals, reserving a presentation of the other **literature** for determination under instructions differentiating the secular from the **religious**.

**HN20 -** Statements made by **religious** bodies must be viewed in the light of the doctrines of that **religion**. Courts may not sift through the teachings of a **religion** and pick out individual statements for scrutiny, deciding whether each standing alone is **religious**.

**HN27 -** In the context of the Establishment Clause of U.S. Const. amend. I the characterization of the **activity** as non-**religious** is not a determinative factor. On the other hand, the characterization of beliefs as **religious** by one seeking the protection of the Free Exercise Clause of U.S. Const. amend. I is not determinative either.

138. AMERICAN FEDN. OF LABOR v. BAIN

Supreme Court of Oregon | Oct 22, 1940 | 165 Ore. 183

**Overview:** A statute that prohibited picketing and boycotting except where an employer and a majority of his employees were engaged in an actual bona fide controversy was void as in contravention of the Fourteenth Amendment.

**HN4 -** The **use of the streets** and public places, for purposes of assembly, communicating thoughts between citizens, and discussing public questions has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens.

**HN1 -** The First Amendment to the Constitution of the United States provides: Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

**HN7 -** The **streets** are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.

139. Altman v. Bedford Cent. Sch. Dist.

United States District Court for the Southern District of New York | May 21, 1999 | 45 F. Supp. 2d 368

**Overview:** School district sponsorship of liturgical Earth Day activities, supernatural charms, or student construction of images of gods or religious symbols was enjoined under the Establishment Clause of U.S. Const. amend. I.

**HN5 -** At a minimum, the Constitution guarantees that government may not coerce anyone to participate in **religion** or its exercise. Even a subtle coercive pressure by a government official to engage in **religious activity** may violate U.S. Const. amend. I. There are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.

**HN6 - Religion** in a constitutional sense is defined as follows. First, a **religion** addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a **religion** is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a **religion** often can be recognized by the presence of certain formal and external signs that include formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observance of holidays, and other similar manifestations associated with the traditional religions.

**HN7 -** The free exercise of **religion** means, first and foremost, the right to believe and profess whatever **religious** doctrine one desires. Thus, U.S. Const. amend. I obviously excludes all governmental regulation of **religious** beliefs as such. The government may not compel affirmation of **religious** belief, punish the expression of **religious** doctrines it believes to be false, impose special disabilities on the basis of **religious** views or **religious** status, or lend its power to one or the other side in controversies over **religious** authority or dogma.

140. Chandler v. James

United States District Court for the Middle District of Alabama, Northern Division | Nov 12, 1997 | 985 F. Supp. 1068

**Overview:** Commingling of private religious commemoration with school graduations was impermissible, as was excusing students from class for baccalaureate practice; such actions endorsed religion and conveyed the message that school officials favored religion.

**HN7 -** The U.S. Const. amend. I requires that states pursue a course of complete neutrality toward **religion**. State initiated or sponsored actions that utilize one type of **religious activity** over another necessarily **promote** that type of **activity** over others.

**HN6 -** The U.S. Const. amend. I clearly protects personal **religious activity** and beliefs. At the same time, it clearly prohibits state initiation or promotion of **religious activity** or beliefs. School officials are arms of the state, and must abide by the requirements of the U.S. Const. amend. I.

**HN5 -** The commingling of the private **religious** commemoration, which is understood to be that, with school graduations is impermissible. School sponsorship, including excusing students from class for baccalaureate practice, is impermissible. The primary effect of such actions is to endorse **religion** and to convey the message that school officials favor **religion**.

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141. ## Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton

Supreme Court of the United States | Jun 17, 2002 | 536 U.S. 150

**Overview:** A village ordinance, requiring canvassers to obtain a permit prior to engaging in the door-to-door advocacy of religious and political causes and to display the permit upon demand, violated the First Amendment.

**HN1 -** Hand **distribution** of **religious** tracts occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of **religion**. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.

**HN2 -** A state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit **funds** for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

**HN4 -** A requirement that one must register before he undertakes to make a public speech to enlist support for a **lawful** movement is quite incompatible with the requirements of the First Amendment.

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142. ## Prince v. Jacoby

United States Court of Appeals for the Ninth Circuit | Sep 09, 2002 | 303 F.3d 1074

**Overview:** A school district had violated the Equal Access Act and First Amendment by treating a student religious club differently than other student clubs and denying it equal access to the benefits enjoyed by other student clubs.

**HN2 -** The Equal Access Act, 20 U.S.C.S. §§ 4071-74, guarantees public secondary school students the right to participate voluntarily in extracurricular groups dedicated to **religious**, political, or philosophical expressive **activity** protected by the First Amendment when other student groups are given this right.

**HN11 -** **Religious** speech is entitled to the same First Amendment protections as non-**religious** speech.

**HN38 -** It does not violate the Establishment Clause for a public school to grant access to its facilities on a **religion**-neutral basis to a wide spectrum of student groups, including groups that use meeting rooms for sectarian activities, accompanied by some devotional exercises. This is so even where the upkeep, maintenance, and repair of the facilities attributed to those uses are paid from a student activities fund to which students are required to contribute. If the expenditure of governmental **funds** is prohibited whenever those **funds** pay for a service that is, pursuant to a **religion**-neutral program, used by a group for sectarian purposes, then Widmar, Mergens, and Lamb's Chapel would have to be overruled. Any benefit to **religion** is incidental to the government's provision of secular services for secular purposes on a **religion**-neutral basis.

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143. Lemon v. Kurtzman

United States District Court for the Eastern District of Pennsylvania | Nov 28, 1969 | 310 F. Supp. 35

**Overview:** Challengers of constitutionality of a law permitting expenditures of state funds in nonpublic schools failed to state claim under free exercise clause as they did not show the challenged law coerced them as individuals in practice of their religion.

**HN1 -** The operational scheme of the Pennsylvania Nonpublic Elementary and Secondary Education Act (Act), 24 P.S. § 5601 et seq. (Supp. 1969), permits the Superintendent of Public Instruction of the Commonwealth of Pennsylvania to enter into contracts with nonpublic schools, whether sectarian or nonsectarian, for the **purchase** of secular educational services. These secular educational services are defined to mean providing of instruction in a secular subject, while secular subject is defined as any course which is presented by the public schools of the commonwealth and shall not include any subject-matter expressing **religious** teaching, or the morals or forms of worship of any sect. All purchases of secular educational services under the Act are to be at the actual cost of three items of such service: teacher salaries, textbooks, and instructional materials.

**HN15 -** A state's interest in education may be sufficiently served by reliance on the secular teachings which accompany **religious** training in nonpublic schools. The state may aid the secular function rather than the sectarian function of private educational institutions in the public interest of education within proper confines and without participating in a forbidden involvement in **religion** proscribed by the First Amendment.

**HN17 -** Where a contested governmental **activity** is calculated to achieve non-**religious** purposes otherwise within the competence of the state, and where the **activity** does not involve the state, so significantly and directly in the realm of the sectarian as to give rise to divisive influences and inhibitions of freedom it is not forbidden by the **religious** clauses of the First Amendment.

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144. Rosenberger v. Rector & Visitors of the Univ. of Va.

Supreme Court of the United States | Jun 29, 1995 | 515 U.S. 819

**Overview:** By excluding a student publication from participating in a student activities fund solely on the basis of the publication's religious viewpoint, a state university engaged in content discrimination and violated the First Amendment.

**HN10 -** In enforcing the prohibition against laws respecting establishment of **religion**, a court must be sure that it does not inadvertently prohibit the government from extending its general state law benefits to all its citizens without regard to their **religious** belief.

**HN7 -** A State may not exercise viewpoint discrimination, even when the limited public forum is one of its own creation. The necessities of confining a forum to the limited and legitimate purposes for which it was created may justify a State in reserving it for certain groups or for the discussion of certain topics. Once it has opened a limited forum, however, a State must respect the **lawful** boundaries it has itself set. A State may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum, nor may it discriminate against speech on the basis of its viewpoint.

**HN11 -** The guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including **religious** ones, are broad and diverse.

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145. ⚠ Green Party v. Hartz Mt. Indus.

Supreme Court of New Jersey | Jun 13, 2000 | 164 N.J. 127

**Overview:** Mall accepted risk of general public invitation, and failed to show real economic costs of additional risk of party and organizer's occasional presence in exercising free speech rights was an unfair economic burden to mall.

**HN9 -** The Supreme Court of New Jersey answers the question of whether the New Jersey Constitution's guarantee of freedom of speech permits persons or groups to distribute **leaflets** at a group of suburban shopping malls. The court declines to follow cases that find no general right to freedom of speech in privately owned shopping centers. Although the ultimate purpose of shopping centers is **commercial**, their normal use is all-embracing, almost without limit, projecting a community image, serving as their own communities, encompassing practically all aspects of a downtown business district, including expressive uses and community events.

**HN21 -** Regarding the right of persons to hand out fliers and solicit signatures in support of a candidate's nomination to public office, the Supreme Judicial Court of Massachusetts describes the paramount importance of this expressive **activity**. Ballot access is of fundamental importance in our form of government because, through the ballot, the people can control their government. The difference between free speech and rights to free elections and to be a candidate equally with others is not **purely** theoretical. Ideas and views are transmitted through the press, by door-to-door distributions, or through the mail without personal contact. On the other hand, a person needing signatures for ballot access requires personal contact with voters. He or she cannot reasonably obtain them in any other way. Reasonable access to the public is essential in ballot access matters.

**HN3 -** When balancing the constitutional rights of owners of property against those of the people to enjoy freedom of press and **religion**, the court remains mindful of the fact that the latter occupy a preferred position.

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146. Evangelical Lutheran Synod v. Hoehn

Supreme Court of Missouri | Aug 01, 1946 | 355 Mo. 257

**Overview:** For city tax purposes, a church and a publisher could not hold themselves as one religious entity in order to justify the publisher's profits and then be severed so that the church could escape constitutional restrictions on owning land.

**HN1 -** Under the second sentence of Mo. Const. art. X, § 6, lots in incorporated cities or towns, to the extent of one acre, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for **religious** worship, for schools, or for purposes **purely** charitable. Mo. Rev. Stat. Ann. § 10937(6) enacts this permissive exemption into law by adopting the language of the constitutional provision and substituting the word "shall" for "may."

**HN6 -** Mo. Const. art. X, § 6 states in part that the use of tax exempt real estate should be "exclusively for **religious** worship" or for "purposes **purely** charitable," coupled with the further limitation of such permissive exemptions to one acre in cities and towns and five acres in the country, those facts show the right is granted cautiously, with the intention of confining it within narrow bounds.

**HN8 -** The plotted objective of the institution must be exclusively **religious** or **purely** charitable; and its activities must be such as integrate with its objective, that is, fit in without changing its character.

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147. EEOC (U. S. A.) v. Pacific Press Pub. Asso.

United States District Court for the Northern District of California | Dec 28, 1979 | 482 F. Supp. 1291

**Overview:** Under Title VII of Civil Rights Act, employer affiliated with church could have exercised only preference for co-religionists. Title VII granted jurisdiction to EEOC over charges of sex discrimination arising from employer-employee relationship.

**HN2 -** A **religious** order in recognition of the tenets of the faith of its church can establish whatever restrictions it desires with regard to employment in that order, be they based on race, color, sex or national origin, regardless of whether its products are marketed commercially. If they are **sold** commercially, the order may be subject to other government regulations; however, the mere **commercial** sale does not subject the order to government restrictions with regard to its employer-employee relationship.

**HN3 -** **Religious** organizations are permitted to discriminate on the basis of **religion** in hiring for all and not just **religious** activities.

**HN6 -** A state's child-labor law may take precedence over the right of a child to exercise his **religion** by selling **religious literature**. The refusal to comply with the Equal Pay Act may not be justified on **religious** grounds, nor may the failure to comply with the federal minimum wage law, or the refusal to pay federal income taxes. Such regulation of conduct will be countenanced if it impinges on free exercise freedoms only when the government demonstrates a compelling state interest which outweighs the inhibition of the religiously based conduct.

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148. Chula Vista v. Pagard

Court of Appeal of California,fourth Appellate District, Division One | Oct 11, 1979 | 97 Cal. App. 3d 627

**Overview:** A residential zoning ordinance rationally served a legitimate societal function and did not unconstitutionally impinge upon the religious freedoms of a group who lived in communal households as a part of their religious beliefs.

**HN15 -** A legislative body may regulate conduct for the protection of society, and insofar as their regulations are directed towards a proper end and are not unreasonably discriminatory, they may indirectly affect **religious activity** without infringing the constitutional guarantee. The constitutional protection of **religious** freedom, while it insures **religious** equality, on the other hand does not provide immunity from compliance with reasonable civil requirements imposed by a city. The individual cannot be permitted, on **religious** grounds, to be the judge of his duty to obey the regulatory laws enacted by a city in the interests of the public welfare. The **mere fact** that such a claim of immunity is asserted because of **religious** convictions is not sufficient to establish its constitutional validity.

**HN6 -** Cal. Const. art. I, § 4 provides that the free exercise and enjoyment of **religious** profession and worship is guaranteed without discrimination or preference. There is no shadow of doubt but that freedom of **religion** is protected by U.S. Const. amend. I. It is also among the fundamental liberties protected by the due process clause of U.S. Const. amend. XIV from impairment by the state. Freedom of **religion** is a basic right. It occupies a preferred position among the constitutional rights of an individual.

**HN7 -** The provisions of U. S. Const. amend. I prohibiting any abridgment of **religious** freedom and prohibiting all laws respecting an establishment of **religion** are to be broadly interpreted. The overall purpose of the provision of U. S. Const. amend. I respecting freedom of **religion** is to insure that no **religion** is sponsored or favored, none commanded, none inhibited. Thus the Constitution assures a generous immunity to the individual from imposition of penalties for offending in the course of his own **religious** activities the **religious** views of others, whether they are a minority or of those who are dominant in government or society.

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149. Al Ghashiyah v. Dep't of Corr.

United States District Court for the Eastern District of Wisconsin | Mar 04, 2003 | 250 F. Supp. 2d 1016

**Overview:** That portion of RLUIPA that applied to inmates was unconstitutional where its primary effect was to advance religion and foster an excessive entanglement of government with religion; as such, the inmate's RLUIPA claim was dismissed.

**HN18 -** The **mere fact** that government acts to remove barriers to the free exercise of **religion** does not mean that the statute does not have impermissible effects. In deciding whether a governmental action constitutes permissible discretionary accommodation under the Establishment Clause, there are a number of factors to consider, including: (1) the extent to which the governmentally created exemption is extended to nonreligious persons or institutions, and not simply to **religious** ones; (2) the magnitude of the resulting burden placed on non-beneficiaries, and the extent to which permitting the accommodation might induce, rather than simply facilitate, **religious** belief or practice; and (3) the substantiality of the free exercise burden removed due to the exemption. Analysis of these factors leads ineluctably to the conclusion that in enacting 42 U.S.C.S. § 2000cc-1 of the **Religious** Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.S. § 2000cc-1 et seq., Congress elevated **religion** to the status of congressionally preferred **activity**, in violation of the Establishment Clause.

**HN22 -** Absent the most unusual circumstances, one's **religion** ought not affect one's legal rights or duties or benefits. But under 42 U.S.C.S. § 2000cc-1 of the **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc-1 et seq., one's **religion** does affect one's rights and benefits. The RLUIPA compelling state interest test privileges **religious** inmates by giving them an ill-defined and potentially sweeping right to claim exemption from generally applicable laws, while comparably serious secular commitments receive no such legal solicitude.

**HN35 -** Under 42 U.S.C.S. § 2000cc-1 of the **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc-1 et seq., prison officials are placed in the business of counting the number of trinkets in each inmate's cell, dividing them into **religious** and non-**religious** stacks, then subtracting the surplus from the secular pile. While RLUIPA forces prison administrators and courts to make distinctions between **religious** and secular property, recall that the **religious** item need not even be central to the inmate's system of **religious** belief. 42 U.S.C.S. § 2000cc-5(7)(A). Moreover, the prison official must, as an initial matter, determine whether the inmate practices a **religion**, entitling him to heightened protection. The legal test for determining what is a **religion** looks primarily to the subjective views of the individual seeking protection. Therefore, if the inmate holds a sincere belief that occupies the same place in his life as an orthodox belief in God, id., the prison official must pause before treating that inmate like any other.

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150. Greater Bible Way Temple v. City of Jackson

Supreme Court of Michigan | Jun 27, 2007 | 478 Mich. 373

**Overview:** Church sought to build apartment complex across from church property, which was surrounded by single family residences. City did not violate Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.S. § 2000cc et seq., because city did not coerce church to act in a way contrary to church's religious beliefs.

**HN9 -** "**Religious** exercise" is defined as any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief. 42 U.S.C.S. § 2000cc-5(7)(A). The **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc et seq., specifically provides that the

use, building, or conversion of real property for the purpose of **religious** exercise shall be considered to be **religious** exercise of the person or entity that uses or intends to use the property for that purpose. 42 U.S.C.S. § 2000cc-5(7)(B). A plaintiff asserting a RLUIPA violation has the burden of presenting prima facie evidence to support the assertion. 42 U.S.C.S. § 2000cc-2(b). That is a plaintiff has the burden to prove that RLUIPA is applicable and that the government has implemented a land use regulation that imposes a substantial burden on the exercise of **religion**. Once the plaintiff has proven this, the burden shifts to the government to prove that the imposition of such burden is in furtherance of a compelling governmental interest and constitutes the least restrictive means of furthering that interest. As the United States Supreme Court has explained, RLUIPA is a congressional effort to accord **religious** exercise heightened protection from government-imposed burdens, consistent with the supreme court's precedents.

**HN16 -** "**Religious** exercise" is defined as "any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief." 42 U.S.C.S. § 2000cc-5(7)(A). The **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc et seq. specifically provides that the use, building, or conversion of real property for the purpose of **religious** exercise shall be considered to be **religious** exercise of the person or entity that uses or intends to use the property for that purpose. 42 U.S.C.S. § 2000cc-5(7)(B). A "**religious** exercise" consists of a specific type of exercise, an exercise of **religion**, and this is not the equivalent of an exercise-- any exercise-- by a **religious** body. The term "**religion**" has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. The exercise of **religion** often involves not only belief and profession but the performance of physical acts such as assembling with others for a worship service or participating in sacramental use of everence for his being and character, and of obedience to his will.

**HN38 -** **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc et seq. applies to burdens imposed by governmental bodies on "**religious** exercises" in the course of implementing land use regulations under which "individualized assessments" may be made of the proposed uses for the land. An "individualized assessment" is an assessment based on one's particular or specific circumstances. A decision concerning a request to rezone property does not involve an "individualized assessment." A "**religious** exercise" constitutes "any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief." 42 USC 2000cc-5(7)(A). However, something does not become a "**religious** exercise" just because it is carried out by a **religious** institution. A "substantial burden" on one's "**religious** exercise" exists where there is governmental action that coerces one into acting contrary to one's **religious** beliefs by way of doing something that one's **religion** prohibits or refraining from doing something that one's **religion** requires. A mere inconvenience or irritation does not constitute a "substantial burden"; similarly, something that simply makes it more difficult in some respect to practice one's **religion** does not constitute a "substantial burden."

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151. Americans United for Separation of Church & State v. Bubb

United States District Court for the District of Kansas | Feb 27, 1974 | 379 F. Supp. 872

**Overview:** Despite a taxpayers association's arguments, a tuition grant program for students at church-related colleges was not unconstitutional; however, state officials were enjoined from granting eligibility to colleges with primarily sectarian missions.

**HN33 -** Since **religious** indoctrination is not a substantial purpose or **activity** of church-related colleges and universities, there is less likelihood than in primary and secondary schools that **religion** will permeate the area of secular education.

**HN14 -** The "establishment of **religion**" clause of the First Amendment means at least this: neither a state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any **religion**. No person can be punished for entertaining or professing **religious** beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any **religious** organizations or groups and vice versa.

**HN20 -** Church-related colleges do not operate for sectarian purposes if they: (1) operate with some small degree of denominational influence; (2) are governed to some extent by members of the sponsoring church; (3) receive minimal financial assistance from the church and in some instances are owned by the church; (4) impose no **religious** qualifications on the hiring of faculty members; (5) impose no **religious** restrictions on the admission of students; (6) offer a high degree of academic freedom to both the faculty and the students; (7) do not offer sectarian **religion** courses in their curriculum; and (8) allow students to voluntarily participate in **religious** activities.

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152. Freedom from Religion Found., Inc. v. Obama

United States District Court for the Western District of Wisconsin | Apr 15, 2010 | 705 F. Supp. 2d 1039

**Overview:** Statute creating the National Day of Prayer, 36 U.S.C.S. § 119, violated the Establishment Clause of the First Amendment because it went beyond mere acknowledgment of religion as its sole purpose was to encourage all citizens to engage in prayer, an inherently religious exercise that served no secular function in that context.

**HN27 -** The suggestion that government may establish an official or **civic religion** as a means of avoiding the establishment of a **religion** with more specific creeds is a contradiction that cannot be accepted. Nor does it solve the problem to say that the state should **promote** a "diversity" of **religious** views; that position would necessarily compel the government and, inevitably, the courts to make wholly inappropriate judgments about the number of religions the state should sponsor and the relative frequency with which it should sponsor each.

**HN4 -** **Religious** freedom under the First Amendment contains two components, the right to practice one's **religion** without undue interference under the Free Exercise Clause and the right to be free from disfavor or disparagement on account of **religion** under the Establishment Clause. All three branches of government engage in a constant struggle to balance these competing rights, to protect **religious** freedom without denigrating any particular **religious** viewpoint. While the two Clauses express complementary values, they often exert conflicting pressures.

**HN16 -** Government may not **promote** one **religion** or **religious** theory against another or even against the militant opposite.

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153. Roman Catholic Diocese v. Morrison

Supreme Court of Mississippi | May 05, 2005 | 905 So. 2d 1213

**Overview:** First Amendment did not shield church administration from civil claims of sexual abuse by priests because there was nothing religious about such reprehensible conduct and plaintiffs' claim of negligent hiring, retention and supervision of priest was simply a negligence claim.

**HN5 -** Lemon is the current guidance for application of the Establishment Clause to claims of governmental intrusion into **religious** territory. Lemon provides a three-pronged test for governmental restrictions on **religious activity**. To test negative for an Establishment Clause violation, the governmental action must (1) have a secular purpose; (2) not have the primary effect of enhancing or inhibiting **religion**; and (3) avoid excessive entanglement with **religion**. As to the "excessive entanglement" prong of the Lemon test, courts are provided yet another test to determine when entanglement becomes excessive; that is, they are instructed to examine the character and purposes of the institutions that are benefitted, the nature of the aid that the state provides, and the resulting relationship between the government and the **religious** authority.

**HN17 -** A church may not hide behind the first amendment when perpetrating fraud upon the public or its members. In resolving intrachurch disputes the State will become entangled in essentially **religious** controversies however such considerations are not applicable to **purely** secular disputes between third parties and a particular defendant, albeit a **religious** affiliated organization, in which fraud, breach of contract, and statutory violations are alleged. The right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes conduct that his **religion** prescribes. Laws are made for the government of actions, and while they cannot interfere with mere **religious** belief and opinions, they may with practices.

**HN4 -** The Establishment Clause prohibits government action which tends to endorse, favor or in some manner **promote religion**. The Establishment Clause of the First Amendment, applied to the states through the Fourteenth Amendment, prevents a State from enacting laws that have the "purpose" or "effect" of advancing or inhibiting **religion**.

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154. State v. Solomon

Supreme Court of South Carolina | Apr 12, 1965 | 245 S.C. 550

**Overview:** Statute prohibiting operation of business on Sunday did not violate defendant's First Amendment rights respecting the establishment or free exercise of religion because its effect was not to aid religion but to set aside uniform day of rest.

**HN26 -** Under S.C. Code Ann. § 64-2 (1962), work is permitted on Sunday if it is a work of necessity or charity and, in the case of a merchant, any sale made in connection therewith is **lawful** if the items **sold** are necessary to the performance of such work. The enumeration in the statute of certain work that might be performed and specific items which may be **sold** on Sunday is a legislative declaration that such work and sales, in any event should be considered necessary. So, a proper construction of § 64-2 permits one to operate his **commercial** establishment on Sunday (1) if the only items **sold** or offered for sale are specifically permitted by the statute; or (2), if not enumerated in the statute, the items **sold** or offered for sale constitute a part of a work of necessity or charity.

**HN2 -** S.C. Code Ann. § 64-2.1 (1962) states: S.C. Code Ann. § 64-2 (1962) shall not apply to the following: The operation of radio or television stations nor to the publication and **distribution** of newspapers, nor to the sale of newspapers, **books** and magazines; nor to the sale or delivery of heating, cooling, refrigerating or motor fuels, oils or gases or the installation of repair parts or accessories for immediate use in connection with motor vehicles, boats, aircrafts or heating, cooling or refrigerating systems; nor to transportation by air, land or water of persons or property; nor to public utilities or sales usual or incidental thereto; nor to the operation of public lodging or eating places, including food caterers, nor to the sale of emergency food needs at open air markets and grocery stores that do not employ more than three persons including the owners or proprietors at any one time; nor to the sale of drugs, medicines, surgical or medical aids, supplies and equipment, or to the sale of cosmetics, toilet articles, or personal health or hygiene supplies and aids; nor to the sale of flowers, plants, seeds and shrubs; nor to the sale of prepared tobaccos, soft drinks, confections, ice cream, ices, novelties, souvenirs, fish bait or swimwear, nor to any farming operations necessary for the preservation of agricultural commodities.

**HN14 -** S.C. Code Ann. § 64-2.4 (1962) in no way affects or changes the secular purpose of S.C. Code Ann. § 64-2 (1962). There is no penalty provided for its violation, and it does not require or prohibit church attendance. The provision simply attempts to afford to employees who work in certain **lawful** businesses on Sunday the opportunity, if they so desire, to attend church services. This certainly abridges no right of a defendant to the free exercise of his **religious** beliefs.

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155. Conley v. Jackson Twp. Trs.

United States District Court for the Northern District of Ohio | Apr 14, 2005 | 376 F. Supp. 2d 776

**Overview:** The taxpayer failed to show that any of the town's aid to the town's Young Men's Christian Association, which was not a pervasively sectarian institution, was used for specifically religious activities. Thus, the town's donations of money and office space did not violate the Establishment Clause of the First Amendment.

**HN8 -** The issues of the **religious** nature of the institution and whether any aid flows to the **religious** side of the institution are critical to whether government aid has the primary effect of advancing **religion** in violation of the Establishment Clause of the First Amendment. In determining that particular grants of aid did not have the primary effect of advancing **religion**, the United States Supreme Court has considered whether the aid flowed: (1) to an institution in which **religion** is so pervasive that a substantial portion of its functions are subsumed in the **religious** mission; or (2) to a specifically **religious activity** in an otherwise substantially secular setting.

**HN5 -** In its attempts to decipher the boundaries of government aid to **religious** institutions, the United States Supreme Court, relying on the cumulative precedent developed over many years, has announced a three-pronged test that has since been the foundation of analysis in any Establishment Clause case: (1) the government **activity** must have a secular purpose; (2) the primary effect of the **activity** must neither advance nor inhibit **religion**; and (3) the **activity** must not foster an excessive government entanglement with **religion**. The Court has reformulated the test by consolidating the entanglement and effect inquiries. That made sense because both inquiries rely on the same evidence. The entanglement prong became one of three factors relevant to the effect prong. The effect prong required that government aid: (1) not result in government indoctrination; (2) not define its recipients by reference to **religion**; and (3) not foster an excessive government entanglement with **religion**.

**HN6 -** In analyzing the purpose prong of the analysis in any Establishment Clause case, courts look to the legislative purpose of the statutory aid program that authorizes the aid in question. In analyzing the three factors of the effect prong, courts look to the statutory scheme of the authorizing aid program. Government indoctrination does not occur if the government, seeking to further some legitimate secular purpose, offers aid on the same terms, without regard to **religion**, to all who adequately further that purpose. Courts will examine whether the aid program has neutral criteria and whether the aid is actually disbursed according to such neutral criteria. The second factor of the effect prong, whether the aid program defines its recipients by **religion**, requires an examination of the same evidence as the first factor. The court must determine whether the criteria for allocating the aid create a financial incentive to undertake **religious** indoctrination. That inquiry examines whether the aid program provides some financial incentive for the recipient to use the aid at or for a **religious** institution. Finally, the entanglement factor of the effect prong requires an analysis of: (1) the character and purposes of the institutions that are benefited; (2) the nature of the aid that the state provides; and (3) the resulting relationship between the government and **religious** authority.

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156. ⚠ Muhammad v. City of New York Dep't of Corr.

United States District Court for the Southern District of New York | Oct 16, 1995 | 904 F. Supp. 161

**Overview:** A prisoner, a member of the Nation of Islam, was not entitled because he failed to show that the free exercise of his religion had been substantially burdened where numerous religious services and accommodations for Muslim inmates were provided.

**HN1 -** The **Religious** Freedom Restoration Act of 1993 provides that governmental action should not substantially burden the free exercise of **religion** unless it advances a compelling governmental interest.

**HN6 -** Under **Religious** Freedom Restoration Act of 1993, the threshold issue is whether a plaintiff's exercise of **religion** has been laden with a "substantial burden."

**HN7 -** In order to establish that a plaintiff's exercise was substantially burdened, a plaintiff must demonstrate that the government's action pressures him to commit an act forbidden by his **religion** or prevents him from engaging in conduct or having a **religious** experience mandated by his faith. In addition, this interference must be more than an inconvenience; the burden must be substantial and an interference with a tenet or belief that is central to **religious** doctrine.

157. Hall v. Commonwealth

Supreme Court of Virginia | Sep 08, 1948 | 188 Va. 72

**Overview:** Restriction of entry into the hallways of an apartment building for the purpose of distributing religious leaflets did not violate constitutional rights when each tenant had the authority to allow the circulation on their respective premises.

**HN2 -** U.S. Const. amend. XIV prohibits any state or municipality from imposing a license tax as a condition to the free **distribution** or sale of **religious** tracts, pamphlets, or **books** upon the highways, **streets**, sidewalks, or other public places.

**HN3 -** The inner hallways of apartment houses are not to be regarded in the same light as public roads, **streets** or highways, even when the naked fee of the latter is privately owned.

158. Roman Catholic Archbishop of Wash. v. Sebelius

United States District Court for the District of Columbia | Dec 20, 2013 | 19 F. Supp. 3d 48

**Overview:** Contraceptive mandate in Affordable Care Act did not place substantial burden on religious organizations' exercise of religion because, under regulatory accommodation, such organizations were relieved of obligation to themselves be the vehicle by which contraceptive coverage was delivered; therefore, organizations could not sustain RFRA claim.

**HN9 -** The **Religious** Freedom Restoration Act (RFRA) provides that the government shall not substantially burden a person's exercise of **religion** unless it can demonstrate 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. 42 U.S.C.S. § 2000bb-1(a)-(b). The prohibition applies even if the burden results from a rule of general applicability. 42 U.S.C.S. § 2000bb-1(a). To successfully mount a RFRA challenge and subject government action to strict scrutiny, a plaintiff must meet the initial burden of establishing that the government has substantially burdened his **religious** exercise. Only if that predicate has been established will the onus then shift to the government to show that the law or regulation is the least restrictive means to further a compelling interest. 42 U.S.C.S. §§ 2000bb-1(b), 2000bb-2(3).

**HN10 -** Congress expressly stated in the findings and declaration of purpose section of the statute, the **Religious** Freedom Restoration Act (RFRA), 42 U.S.C.S. § 2000bb et seq., was enacted to restore the compelling interest test as set forth in Sherbert v. Verner and to guarantee its application in all cases where free exercise of **religion** is substantially burdened. 42 U.S.C.S. § 2000bb(b)(1).

**HN11 -** A plaintiff cannot satisfy his burden under the **Religious** Freedom Restoration Act (RFRA), 42 U.S.C.S. § 2000bb et seq., if the government regulation requires a third party, and not the plaintiff, to act in a way that violates the plaintiff's **religious** beliefs.

159. Brady v. Reiner

Supreme Court of Appeals of West Virginia | Jul 31, 1973 | 157 W. Va. 10

**Overview:** Upon separation from membership in a church, a person could not take church property with him, since such property, in the absence of agreement, remained under the jurisdiction and control of the church.

**HN14 -** Any form of interference with **religion** by a state is a denial of **religious** liberty protected by the First Amendment as applied to the states by the Fourteenth Amendment.

**HN16 -** W. Va. Const. art. III, § 15 provides: No man must be compelled to frequent or support any **religious** worship, place or ministry whatsoever; nor must any man be enforced, restrained, molested or burthened, in his body or goods, or otherwise suffer, on account of his **religious** opinions or belief, but all men must be free to profess, and by argument, to maintain their opinions in matters of **religion**; and the same must, in no wise, affect, diminish or enlarge their civil capacities; and the legislature must not prescribe any **religious** test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any **religious** society, or the people of any district within this state, to levy on themselves, or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry, but it must be left free for every person to select his **religious** instructor, and to make for his support, such private contract as he pleases.

**HN21 -** W. Va. Code § 35-1-4 provides inter alia: No conveyance in excess of 4 acres in a municipality or 60 acres in unincorporated areas within the state, made to any church, **religious** sect, society, denomination, or to any individual church, or to the trustee or trustees for either, must fail or be declared void for insufficient dedication of the beneficiaries in, or the objects of, any trust annexed to such conveyance, in any case where **lawful** trustees are in existence or capable of being appointed. Under these circumstances the statute declares such conveyances to be valid.

160. Bennett v. Livermore Unified Sch. Dist.

Court of Appeal of California, First Appellate District, Division One | Jul 24, 1987 | 193 Cal. App. 3d 1012

**Overview:** Trial court's declaration that inclusion of a religious invocation in defendant school district's high school graduation ceremonies was unconstitutional, under both state and federal constitutions, was proper under the three-part Lemon test.

**HN13 -** California's constitution does not permit the use of high school facilities as a meeting place for student **religious** activities. Such a use would both result in both state financing of **religion**, in the form of providing space, heat and light for the meetings, and in impermissibly placing the state's imprimatur upon the **religious activity**.

**HN4 -** California's constitutional provisions are more comprehensive than those of the federal constitution, and particularly so in the area of involvement of **religion** in schools. Thus, Cal. Const. art. XVI, § 5, in providing that neither the legislature, nor any county, city and county, township, school district, or other

municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any **religious** sect, church, creed, or sectarian purpose to help or to support or sustain any school, college, university, forbids more than the appropriation or payment of public **funds** to support sectarian institutions. It bans any official involvement, whatever its form, which has the direct, immediate, and substantial effect of promoting **religious** purposes.

**HN12 -** U.S. Const. amend. I is not construed so as to prohibit a secular **activity** merely because it contains some language of **religion** or has its roots in what was once a **religious** practice. Consequently a three-part test has been developed against which, and taking into consideration the strong construction given U.S. Const. amend. I, an avowedly secular **activity** must be measured in order to withstand U.S. Const. amend. I scrutiny: first, the state action must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits **religion**, and third, the statute must not foster an excessive entanglement with **religion**. Moreover, if a state action violates any of those three principles, it must be struck down under the Establishment Clause. California, too, has adopted the three-part test.

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161. Demmon v. Loudoun County Pub. Schs

United States District Court for the Eastern District of Virginia, Alexandria Division | Oct 15, 2004 | 342 F. Supp. 2d 474

**Overview:** Neutral policy allowing students or family members to choose religious symbols to be inscribed in bricks in a fund-raiser walkway would not offend the Establishment Clause, but rather was required by it, once the school opened up a public forum.

**HN16 -** A school may not deny benefits to a group solely on account of their **religious** viewpoint. Whether that benefit is access to school facilities open to the public or paying for the cost of printing a journal, school policy must be neutral. Put another way, the school must choose who speaks based on criteria that do not involve **religion**. The school need not open its facilities up to private speech; but once it does allow for expressive **activity**, it may not discriminate against those speakers who express a **religious** viewpoint on an otherwise permissible topic.

**HN9 -** The three recognized types of fora are the traditional public forum, the nonpublic forum, and the designated or limited public forum. The first category of government property, the traditional public forum, is a place that by long tradition or by government fiat has been devoted to assembly and debate. The government may not prohibit all expressive **activity** in a traditional public forum, and content-based restrictions on speech are valid only if they are narrowly tailored to serve a compelling state interest. The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. The classic public fora are public parks, **streets**, or meeting halls. The second category of government property, the nonpublic forum, is not open by tradition or designation to the public for expressive **activity**. The government can restrict access to a nonpublic forum as long as the restrictions are reasonable and are not an effort to suppress expression merely because public officials oppose the speaker's view. Control over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.

**HN21 -** In applying the purpose test, it is appropriate to ask whether government's actual purpose is to endorse or disapprove of **religion**. The United States Supreme Court will, generally, only invalidate a statute when it concludes that the statute or action was motivated wholly by **religious** considerations. The secular purpose requirement presents a fairly low hurdle for the state.

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162. State v. Cox

Supreme Court of New Hampshire | Jun 20, 1940 | 91 N.H. 137

**Overview:** A state licensing act requiring that applications be made and approved before marches on public streets could be conducted was constitutional, so defendants who violated act by failing to apply for a license before marching were properly convicted.

**HN8 -** Application for a permit gives the public authorities notice in advance of any parade or procession for which license may be granted, thus giving opportunity for its proper policing. And a license, in fixing the time and place of a parade or procession, serves to prevent confusion by overlapping parades or processions, to secure convenient **use of the streets** by other travelers, and to minimize the risk of disorder.

**HN10 -** N.H. Pub. Law ch. 145, § 2 prescribes no measures for controlling or suppressing the publication on the highways of facts and opinions, either by speech or by writing. Communication by the **distribution** of **literature** or by the display of placards and signs is in no respect regulated by it. The regulation, in respect to highways, is only of parades and processions in their generality. Freedom of publication by speech or writing is under no restraint. Section 2 is applicable only to organized formations of persons using the highways.

**HN20 -** Conscientious scruples have not, in the course of the long struggle for **religious** toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of **religious** beliefs. It would seem a play of imagination to find in N.H. Pub. Laws ch. 45, § 2 any purpose to restrain the freedom of **religion**, or its exercise through speech or writing.

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163. Sch. Dist. of Abington Twp. v. Schempp

Supreme Court of the United States | Jun 17, 1963 | 374 U.S. 203

**Overview:** Reading from the bible, reciting the Lord's Prayer, and the laws that required such religious activities in public schools were found to be unconstitutional under the First Amendment, as applied to the states through the Fourteenth Amendment.

**HN7 -** Although the Establishment Clause and the Free Exercise Clause may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon **religious** freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official **religion** whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course,

that laws officially prescribing a particular form of **religious** worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular **religious** belief, the indirect coercive pressure upon **religious** minorities to conform to the prevailing officially approved **religion** is plain.

**HN9 -** The Free Exercise Clause withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of **religion**. Its purpose is to secure **religious** liberty in the individual by prohibiting any invasions thereof by civil authority. Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his **religion**.

**HN1 -** The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of **religion** or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws.

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164. Equal Opportunity Empl. Comm'n v. United Health Programs of Am., Inc.

United States District Court for the Eastern District of New York | Sep 30, 2016 | 213 F. Supp. 3d 377

**Overview:** EEOC was entitled to summary judgment on the discrete issue of whether the Onionhead program used by the employers in the workplace constituted a religion because there was sufficient evidence that the developer of the program and the employers held sincere beliefs regarding Onionhead, and the nature of the beliefs qualified as religious.

**HN2 -** Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees on the basis of **religion**. 42 U.S.C.S. § 2000e-2(a)(1) provides that it shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's **religion**. Title VII has been interpreted to protect against requirements of **religious** conformity and as such protects those who refuse to hold, as well as those who hold, specific **religious** beliefs. Title VII also prohibits employers from retaliating against employees for engaging in protected **activity**. 42 U.S.C.S. § 2000e-3(a) provides that it shall be an unlawful employment practice for an employer to discriminate against any of his employees because he has opposed any practice made an unlawful employment practice by this subchapter.

**HN4 -** Title VII of the Civil Rights Act of 1964 provides that the term "**religion**" includes all aspects of **religious** observance and practice. 42 U.S.C.S. § 2000e(j). Equal Opportunity Employment Commission guidelines further define **religious** practices to include **moral** or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional **religious** views. The fact that no **religious** group espouses such beliefs or the fact that the **religious** group to which the individual professes to belong may not accept such belief will not determine whether the belief is a **religious** belief of the employee or prospective employee. 29 C.F.R. § 1605.1. The Equal Opportunity Employment Commission adopted its expansive definition of **religion** based on two Supreme Court decisions, which defined **religion** broadly for purposes of addressing conscientious-objector provisions to the selective service law.

**HN3 -** Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating on the basis of **religion**. 42 U.S.C.S. § 2000e-2(a)(1). Aside from protecting employees from discrimination on the basis of their **religion**, Title VII also protects employees from discrimination because they do not share their employer's **religious** beliefs. A **religious** discrimination claim premised on an employer's preference for a particular **religious** group is often referred to as a reverse **religious** discrimination claim.

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165. ## Fifth Ave. Presbyterian Church v. City of New York

United States District Court for the Southern District of New York | Oct 28, 2004 | 2004 U.S. Dist. LEXIS 22185

**Overview:** City was enjoined from dispersing or arresting homeless persons sleeping on a church's staircases because the church was exercising sincerely held religious beliefs by allowing the practice and the city's actions were overbroad and unjustified.

**HN3 -** The Free Exercise Clause of the First Amendment, which has been applied to the states through the Fourteenth Amendment, provides that Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof. Government enforcement of laws or policies that substantially burden the exercise of sincerely held **religious** beliefs is subject to strict scrutiny. To satisfy the commands of the First Amendment, a law restrictive of **religious** practice must advance interests of the highest order and must be narrowly tailored in **pursuit** of those interests. Where the government seeks to enforce a law that is neutral and of general applicability, however, then it need only demonstrate a rational basis for its enforcement, even if enforcement of the law incidentally burdens **religious** practices.

**HN6 -** According to the directive of the U.S. Court of Appeals for the Second Circuit, demonstrating substantial burden upon the exercise of sincerely held **religious** beliefs is not a particularly onerous task. A limited judicial inquiry is necessary because it respects the danger of undue judicial involvement in **religious activity**. Thus, by necessity, a court's scrutiny extends only to whether a claimant sincerely holds a particular belief and whether the belief is **religious** in nature. An inquiry any more intrusive would be inconsistent with the nation's fundamental commitment to individual **religious** freedom.

**HN10 -** Government actions are underinclusive, and thus not generally applicable, when, though intended to advance legitimate interests, they result in disparate treatment of **religious activity** by failing to prohibit nonreligious conduct that endangers these interests in a similar or greater degree.

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166. ## Daugherty v. Vanguard Charter Sch. Academy

United States District Court for the Western District of Michigan, Southern Division | Sep 25, 2000 | 116 F. Supp. 2d 897

**Overview:** Court found no violation of the Establishment Clause; plaintiffs presented no more than a mere scintilla of evidence to support a finding that any constitutionally impermissible conduct occurred pursuant to defendants' policies or customs.

**HN10 -** The **Religion** Clauses of U.S. Const. amend. I prevent the government from making any law respecting the establishment of **religion** or prohibiting the free exercise thereof. By no means do these commands impose a prohibition on all **religious activity** in our public schools. Indeed, the common purpose of the **Religion** Clauses is to secure **religious** liberty.

**HN15 -** Teachers do not shed their constitutional rights at the schoolhouse gate. Granted, the rights of teachers in the public schools are not automatically coextensive with the rights of adults in other settings. Generally, however, protected conduct that is not part of the school curriculum or school-sponsored activities may not be restricted unless (1) it would materially and substantially interfere with operation of the school; or (2) in the case of **religious activity**, students, parents and members of the public might reasonably perceive the **activity** to bear the imprimatur of the school.

**HN12 -** Under Lemon, a government-sponsored **activity** will be deemed not to violate the Establishment Clause if: (1) it has a secular purpose, (2) its principal or primary effect neither advances nor inhibits **religion**, and (3) it does not create an excessive entanglement of the government with **religion**. If a challenged practice fails to satisfy any part of this test, it will be deemed to violate the Establishment Clause.

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167. ⚠ People v. Uffindell

Appellate Department, Superior Court of California, San Diego | Feb 01, 1949 | 90 Cal. App. 2d Supp. 881

**Overview:** A defendant was properly convicted of depositing advertising materials on parked cars in violation of a city ordinance, as the activity was not protected by freedom of the press because it was purely commercial.

**HN1 -** One who bases his defense upon the right of freedom of the press is in a preferred position before the courts. That right is one of the four important guarantees of the First Amendment of the federal constitution, and along with freedom of speech, freedom of **religious** belief, and freedom of assembly, controls, through the Fourteenth Amendment, states and their political subdivisions. When such a claim of right is set up to justify the violation of a municipal ordinance that regulates the **use of the streets** in the interests of the movement of people and property, the regulation will be carefully examined to insure that the restraint of freedom is reasonable in the interests of the general welfare and the convenience of the public. These considerations have led the courts to hold that a police regulation, though presumptively valid, will fall if it seeks to prevent the **distribution** in an orderly manner to willing recipients of **handbills** publicizing ideas and opinions, or meetings where matters of **religion**, politics, laws or social questions are to be discussed. When a **distribution**, however, is to advertise a private business conducted for profit, unconnected with the stated freedoms of the First Amendment, the rule is otherwise.

**HN2 -** The freedom of press guaranteed by the First Amendment of the federal constitution, and made applicable to the states by the Fourteenth Amendment, has no application to the **distribution** of **handbills** on the **streets** for **purely commercial** advertising. When the claim is made under Cal. Const. art. I, § 9 the rule as regards **purely commercial** advertising is the same.

**HN3 -** Cal. Const. art. XI, § 11 delegates directly to inferior governmental agencies the police power in their respective localities and that the power so delegated is as broad as that of the legislature itself

provided only that its exercise by any city must be confined to such city and must not conflict with the general laws. This power carries with it the duty that may not be delegated or impaired, to regulate and control the use of the city **streets** for the primary purpose to which they are dedicated, which is to keep such thoroughfares open for the movement of people and property. Hence if an ordinance in question comes within the class of a proper legislative purpose then the court is required to uphold the ordinance unless it is adjudged arbitrary or discriminatory or unduly burdensome or unreasonable.

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168. Trinity Lutheran Church of Columbia, Inc. v. Pauley

United States District Court for the Western District of Missouri, Central Division | Sep 26, 2013 | 976 F. Supp. 2d 1137

**Overview:** In a suit by a religious day care challenging the denial of its grant to purchase recycled tires to resurface its playground, a policy prohibiting organizations from participating if the applicant was owned or controlled by a church was consistent with Mo. Const. art. 1, § 7 because a church used the day care to inculcate its religious beliefs.

**HN4 -** There is a long tradition of Missouri state courts recognizing a high wall of separation between church and state based on the state constitution. The Missouri Supreme Court has long interpreted the State's constitution to be more restrictive than the First Amendment to the United States Constitution in prohibiting expenditures of public **funds** in a manner tending to erode an absolute separation of church and state. Missouri has an unqualified policy that no public **funds** or properties, either directly or indirectly, be used to support or sustain any school affected by **religious** influences or teachings or by any sectarian or **religious** beliefs or conducted in such a manner as to influence or predispose a school child towards the acceptance of any particular **religion** or **religious** beliefs.

**HN10 -** The U.S. Supreme Court has upheld the provision of government grants to sectarian colleges and universities for the construction of buildings, provided that the buildings were used exclusively for secular purposes. There are generally significant differences between the **religious** aspects of church-related institutions of higher learning and parochial elementary and secondary schools. The affirmative if not dominant policy of the instruction in pre-college church schools is to assure future adherents to a particular faith by having control of their total education at an early age. There is substance to the contention that college students are less impressionable and less susceptible to **religious** indoctrination. Furthermore, by their very nature, college and postgraduate courses tend to limit the opportunities for sectarian influence by virtue of their own internal disciplines. Many church-related colleges and universities are characterized by a high degree of academic freedom and seek to evoke free and critical responses from their students. Since **religious** indoctrination is not a substantial purpose or **activity** of these church-related colleges and universities, there is less likelihood than in primary and secondary schools that **religion** will permeate the area of secular education. This reduces the risk that government aid will in fact serve to support **religious** activities.

**HN11 -** In the absence of an effective means of guaranteeing that the state aid derived from public **funds** will be used exclusively for secular, neutral, and nonideological purposes, it is clear from cases that direct aid in whatever form is invalid. No tax in any amount, large or small, can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**.

169. Emch v. City of Guymon

Court of Criminal Appeals of Oklahoma | Jul 08, 1942 | 1942 OK CR 101

**Overview:** Ordinance that restricted distribution of pamphlets except with permission of city clerk was unconstitutional as applied to defendant because freedom of the press was not confined to newspapers and periodicals, but necessarily embraced pamphlets.

**HN2 -** "Freedom of the press" as guaranteed by constitutions, federal and state, is not confined to newspapers and periodicals, but necessarily embraces pamphlets and **leaflets**, and contemplates not only the right to print, but also the right to distribute. The power of municipalities to enact regulations in the interest of the public safety, health, and welfare or convenience, may not be so employed as to abridge the individual liberties secured by the Constitution to those who wish to speak, write, print or circulate information or opinion. Members of a cult known as Jehovah's Witnesses have a constitutional right to distribute their **literature**, on **streets** of city, in an orderly manner, without interference by state authority, in absence of allegation or showing that such **literature** is against public morals or in any way improper for **distribution**. U. S. Const. amends. 1, 14.

**HN1 -** Section 1 of ordinance No. 85 of the City of Guymon, Oklahoma provides that no person shall distribute newspapers, hand bills, or tracts, or **books**, within the city limits of the City of Guymon without first securing a written permit from the City Clerk of Guymon City. Section 4 of said ordinance provides that any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be fined the sum of not less than $ 1 or more than $ 20 for each and every offense.

**HN3 -** Perfect toleration of **religious** sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of **religious** worship; and no **religious** test shall be required for the exercise of civil or political rights. Polygamous or plural marriages are forever prohibited.

170. Americans United for Separation of Church & State v. Grand Rapids

United States Court of Appeals for the Sixth Circuit | Apr 21, 1992 | 1992 U.S. App. LEXIS 7513

**Overview:** Private religious group was not permitted to display 20-foot menorah in city's main square, surrounded by government buildings, because menorah's size, and lack of any other private symbols gave message that city endorsed menorah.

**HN10 -** Regardless of whether a display is in a public forum or not, if an Establishment Clause violation is claimed because of the context, composition or location of a **religious** symbol or **religious activity**, a court must apply the endorsement test to decide that issue.

**HN5 -** The Establishment Clause does not limit only the **religious** content of the government's own communications. It also prohibits the government's support and promotion of **religious** communications by **religious** organizations. Indeed, the very concept of "endorsement" conveys the sense of promoting someone else's message. Thus, by prohibiting government endorsement of **religion**, the Establishment

Clause prohibits precisely what occurred here: the government's lending its support to the communication of a **religious** organization's **religious** message.

**HN9 -** **Religious** displays during the Christmas holiday season satisfied the first requirement, in that they are maintained in the context of a national holiday. It is also required that the **religious** object or symbol located on government property not be the only features of the display. This composition requirement is not satisfied unless there are other objects or symbols as well that provide separate focal points and tell other specific non-**religious** stories.

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171. State ex rel. Comm'r of Transp. v. Eagle

Court of Appeals of Tennessee, Middle Section, At Nashville | Jul 11, 2001 | 63 S.W.3d 734

**Overview:** Addition of State Indian Affairs Commission and several Native Americans to State Transportation Department's suit to terminate use of property near road, containing newly-discovered ancient Native American graves, as a cemetery, was reversed.

**HN30 -** Both the United States Constitution and the Constitution of Tennessee protect an individual's free exercise rights and rights of conscience. The **Religion** Clauses of the First Amendment provide that the federal and state governments shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof. Likewise, Tenn. Const. art. I, § 3 provides: that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any **religious** establishment or mode of worship.

**HN1 -** The civil courts have unquestioned jurisdiction to resolve disputes involving the burial and reinterment of human remains. Human remains, after internment, are in the custody of the law, and are subject to the control and discretion of the courts applying equitable principles. The courts must employ neutral legal principles to resolve disputes among the living involving the disposition of human remains. In the search for these principles, the courts should not close their eyes to the customs and necessities of civilizations in dealing with the dead and the sentiments connected with the decent care and disposal of human remains. However, while the courts should respect the rights of persons to freely exercise their **religion**, they must not permit the civil law to be circumscribed or superceded by the canon law of any particular **religion**. **Religious** customs, laws, and beliefs regarding the disposition of human remains are to be considered only for the purpose of producing an equitable result.

**HN32 -** The Tennessee Supreme Court has never held that Tenn. Const. art. I, § 3's protection of the right of conscience and free exercise of **religion** are more expansive than the Free Exercise Clause of the First Amendment. The degree of protection that Tenn. Const. art. I, § 3 provides for the **religious** freedoms of the Native Americans is the same as that provided by the Free Exercise Clause of the First Amendment.

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172. Ogden v. United States

United States Court of Appeals for the Seventh Circuit | Mar 29, 1985 | 758 F.2d 1168

**Overview:** Naval commander's order declaring a church off limits to navy personnel created a genuine clash between navy's interests and First Amendment rights of navy personnel who went to that church. The court reversed for consideration of an injunction.

**HN8 -** The degree of interference or intrusiveness of military action upon constitutionally protected **activity**, and the degree of protection to which the affected **religious activity** is entitled determine what is an appropriate accommodation of First Amendment rights. An order displacing **religious** worship must be more closely related to or more important in effectuating a particular military interest than an order impinging on a less fundamental or a less intensely **religious** practice or observance. Further, an order which completely bars participation in **religious** services merits closer scrutiny than an order merely restricting the time or location of participation.

**HN1 -** 10 U.S.C.S § 5947 imposes upon officers in the navy the duty to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to **promote** and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge. The statute is implemented, in part, by 32 C.F.R. § 631.11(b) (1982), which empowers commanders to establish off-limits areas to help maintain good discipline and an appropriate level of good health, morale, safety, morals, and welfare of armed forces personnel and by U.S. Navy Regulations 0702 para. 4 and 0727a (Bureau of Naval Personnel Instruction 1620.4B) which require the commanding officer, inter alia, to exercise judicious attention to the welfare of persons under their control or supervision and use all proper means to foster high morale, and to develop and strengthen the **moral** and spiritual well-being of the personnel under his command.

**HN7 -** Organized worship is a genuine and protected **religious** practice, but all **activity** conducted or organized by a **religious** group does not receive the same degree of protection under the First Amendment.

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173. People v. Ciocarlan

Supreme Court of Michigan | Apr 08, 1947 | 317 Mich. 349

**Overview:** Ordinance prohibiting children of Jehovah's witnesses from participating in "street trades" did not violate equal protection as state had greater power over children than over adults and no other children were allowed to engage in such activities.

**HN1 -** Section 1 of the so-called "street trades" ordinance of the city of Detroit provides: For the purpose of this ordinance the words "street trade" shall mean the business, occupation, undertaking or **pursuit** of: (a) Peddling; (b) Boot blacking; (c) Delivering goods, wares, merchandise, telegrams, newspapers, magazines, periodicals, advertising matter, or any other printed or written material; (d) Distributing, selling or offering for sale, goods, wares, merchandise, newspapers, magazines, periodicals, advertising matter or any other printed or written material; (e) Soliciting subscriptions for newspapers, magazines or periodicals; (f) Offering services for hire or gain and/or (g) Soliciting **funds** for the awarding of prizes by punchboards or otherwise when conducted in any street, alley, park, square or other public place, or in the lobby or entrance of any building frequented by the public or conducted by house to house canvassing.

**HN5 -** The state's authority over children's activities is broader than over like actions of adults. With reference to the public proclaiming of **religion**, upon the **streets** and in other similar public places, the power of the state to control the conduct of children reaches beyond the scope of its authority over adults, as is true in the case of other freedoms.

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174. American Tobacco Co. v. Missouri P. R. Co.

Supreme Court of Missouri | Dec 31, 1912 | 247 Mo. 374

**Overview:** Ordinances that required a railway company to depress its lines under city streets were void notwithstanding that the city had the power to order such safety measures because the ordinances were oppressive and enacted contrary to the city charter.

**HN3 -** Paragraph 2 of § 26 of art. 3 of the charter of the city of St. Louis, 4 Mo. Ann. Stat. p. 4809 et seq. (as amended 1901), provides: To establish, open, vacate, alter, widen, extend, pave or otherwise improve and sprinkle all **streets**, avenues, sidewalks, alleys, wharves and public grounds and squares, and provide for the payment of the costs and expenses thereof, in the manner in this charter prescribed; and also to provide for grading, lighting, cleaning and repairing the same, and to condemn private property for public use, as provided for in this charter; to construct and keep in repair all bridges, **streets**, sewers and drains, and to regulate the use thereof.

**HN8 -** Where a person or corporation is given the right to build a railroad, or make a canal, across a public highway, this gives them no right to destroy it as a thoroughfare, but they are bound to restore or unite the highway at their own expense, by some reasonably safe and convenient means of passage, although the statute contains no express provision to that effect. This duty includes the doing of whatever is necessary to be done to restore the highway to such conditions; as, for instance, in case of a bridge, the approaches or lateral embankments, without which the bridge itself would be useless. This duty is founded upon the equitable principle that it was their act, done in **pursuit** of their own advantage, which rendered this work necessary, and therefore they, and not the public, should be burdened with its expense. Qui sentit commodum sentire debet et onus.

**HN10 -** A railroad company has a duty prescribed to keep, at all times and under all circumstances, the **streets**, at points where they are intercepted by the railroad, in a condition and state of repair so as not to impair or interfere with their free and proper use; and if this cannot be done with a surface crossing, the company must do it either by carrying their tracks under or over the highway, or the highway under or over their tracks; and the duty of thus restoring or preserving the free use of the street includes the doing of whatever is needed to accomplish the required end, and which is rendered necessary to be done by reason of the presence of the railroad in the street.

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175. Baker v. Adams County

United States District Court for the Southern District of Ohio, Western Division | Jun 06, 2002 | 2002 U.S. Dist. LEXIS 26226

**Overview:** Display on public school property of the Ten Commandments, whether alone or as part of a foundation's display, violated the Establishment Clause of the First Amendment of the United States Constitution. The court ordered removal of the displays.

**HN11 -** The court must view with special scrutiny **religious activity** in the public school setting. Public schools play a key role in the maintenance of a democratic pluralistic society. Because students are young, impressionable, and compelled to attend public schools, there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in schools.

**HN13 -** A governmental intention to **promote religion** is clear when the state enacts a law to serve a **religious** purpose. This intention may be evidenced by promotion of **religion** in general, or by advancement of a particular **religious** belief.

**HN10 -** To comply with the Establishment Clause of the First Amendment, the government action must (1) have a secular purpose; (2) have the primary effect of neither advancing nor inhibiting **religion**; and (3) not foster an excessive governmental entanglement with **religion**. The United States Supreme Court has also utilized an "endorsement test," a refinement of the Lemon test. Under the endorsement test, a governmental practice or action violates the Establishment Clause if it has the purpose or effect of endorsing **religion**. The United States Court of Appeals for the Sixth Circuit has found the endorsement test to be a refinement of the "effects" element of the Lemon test. The endorsement test prohibits governmental actions which convey or attempt to convey a message that a **religion** or a particular **religious** belief is favored or preferred. Under this test, the court must determine whether a "reasonable observer" would conclude that the government is endorsing **religion** through its action. This "reasonable observer" is deemed aware of the history and context of the community and forum in which the **religious** display appears.

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176. Tong v. Chi. Park Dist.

United States District Court for the Northern District of Illinois, Eastern Division | Apr 29, 2004 | 316 F. Supp. 2d 645

**Overview:** A city park district's refusal to accept a donated brick based on a religious message included on it amounted to viewpoint discrimination and a prior restraint in violation of the brick donors' federal and state constitutional free speech rights.

**HN19 -** By construing an **activity** as **religious activity** rather than **civic activity**, a governmental entity discriminates against the speech of those of its citizens who utilize those forms of expression to convey their point of view on matters relating to the government.

**HN22 -** Establishment Clause concerns do not justify a refusal to extend free speech rights to **religious** speakers who participate in broad-reaching government programs neutral in design. The United States Court of Appeals for the Seventh Circuit has regularly noted that maintaining a neutral policy avoids establishment of **religion** difficulties.

**HN23 -** Policies that require government officials to scan and interpret texts to discern their underlying philosophic assumptions respecting **religious** theory and belief are a denial of the right of free speech and risk fostering a pervasive bias or hostility to **religion**, which could undermine the very neutrality the Establishment Clause requires.

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177. Dayton Christian Sch. v. Ohio Civil Rights Comm'n

United States Court of Appeals for the Sixth Circuit | Jun 26, 1985 | 766 F.2d 932

**Overview:** The U.S. Constitution's First Amendment proscribed application of the Ohio Civil Rights Act to religious employer as it placed an undue burden on its religious beliefs and there were less drastic means to further the state's interest.

**HN15 -** The state, in **pursuit** of a compelling interest, may burden **religious** practices. However, only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of **religion**. Whether the state's interest is compelling is often judged by reference to state law.

**HN10 -** Consideration of a challenge to governmental action under the Free Exercise Clause requires that first a court identify the nature and extent to which the state action interferes with or burdens the free exercise of appellants' **religious** beliefs. A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of **religion**. Second, the state may justify a limitation on **religious** liberty by showing that it is essential to accomplish an overriding governmental interest. Inherent in determining whether the limitation is essential to the governmental interest is consideration of whether accommodation by the state would unduly interfere with fulfillment of the governmental interest, and whether the governmental regulation is the least restrictive means of promoting the governmental interest.

**HN14 -** When the state penalizes particular hiring practices with respect to an individual employed to provide **religious** instruction and act as a **religious** role model when the employment is governed by **religious** principles, a burden on **religion** exists.

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178. ACLU v. Mercer County

United States District Court for the Eastern District of Kentucky, Lexington Division | Sep 06, 2002 | 219 F. Supp. 2d 777

**Overview:** Plaintiffs were not entitled to preliminary injunction where defendants' purpose of display that included Ten Commandments was that all nine included documents had played a role in the formation of the United States' system of law and government.

**HN7 -** The "reasonable observer" for the Lemon endorsement test is defined as an individual who is deemed aware of the history and context of the community and forum in which the **religious** display appears. It is important to understand that there is always someone who, with a particular quantum of

knowledge, reasonably might perceive a particular action as an endorsement of **religion**, but that "someone" does not constitute the "reasonable observer" for purposes of the endorsement test.

**HN9 -** The United States Supreme Court has stated that the history of man is inseparable from the history of **religion**. Legal proof that the Ten Commandments do indeed have secular, historical significance comes from the Court itself in certain cases, as well as the lower courts. Innumerable civil regulations enforce conduct which harmonizes with **religious** concerns. State prohibition of murder, theft and adultery reinforce commands of the decalogue. The Ten Commandments, undeniably, have had a significant impact on the development of secular legal codes of the Western World. As for lower courts, the Tenth Circuit has held that the Commandments are historically important with both secular and sectarian effects.

**HN12 -** The first prong of the Lemon test merely requires that the government act with a secular purpose. The law distinguishes between a **religious** purpose (which is impermissibly normative) and a secular purpose for the display, such as acknowledging history. The court is obviously not required to determine whether the secular purpose is morally or politically correct--because the government acts neutrally so long as the purpose is one other than advancing **religion**.

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179. Grace United Methodist Church v. City of Cheyenne

United States Court of Appeals for the Tenth Circuit | Oct 25, 2005 | 427 F.3d 775

**Overview:** The City of Cheyenne and its Council, Board of Adjustment, and Development Director were properly granted summary judgment on a claim that an ordinance, under which a church was denied a variance to operate a daycare in a low-density residential zone, offended the Free Exercise Clause because it was a neutral policy of general applicability.

**HN22 -** The **Religious** Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C.S. § 2000cc et seq., sets up a strict scrutiny standard for the implementation of land use regulations. In essence, a land use regulation cannot "substantially burden" "**religious** exercise" unless the government can show the regulation furthers a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C.S. § 2000cc-1(a). The statute also contains a nondiscrimination provision, which prohibits land use regulations that either disfavor **religious** uses relative to nonreligious uses or unreasonably exclude **religious** uses from a particular jurisdiction. 42 U.S.C.S. § 2000cc(b). Although RLUIPA provides a very broad definition of "**religious** exercise," 42 U.S.C.S. § 2000cc-5(7)(A), including any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief, it fails to define "substantial burden." Nevertheless, RLUIPA's legislative history reveals that "substantial burden" is to be interpreted by reference to the **Religious** Freedom Restoration Act of 1993, 42 U.S.C.S. § 2000bb et seq., and First Amendment jurisprudence.

**HN4 -** While the First Amendment provides absolute protection to **religious** thoughts and beliefs, the Free Exercise Clause does not prohibit Congress and local governments from validly regulating **religious** conduct. Neutral rules of general applicability normally do not raise free exercise concerns even if they incidentally burden a particular **religious** practice or belief. The Free Exercise Clause does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes or prescribes conduct that his **religion** prescribes or proscribes. Thus, a law that is both neutral and generally applicable need only be rationally related to a legitimate governmental interest to survive a constitutional challenge. On the other hand, if a law that burdens a **religious** practice is not

neutral or generally applicable, it is subject to strict scrutiny, and the burden on **religious** conduct violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling governmental interest.

**HN7 -** Where the state has in place a system of individual exemptions, it may not refuse to extend that system to cases of "**religious** hardship" without compelling reason. This language is the "individualized exemption" exception to the rule regarding neutral and generally applicable laws. The individualized exemption exception inquiry can be summarized as follows: as long as a law remains exemptionless, it is considered generally applicable and **religious** groups cannot claim a right to exemption; however, when a law has secular exemptions, a challenge by a **religious** group becomes possible. In other words, the general applicability test gives **religious** groups something akin to a disparate treatment claim. The critical inquiry in these cases involves assessing precisely how numerous and notable the secular exemptions must be before the law is no longer considered generally applicable. To ensure that individuals do not suffer unfair treatment on the basis of **religious** animus, subjective assessment systems that **invite** consideration of the particular circumstances behind an applicant's actions trigger strict scrutiny. A regulation that contains broad, objective exceptions does not establish a subjective system of individualized considerations that triggers heightened scrutiny.

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180. Welsh v. Boy Scouts of Am.

United States District Court for the Northern District of Illinois, Eastern Division | Aug 09, 1990 | 742 F. Supp. 1413

**Overview:** Allegations that a scouting organization denied membership to individuals who refused to profess a belief in God sufficiently stated a claim of religious discrimination under Title II of the Civil Rights Act.

**HN21 -** Application of Title II of the Civil Rights Act of 1964 (Act), 42 U.S.C.S. § 2000a et seq., restricts the ability of a place of public accommodation to exclude individuals with different **religious** philosophies, just as it restricts the ability to exclude individuals on other grounds, such as race. However, while invidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, it is not accorded affirmative constitutional protections. By its very terms, the Act always operates to prevent exclusion of people who are different. The more fundamental question is whether the particular organization engages in expressive **activity** that would be unduly infringed by application of the Act.

**HN1 -** Title II of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000a et seq., prohibits places of public accommodation from discriminating on the basis of certain criteria, including **religion**.

**HN3 -** The individual freedom of conscience protected by the First Amendment embraces the right to select any **religious** faith or none at all.

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181. Murphy v. Zoning Comm'n

United States District Court for the District of Connecticut | Sep 30, 2003 | 289 F. Supp. 2d 87

**Overview:** Zoning commission's cease and desist order that limited the number of attendants at one private residence, thus impacting the homeowners' prayer meetings, abridged state and federal constitutional free exercise and free assembly rights.

**HN47 -** According to the United States District Court for the District of Connecticut, the **Religious** Land Use and Institutionalized Persons Act, 42 U.S.C.S. § 2000cc, satisfies all of the Lemon tests, and does not violate the Establishment Clause. RLUIPA removes barriers to the free exercise of **religion** - an effect the United States Supreme Court has repeatedly found to be constitutional. The Constitution allows the State to accommodate **religious** needs by alleviating special burdens; cases leave no doubt that in commanding neutrality the **Religion** Clauses do not require the government to be oblivious to impositions that legitimate exercises of state power may place on **religious** belief and practice. The Supreme Court has held that where government acts with the proper purpose of lifting a regulation that burdens the exercise of **religion**, it sees no reason to require that the exemption comes packaged with benefits to secular entities.

**HN6 -** The right to assemble peaceably is among the most precious of the liberties safeguarded by the Bill of Rights, and is intimately connected both in origin and in purpose with the other First Amendment rights. The right to "expressive association" protects the right of individuals to associate for purposes of engaging in activities protected by the First Amendment, such as speech, assembly, the exercise of **religion**, or petitioning for the redress of grievances. Implicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in **pursuit** of a wide variety of political, social, economic, educational, **religious**, and cultural ends. To be cognizable, the interference with associational rights must be "direct and substantial" or "significant."

**HN42 -** The Establishment Clause prohibits any government from enacting a law that would respect the establishment of **religion**. While this clause forbids Congress from advancing **religion**, the United States Supreme Court has interpreted it to allow, and sometimes to require, the accommodation of **religious** practices. The Court has long recognized that the government may (and sometimes must) accommodate **religious** practices and that it may do so without violating the Establishment Clause. Moreover, in commanding neutrality the **Religious** Clauses do not require the government to be oblivious to impositions that legitimate exercises of state power may place on **religious** belief and practice.

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182. ⚠ Bollenbach v. Board of Education

United States District Court for the Southern District of New York | May 08, 1987 | 659 F. Supp. 1450

**Overview:** Assigning only male drivers to school bus routes of Hasidic male students violated the Establishment Clause of the First Amendment because it promoted Hasidic tenet that boys must not be in contact with women.

**HN7 -** The Establishment Clause of the First Amendment prohibits states from enacting laws respecting the establishment of **religion**. The Establishment Clause is more than a pledge that no single **religion** will be designated as a state **religion** and more than a mere injunction that governmental programs discriminating among religions are unconstitutional. Instead, the Establishment Clause primarily proscribes sponsorship, financial support, and active involvement of the sovereign in **religious activity**. When asked to determine the constitutionality of conduct challenged under the Establishment Clause, the court must carefully examine the conduct at issue to ascertain whether it furthers any of these three evils. But it is clear

that not every government action that confers an "indirect," "remote," or "incidental" benefit is constitutionally invalid. The problem, like many problems which arise in constitutional law, is one of degree.

**HN15 -** The "**mere fact**" **religious** practices are burdened by a governmental program does not mean that an exemption accommodating their practices must be granted. The state may justify an inroad on **religious** liberty by showing that it is the least restrictive means of achieving some compelling state interest. Only those interests of the highest order can overbalance legitimate claims to the free exercise of **religion**. The Free Exercise Clause of the First Amendment does not prohibit a government from forcing a choice between receipt of public benefit and **pursuit** of a **religious** belief if it can show a compelling reason for doing so. Avoiding a violation of the Establishment Clause that would otherwise result from an apparent endorsement of the tenets of a particular faith is ample reason for compelling that choice.

**HN11 -** Under the "primary effect" factor of the tripartite Lemon test, the crucial question is not whether some benefit accrues to a **religious** institution as a consequence of the legislative program, but whether its principal or primary effect advances **religion**. Impermissible advancement occurs not only when the state directly **funds** efforts to indoctrinate children in specific **religious** beliefs, but also when the state fosters a close identification of its powers and responsibilities with those of **religious** denominations. It is clear that if this identification conveys a message of government endorsement or disapproval of **religion**, a core purpose of the Establishment Clause of the First Amendment is violated. Thus, an important inquiry under the effects test is whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual **religious** choices.

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183. A Woman's Friend Pregnancy Res. Clinic v. Harris

United States District Court for the Eastern District of California | Dec 18, 2015 | 153 F. Supp. 3d 1168

**Overview:** Preliminary injunction against enforcement of Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act, Cal. Health & Safety Code. § 123472, which required notice of availability of free or low-cost public family planning services, was not warranted as the balance of hardships favored the State's public health interest.

**HN26 -** Although the State may at times prescribe what shall be orthodox in **commercial** advertising by requiring the dissemination of **purely** factual and uncontroversial information, outside that context it may not compel affirmance of a belief with which the speaker disagrees. Indeed this general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid, subject, perhaps to the permissive law of defamation. **Purely commercial** speech is more susceptible to compelled disclosure requirements.

**HN20 -** Content-based regulations are subject to lesser scrutiny when they concern **commercial** speech. Compelled **commercial** speech is subject to either intermediate scrutiny, or, if the law compels disclosure of **purely** factual and uncontroversial information, rational basis review. An advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers. The U.S. Supreme Court has articulated several justifications for its differential treatment of **commercial** speech: an advertiser may easily verify the truth of the information it disseminates about a specific product or service; **commercial** speech may be more durable and less likely

to be chilled than other types of speech due to the advertiser's economic self-interest; and the State has an interest in regulating the underlying **commercial** transaction.

**HN25 -** **Commercial** information does not offend the core First Amendment values, and the rational basis test only applies in the **commercial** context.

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184. State v. Arlene's Flowers, Inc.

Supreme Court of Washington | Feb 16, 2017 | 187 Wn.2d 804

**Overview:** Judgment was properly entered against the floral business and its owner for refusing to provide custom floral arrangements for a same-sex wedding because the refusal constituted discrimination in public accommodations in violation of Wash. Rev. Code § 49.60.215 and the defendants did not have a constitutional right to refuse service.

**HN38 -** Under Wash. Rev. Code § 26.04.010(6), a **religious** organization shall be immune from any civil claim or cause of action, including a claim pursuant to Wash. Rev. Code ch. 49.60 based on its refusal to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage. "**Religious** organization" is defined as including, but not limited to, churches, mosques, synagogues, temples, nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of **religion**. Wash. Rev. Code § 26.04.010(7)(b).

**HN16 -** The Washington Law Against Discrimination (WLAD), Wash. Rev. Code ch. 49.60, already contains an express exemption to Wash. Rev. Code § 49.60.215 for **religious** organizations that object to providing public accommodations for same-sex weddings. 2012 Wash. Laws ch. 3, § 1(5) (no **religious** organization is required to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage). If the WLAD already excluded same-sex wedding services from the public accommodations covered under Wash. Rev. Code § 49.60.215, this exemption would be superfluous. This exemption does not extend to a floral business, which does not meet the WLAD's definition of a "**religious** organization." 2012 Wash. Laws ch. 3, § 1(7)(b) (defining "**religious** organization" to include entities whose principal purpose is the study, practice, or advancement of **religion**, such as churches, mosques, synagogues, temples, etc.).

**HN36 -** Laws that burden **religion** are subject to two different levels of scrutiny under the free exercise clause. U.S. Const. amend I. Neutral, generally applicable laws burdening **religion** are subject to rational basis review, while laws that discriminate against some or all religions (or regulate conduct because it is undertaken for **religious** reasons) are subject to strict scrutiny.

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185. Malyon v. Pierce County

Supreme Court of Washington | Apr 24, 1997 | 131 Wn.2d 779

**Overview:** Taxpayer's claim that the sheriff department's chaplaincy program unconstitutionally used tax dollars to support a religious purpose was dismissed where it was shown the program satisfied the elements of the Lemon Test.

**HN5 -** In 1971 the United States Supreme Court synthesized prior case law into a three-prong test, The Lemon test, used to determine whether a challenged state **activity** amounts to an impermissible establishment of **religion**. To survive constitutional attack the act: (1) must have a secular purpose, (2) may not have as its primary effect the advancement of **religion**, and (3) must not create an excessive entanglement between church and state.

**HN8 -** When determining the primary effect of a given government act, the **religious** affiliation of the actors is not determinative. On the contrary, the court has held the fact that one of the actors is religiously affiliated or inspired is not enough to show that the act advances **religion**.

**HN6 -** Under Lemon, the first prong of the test for violation of establishment clause inquires into the "secular purpose" of the challenged act. Rather than require the purpose be entirely secular, this prong demands there be at least some valid secular purpose to ensure that **religious** concerns were not the sole motivation behind the act. A **religious** purpose alone is not enough to invalidate a state act. The **religious** purpose must predominate.

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186. Littlefield v. Forney Indep. Sch. Dist.

United States District Court for the Northern District of Texas, Dallas Division | Aug 03, 2000 | 108 F. Supp. 2d 681

**Overview:** Section 1983 constitutional challenge to school boards' implementation of a school uniform policy was denied; uniform policy met rational basis test; no due process, or free speech rights impinged upon.

**HN33 -** The establishment clause of the U.S. Const. amend. I prohibits the government from promoting or affiliating itself with any **religious** doctrine or organization, discriminating against persons on the basis of their **religious** beliefs or practices, delegating a governmental power to a **religious** institution, or entangling itself in a **religious** institution's affairs. The United States Supreme Court has fashioned a three-part inquiry to determine whether a particular governmental action does not offend the establishment clause: first, the statute or regulation must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits **religion**; third, the statute or regulation must not foster an excessive entanglement with **religion**. Thus, each value judgment under the **Religion** Clauses must therefore turn on whether the particular acts in question are intended to establish or interfere with **religious** beliefs and practices or have the effect of doing so.

**HN27 -** The free exercise of **religion** clause of the U.S. Const. amend. I affords absolute protection to **religious** beliefs. The clause also extends, to a limited extent, to conduct based upon **religious** beliefs. The United States Supreme Court observed, cases have long recognized a distinction between the freedom of individual belief, which is absolute, and the freedom of individual conduct, which is not absolute. In defining the limits of protection afforded by that constitutional provision, the Supreme Court explained that the free exercise clause holds an important place in our scheme of ordered liberty, but the Supreme

Court has steadfastly maintained that claims of **religious** conviction do not automatically entitle a person to fix unilaterally the conditions and terms of dealings with the government. Not all burdens on **religion** are unconstitutional.

**HN9 -** The initial inquiry is whether the conduct in question can be characterized as "speech" for purposes of U.S. Const. amend. I analysis. To that end, the Court must consider whether the **activity** is sufficiently imbued with elements of communication, so as to fall within the protective scope of the U.S. Const. amend. I. To help identify expressive conduct, the United States Supreme Court has fashioned a two-part test, which requires courts to determine: (1) whether an intent to convey a particularized message was present, and (2) whether the likelihood was great that the message would be understood by those who viewed it. It is critically important to examine the nature of the **activity**, combined with the factual context in which it was undertaken.

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187. Lynch v. Indiana State University Board of Trustees

Court of Appeals of Indiana | Aug 02, 1978 | 177 Ind. App. 172

**Overview:** Summary judgment to a university in a professor's wrongful discharge action was proper because the professor violated the First Amendment when he insisted on reading aloud to his students from the Bible during his mathematics classes.

**HN4 -** The constitutional inhibition of legislation on the subject of **religion** has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. On the other hand, it safeguards the free exercise of the chosen form of **religion**. Thus, the First Amendment embraces two concepts, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. No one would contest the proposition that a state may not, by statute, wholly deny the right to preach or to disseminate **religious** views. Plainly, such a previous and absolute restraint would violate the terms of the guarantee. It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its **streets**, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment.

**HN11 -** Government in a democracy, state and national, must be neutral in matters of **religious** theory, doctrine, and practice. It may not be hostile to any **religion** or to the advocacy of non-**religion**; and it may not aid, foster, or **promote** one **religion** or **religious** theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between **religion** and **religion**, and between **religion** and nonreligion. The Establishment Clause of the First Amendment, then, stands at least for the proposition that when government activities touch on the **religious** sphere, they must be secular in purpose, evenhanded in operation, and neutral in primary impact.

**HN10 -** Neither a state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any **religion**. No person can be punished for entertaining or professing **religious** beliefs or disbeliefs, for

church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any **religious** activities, or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any **religious** organizations or groups and vice versa. The First Amendment clause against establishment of **religion** by law erects a wall of separation between the church and the state.

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188. Geneva College v. Sebelius

United States District Court for the Western District of Pennsylvania | Mar 06, 2013 | 929 F. Supp. 2d 402

**Overview:** Owners of business properly alleged violation of Religious Freedom Restoration Act since owners sufficiently alleged that federal mandate requiring health insurance plan of business to include coverage for contraceptives, sterilization procedures, and education and counseling for women was contrary to sincerely held religious beliefs of owners.

**HN15 -** Pursuant to the **Religious** Freedom Restoration Act of 1993 (RFRA), the government may not substantially burden a person's exercise of **religion**, even if the burden results from a rule of general applicability. The government may, however, substantially burden the exercise of **religion** if the burden: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. 42 U.S.C.S. § 2000bb-1(b). Plaintiffs bear the initial burden under the RFRA of establishing that application of the offensive law or policy would substantially burden a sincere, **religious** exercise.

**HN21 -** Under the **Religious** Freedom Restoration Act of 1993, exercise of **religion** is defined as any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief. 42 U.S.C.S. § 2000bb-2. It is not the province of the court to tell the plaintiffs what their **religious** beliefs are, or to decide whether such beliefs are fundamental to their belief system.

**HN23 -** In construing claims under the **Religious** Freedom Restoration Act of 1993 (RFRA), courts must look beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize the asserted harm of granting specific exemptions to particular **religious** claimants. Under the RFRA, the government must demonstrate that the compelling interest test is satisfied through application of the challenged law to the person—the particular claimant whose sincere exercise of **religion** is being substantially burdened.

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189. Lickteig v. Landauer

United States District Court for the Eastern District of Pennsylvania | Jul 07, 1992 | 1992 U.S. Dist. LEXIS 9592

**Overview:** Individuals' § 1983 claims that police interfered with individuals' dissemination of religious information on a city sidewalk were not plead with the requisite specificity and failed to allege a claim of selective enforcement of a police directive.

**HN6 -** The hand **distribution** of **religious** tracts is an age-old form of missionary **evangelism**--as old as the history of printing presses. It has been a potent force in various **religious** movements down through the years. This form of **evangelism** is utilized today on a large scale by various **religious** sects whose colporteurs carry the Gospel to thousands upon thousands of homes and seek through personal visitations to win adherents to their faith. It is more than preaching; it is more than the **distribution** of **religious literature**. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of **religious activity** occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of **religion**. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.

**HN7 -** The liberty to distribute ideology, even **religious** ideology, is not inviolate. It may be constrained by the demands of an orderly society. In this regard, the **distribution** of **religious** tracts and other forms of **religious** expression are categorically identical to other speech, such as political speech, which receives the most complete manifestation of First Amendment protection.

**HN4 -** The privilege of a citizen of the United States to use the **streets** and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convince, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

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190. State v. Toolen

Supreme Court of Alabama | Sep 10, 1964 | 277 Ala. 120

**Overview:** Personal property, purchased at retail outside of Alabama, even though used exclusively by a religious group in their religious services, was not exempt from the state's use tax. The tax was uniform, non-discriminatory, and constitutional.

**HN1 -** Ala. Const. § 3 provides: That no **religion** shall be established by law; that no preference shall be given by law to any **religious** sect, society, denomination, or mode of worship; that no one shall be compelled by law to attend any place of worship; nor to pay any tithes, taxes, or other rate for building or repairing any place of worship, or for maintaining any minister or ministry; that no **religious** test shall be required as a qualification to any office or public trust under this state; and that the civil rights, privileges, and capacities of any citizen shall not be in any manner affected by his **religious** principles.

**HN2 -** Ala. Const. § 91 provides for exemptions of real estate used exclusively for **religious** purposes, but it places no limitation on the legislature concerning the taxation of personal property.

**HN4 -** Ala. Code tit. 51, § 2 (1940) exempts all property, real and personal, used exclusively for **religious** worship, from ad valorem taxation and none other. Under § 2, personal property is exempt from ad valorem tax regardless of how valuable it may be or how long it may be kept, stored, used or consumed in Alabama. Alabama's use tax is not a property tax.

191. Smith v. Raleigh Dist. of the N.C. Conf. of the United Methodist Church

United States District Court for the Eastern District of North Carolina, Western Division | Jul 27, 1999 | 63 F. Supp. 2d 694

**Overview:** Former secular employees of a church employer were permitted to sue for hostile environment sexual harassment under Title VII of the Civil Rights Act of 1964 where the claims did not intrude upon the employer's spiritual functions.

**HN10 -** Although Title VII of the Civil Rights Act of 1964, § 702, 42 U.S.C.S. § 2000e-1, permits **religious** institutions to discriminate based on **religion** or **religious** preferences, Title VII does not permit **religious** organizations to discriminate on the basis of race, sex, or national origin.

**HN28 -** A court must consider the nature of a particular dispute involving a **religious** defendant to determine whether U.S. Cons. amend. I bars its exercise of jurisdiction over that dispute. A court must determine whether the dispute is an ecclesiastical one about discipline, faith, internal organization, or ecclesiastical rule, custom or law, or whether it is a case in which it should hold **religious** organizations liable in civil courts for **purely** secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization.

**HN30 -** **Religious** documents may be examined or interpreted regarding non-doctrinal matters if the analysis can be done in **purely** secular terms.

192. Barghout v. Mayor of Baltimore

United States District Court for the District of Maryland | Sep 30, 1993 | 833 F. Supp. 540

**Overview:** The fraud ordinance, designed to prevent the intentional mislabeling of kosher foods, was held to be unconstitutional where its primary effect was to advance or inhibit religion and it created an excessive government entanglement with religion.

**HN1 -** The courts cannot decide **religious** questions that require interpretation of **religious literature**. The Constitution forbids it, and respect for **religion** requires it.

**HN8 -** The fundamental import of the Establishment Clause is unyielding: Neither a state nor the Federal government can set up a church. Neither can pass laws, which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to profess a belief or disbelief in any **religion**. Neither a state nor the Federal government can, openly or secretly, participate in the affairs of any **religious** organizations or groups and vice versa. That is, government may neither **promote** nor affiliate itself with any **religious** doctrine or organization, nor may it obtrude itself in the internal affairs of any **religious** institution.

**HN18 -** It is wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions. The government must be neutral in matters of

**religious** theory, doctrine, and practice, and it may not aid, foster, or **promote** one **religion** or **religious** theory. The commitment to neutrality stems from a recognition that powerful sects or groups might bring about a fusion of governmental and **religious** function or a concert or dependency of one upon the other to the end that official support of the state or federal government would be placed behind the tenets of one or of all orthodoxies.

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193. Doe v. Indian River Sch. Dist.

United States Court of Appeals for the Third Circuit | Aug 05, 2011 | 653 F.3d 256

**Overview:** District court erred in applying the legislative exception upheld in Marsh v. Chambers to a school board's prayer policy because a potentially coercive atmosphere was present, due to the nature of the relationship between the board and district students and schools, which resulted in the prayer policy's violation of the Establishment Clause.

**HN5 -** The Establishment Clause provides that Congress shall make no law respecting an establishment of **religion**. U.S. Const. amend. I. The Establishment Clause was designed as a specific bulwark against the potential abuses of governmental power. It therefore prohibits the government from promoting or affiliating itself with any **religious** doctrine or organization, discriminating among persons on the basis of their **religious** beliefs and practices, delegating a governmental power to a **religious** institution, and involving itself too deeply in such an institution's affairs. The Clause applies equally to the states, including public school systems, through the Fourteenth Amendment.

**HN6 -** Neither a state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any **religion**. No person can be punished for entertaining or professing **religious** beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any **religious** organizations or groups and vice versa.

**HN11 -** The need to protect students from government coercion in the form of endorsed or sponsored **religion** is at the heart of the school prayer cases. This reflects the fundamental guarantee of the First Amendment that government may not coerce anyone to support or participate in **religion** or its exercise. The risk of coercion is heightened in the public school context: prayer exercises in public schools carry a particular risk of indirect coercion. The possibility of coercion is greater in schools because children are more susceptible to pressure from their peers. Thus, the U.S. Supreme Court has recognized a distinction when government-sponsored **religious** exercises are directed at impressionable children who are required to attend school, for then government endorsement is much more likely to result in coerced **religious** beliefs.

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194. America Press, Inc. v. Lewisohn

Supreme Court of New York, New York County | Jun 13, 1973 | 74 Misc. 2d 562

**Overview:** The property owned by petitioner was tax-exempt, and petitioner was entitled to an order commanding respondents to remove property from city's tax roll because property was devoted solely to religious purpose and not alone to Bible, tract or mission.

**HN6 -** The policy of the law has been, in New York, to encourage, foster and protect corporate institutions of **religious** and literary character, because the **religious**, **moral** and intellectual culture afforded by them were deemed, as they are in effect, beneficial to the public, necessary to the advancement of civilization, and the promotion of the welfare of society. At least the **distribution** of **literature** for money does not preclude a conclusion that such **distribution** is an exercise of **religion** within the United States Constitution First Amendment. Error is rampant when a myriad of activities considered in relation to **religious** exercise are held by mere ipse dixit to be mutually exclusive. The church, temple and synagogue are not so confined. The categories of dedication of use of real property enumerated in N.Y. Real Prop. Tax Law § 421(1)(b) and in New York, N.Y., Local Law No. 46 (1971) are not mutually exclusive. This holding is the only way by which the constitutionality and validity of the statutes can be upheld. There is no necessary incompatibility of dedication and use of real property simultaneously for "**religious**," "bible," and "missionary" purposes, for 'hospital," and "infirmary" purposes, for "charitable" and "benevolent" purposes, or for "educational" "scientific," "literary," and "library" purposes.

**HN4 - Distribution** by sale of **literature** as a method of spreading the distributor's **religious** beliefs has been held to be an exercise of **religion** under the First Amendment.

**HN1 -** N.Y. Real Prop. Tax Law § 421(1)(a) (1972), entitled "Non-profit organizations," reads in part: Real property owned by a corporation or association organized or conducted exclusively for **religious**, charitable, hospital, educational, **moral** or mental improvement of men, women or children or cemetery purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in § 421(1)(a).

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195. ⚠ Grace United Methodist Church v. City of Cheyenne

United States Court of Appeals for the Tenth Circuit | Jun 20, 2006 | 451 F.3d 643

**Overview:** A city that denied a church a license to operate a day care did not violate the First Amendment or the Religious Land Use and Institutionalized Persons Act, 42 U.S.C.S. § 2000cc et seq., because a zoning ordinance did not substantially burden the free exercise of religion and operation of the day care was not a sincere exercise of religion.

**HN14 -** The **Religious** Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C.S. § 2000cc et seq., sets up a strict scrutiny standard for the implementation of land use regulations. In essence, a land use regulation cannot substantially burden **religious** exercise unless the government can show the regulation furthers a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C.S. § 2000cc-1(a). The statute also contains a nondiscrimination provision, which prohibits land use regulations that either disfavor **religious** uses relative to nonreligious uses or unreasonably exclude **religious** uses from a particular jurisdiction. 42 U.S.C.S. § 2000cc(b). Although RLUIPA provides a very broad definition of "**religious** exercise," 42 U.S.C.S. § 2000cc-5(7)(A) (**religious** exercise includes any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief), it fails to define "substantial burden." Nevertheless, RLUIPA's legislative history reveals that "substantial burden" is

to be interpreted by reference to the **Religious** Freedom Restoration Act of 1993, 42 U.S.C.S. § 2000bb et seq., and First Amendment jurisprudence.

**HN3 -** While the First Amendment provides absolute protection to **religious** thoughts and beliefs, the Free Exercise Clause does not prohibit Congress and local governments from validly regulating **religious** conduct. Neutral rules of general applicability normally do not raise free exercise concerns even if they incidentally burden a particular **religious** practice or belief. The Free Exercise Clause does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his **religion** prescribes (or proscribes). Thus, a law that is both neutral and generally applicable need only be rationally related to a legitimate governmental interest to survive a constitutional challenge. On the other hand, if a law that burdens a **religious** practice is not neutral or generally applicable, it is subject to strict scrutiny, and the burden on **religious** conduct violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling governmental interest.

**HN5 -** Where a state has in place a system of individual exemptions, it may not refuse to extend that system to cases of **religious** hardship without compelling reason. The individualized exemption exception inquiry can be summarized as follows: as long as a law remains exemptionless, it is considered generally applicable and **religious** groups cannot claim a right to exemption; however, when a law has secular exemptions, a challenge by a **religious** group becomes possible. To ensure that individuals do not suffer unfair treatment on the basis of **religious** animus, subjective assessment systems that **invite** consideration of the particular circumstances behind an applicant's actions trigger strict scrutiny.

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196. Chess v. Widmar

United States District Court for the Western District of Missouri, Western Division | Dec 11, 1979 | 480 F. Supp. 907

**Overview:** The students' claim against the university for violations of the First and Fourteenth Amendments was unsuccessful because the university's ban on religious services in its buildings was required by the Establishment Clause.

**HN6 -** A mere danger of an Establishment Clause violation cannot serve as a justification for interference with free exercise rights. The proper course is one that both avoids infringement of free exercise rights and avoids any semblance of established **religion**. The two **religion** clauses are aimed at separate evils. The clauses must, therefore, be read together, with neither clause subordinate to the other. Governmental **activity** may not exceed the boundaries of either clause.

**HN8 -** For purposes of the **religion** clauses, a distinction must be drawn between public parks, sidewalks and **streets** on the one hand, and public buildings on the other.

**HN9 -** Wherever the title of **streets** and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such **use of the streets** and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the **streets** and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination

to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

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197. ⚠ Burwell v. Hobby Lobby Stores, Inc.

Supreme Court of the United States | Jun 30, 2014 | 573 U.S. 682

**Overview:** Regulations requiring that closely held corporations, whose owners had sincere religious beliefs regarding contraception, provide health insurance coverage for contraception violated the RFRA because the regulations substantially burdened the exercise of religion and were not the least restrictive means of serving a compelling government interest.

**HN1 -** In order to ensure broad protection for **religious** liberty, the **Religious** Freedom Restoration Act of 1993 (RFRA), 42 U.S.C.S. § 2000bb et seq., provides that government shall not substantially burden a person's exercise of **religion** even if the burden results from a rule of general applicability. 42 U.S.C.S. § 2000bb-1(a). The Act defines "government" to include any "department" or "agency" of the United States. 42 U.S.C.S. § 2000bb-2(1). If the government substantially burdens a person's exercise of **religion**, under the Act that person is entitled to an exemption from the rule unless the government 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. 42 U.S.C.S. § 2000bb-1(b).

**HN3 -** The **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc et seq., enacted under Congress's Commerce and Spending Clause powers, imposes the same general test as the **Religious** Freedom Restoration Act of 1993 (RFRA), 42 U.S.C.S. § 2000bb et seq., but on a more limited category of governmental actions. And, RLUIPA amended RFRA's definition of the "exercise of **religion**." 42 U.S.C.S. § 2000bb-2(4) import s the RLUIPA definition. Before RLUIPA, RFRA's definition made reference to the First Amendment. 42 U.S.C.S. § 2000bb-2(4). In RLUIPA, in an obvious effort to effect a complete separation from First Amendment case law, Congress deleted the reference to the First Amendment and defined the "exercise of **religion**" to include any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief. 42 U.S.C.S. § 2000cc-5(7)(A). And Congress mandated that this concept be construed in favor of a broad protection of **religious** exercise, to the maximum extent permitted by the terms of this chapter and the Constitution. 42 U.S.C.S. § 2000cc-3(g).

**HN20 -** The **Religious** Freedom Restoration Act of 1993, 42 U.S.C.S. § 2000bb et seq., requires the government to demonstrate that the compelling interest test is satisfied through application of the challenged law to the person — the particular claimant whose sincere exercise of **religion** is being substantially burdened 42 U.S.C.S. § 2000bb-1(b). This requires courts to look beyond broadly formulated interests and to scrutinize the asserted harm of granting specific exemptions to particular **religious** claimants.

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198. ⚠ Gasparo v. City of New York

United States District Court for the Eastern District of New York | May 28, 1998 | 16 F. Supp. 2d 198

**Overview:** The operation of a newsstand was protected under the First Amendment under the logical extension that newsracks were protected. The fact that speech was sold and the fact that a variety of speech was offered did not detract from protected status.

**HN8 -** The protection afforded the **distribution** of printed material by the First Amendment is not lost simply because the written material, sought to be distributed are **sold** rather than given away.

**HN10 -** Wherever the title of **streets** and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such **use of the streets** and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the **streets** and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

**HN7 -** The **distribution** of printed material has long been protected by the First Amendment.

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199. Kaufman v. McCaughtry

United States District Court for the Western District of Wisconsin | Feb 09, 2004 | 2004 U.S. Dist. LEXIS 1904

**Overview:** The opening of a prisoner's mail outside his presence was nothing more than mere negligence; neither had he shown that his not being able to have weekly group meetings imposed a substantial burden on his practice of atheism.

**HN16 -** When making a decision whether to approve a new **activity** group, the warden must consider whether (1) the group's objectives **promote** educational, social, cultural, **religious**, recreational or other **lawful** leisure time interests of the inmates who will participate in the group; (2) the institution can accommodate the proposed activities with available resources; (3) the benefits of the group outweigh the group's demands on the institution's resources; and (4) the activities, services or benefits offered by the group are adequately provided by existing programs or groups. Wis. Admin. Code § DOC 309.365(b).

**HN17 -** **Religious** group requests may be made either under the rules governing requests for new **religious** practices, Wis. Admin. Code § DOC 309.61, or inmate **activity** groups, Wis. Admin. Code § DOC 309.365.

**HN8 -** A prison procedure will not violate the free exercise clause of the First Amendment if it is neutral and generally applicable even if it compels **activity** forbidden by an individual's **religion**, provided that it is related reasonably to a legitimate, penological interest.

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200. ## Slotterback v. Interboro School Dist.

United States District Court for the Eastern District of Pennsylvania | May 13, 1991 | 766 F. Supp. 280

**Overview:** School district's policy banning students' distribution of religious literature involved excessive government entanglement with religion, and was not a product of a compelling interest protected by the establishment clause of the U.S. Constitution.

**HN20 -** To be valid, a policy permitting distributions of nonschool **religious literature** would substantively have to have as its primary effect neither government advancement nor government inhibition of **religion**. Because there is a crucial difference between government speech endorsing **religion**, which the Establishment Clause forbids, and private speech endorsing **religion**, which the Free Speech Clause protects, a court's focus is perforce on state action. A school district's policy cannot be unconstitutional simply because it allows students and churches to advance **religion**.

**HN21 -** Government must avoid excessive entanglement with **religion** where continuing state surveillance will inevitably be required to ensure that the restrictions of the First Amendment of the United States Constitution are respected. The usual setting for an entanglement clause violation is when a state official, in order to avoid giving state aid to **religion**, must make determinations as to what **activity** or material is **religious** in nature, and what is secular, and therefore permissible.

**HN19 -** Establishment clause questions are governed by the three-pronged test. To pass constitutional muster, a content-neutral policy for the **distribution** of nonschool written materials would have to satisfy the following: First, it would have to have a secular governmental purpose; second, its principal or primary effect would have to be one that neither advances nor inhibits **religion**; and third, the policy would have to avoid excessive government entanglement with **religion**.

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201. ## Commack Self-Service Kosher Meats, Inc. v. Weiss

United States Court of Appeals for the Second Circuit | May 21, 2002 | 294 F.3d 415

**Overview:** New York State kosher fraud statutes violated the Establishment Clause where the challenged laws required the state to take an official position on religious doctrine, and created an impermissible fusion of governmental and religious functions.

**HN9 -** The framers of the United States Constitution understood the U.S. Const. amend. I's prohibition on laws respecting an establishment of **religion** to preclude government sponsorship of **religion**, financial support for **religion**, or the active involvement of the sovereign in **religious activity**. Like the Establishment Clause generally, the prohibition on excessive government entanglement with **religion** rests upon the premise that both **religion** and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.

**HN10 -** Whatever else the Establishment Clause may mean, it certainly means at the very least that government may not demonstrate a preference for one particular sect or creed. The clearest command of the Establishment Clause is that one **religious** denomination cannot be officially preferred over another. Government may not aid, foster, or **promote** one **religion** or **religious** theory against another. The

Establishment Clause prohibits passage of laws that aid one **religion**, aid all religions, or prefer one **religion** over another.

**HN14 -** Pursuant to the Establishment Clause of U.S. Const. amend. I, some limited and incidental entanglement between church and state authority is inevitable in a complex modern society, where "fusion" of governmental and **religious** authority is an issue, the difference lies in the distinction between a government's purposeful delegation on the basis of **religion** and a delegation on principles neutral to **religion**, to individuals whose **religious** identities are incidental to their receipt of **civic** authority.

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202. State v. McCleary

Court of Appeals of North Carolina | Dec 06, 1983 | 65 N.C. App. 174

**Overview:** Where only a small portion of a state statute limiting raffles and bingo games to charities and other exempt organizations was unconstitutional, the court reversed a dismissal of the warrants against defendant and remanded the case for trial.

**HN9 -** The constitutional guaranty of liberty embraces the right of the citizen to be free to use his faculties in all **lawful** ways; to live and work where he will; to earn his livelihood by any **lawful** calling; to pursue any livelihood or vocation. The right to work and earn a livelihood has also been recognized as a property right that cannot be taken away except under the police power of the state in the paramount public interest. A statute or ordinance which curtails the right of any person to engage in any occupation can be sustained as a valid exercise of the police power only if it is reasonably necessary to **promote** the public health, morals, order, safety or general welfare. The statute must have a rational, real, or substantial relation to the legitimate governmental purpose and must be reasonably necessary to **promote** the accomplishment of a public good, or prevent the infliction of a public harm.

**HN17 -** The exemption for bingo games and raffles is available only to the classes of organizations listed. Those are organizations that (1) have been in continuous existence in the county of operation for at least one year, (2) are exempt from taxation under either the enumerated provisions of the Internal Revenue Code or similar provisions of the North Carolina General Statutes, (3) as bona fide nonprofit charitable, **civic**, **religious**, fraternal, patriotic or veterans organizations, or as a nonprofit volunteer fire department or nonprofit volunteer rescue squad or as a bona fide homeowners' or property owners' association.

**HN19 -** The organizations exempt from taxation under I.R.C. §§ 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) and 501(d) and under the similar provisions of N.C. Gen. Stat. § 105-130.11 are all required by law to have a general charitable, **religious**, **civic** or educational purpose or orientation. In general, it is required either that no part of the net earnings of these organizations inure to the benefit of any private member, individual, or stockholder or that the group not be organized for profit.

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203. Archdiocese of Wash. v. Wash. Metro. Area Transit Auth.

United States Court of Appeals for the District of Columbia Circuit | Jul 31, 2018 | 897 F.3d 314

**Overview:** A religious institution was unlikely to succeed on a claim that an interstate transit authority's guideline prohibiting religious advertisements violated the Free Speech Clause where, inter alia, bus advertising space was properly treated as a nonpublic forum, and the exclusion of religion as a subject matter was permissible in a nonpublic forum.

**HN15 -** Judicial precedent rejects the view that accepting **commercial** advertising creates a forum for the dissemination of information and expression of ideas and sanctions a preference for commercialism. So understood, ads promoting Christmastime sales are not expressing a view on Christmas any more than a McDonald's ad expresses a view on the desirability of eating beef that demands the acceptance of a contrary ad from an animal rights group, or than a Smithsonian Air and Space Museum ad for a special stargazing event expresses a view on the provenance of the cosmos that demands a spiritual response. **Commercial** advertisements are designed to sell products.

**HN19 -** Generally, the Free Exercise Clause does not exempt individuals from complying with neutral laws of general applicability. Non-neutral laws are impermissible because they have as their object to infringe upon or restrict practices because of their **religious** motivation. There are many ways of demonstrating that the object or purpose of a law is the suppression of **religion** or **religious** conduct. Courts begin with its text and then consider whether there might be governmental hostility which is masked, as well as overt. The factors relevant to the assessment of governmental neutrality include the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body.

**HN1 -** Transit authorities are permitted to accept only **commercial** and public service oriented advertisements because a streetcar or bus is plainly not a park or sidewalk or other meeting place for discussion, but rather is only a way to get to work or back home. Under the forum doctrine, the Washington Metropolitan Transit Authority, as a non-public forum, may restrict its advertising access as long as the restrictions are reasonable and are not an effort to suppress expression merely because public officials oppose the speaker's view.

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204. ⚠ Hansen v. Ann Arbor Pub. Schs

United States District Court for the Eastern District of Michigan, Southern Division | Dec 05, 2003 | 293 F. Supp. 2d 780

**Overview:** A high school violated a student's free speech and equal protection rights as well as the Establishment Clause by allowing only gay friendly adult religious leaders to participant in a panel discussion on homosexuality and religion.

**HN13 -** Neutrality is the fundamental requirement of the Establishment Clause, which prohibits the government from either endorsing a particular **religion** or promoting **religion** generally. A principle at the heart of the Establishment Clause is that government should not prefer one **religion** to another, or **religion** to irreligion. The clearest command of the Establishment Clause is that one **religious** denomination cannot be officially preferred over another. The Establishment Clause prohibits government from abandoning secular purposes to favor the adherents of any sect or **religious** organization.

**HN17 -** Lemon requires first that the government action at issue serve a secular legislative purpose. However, the requirement of a secular purpose does not mean that the government's purpose must be unrelated to **religion**. Rather, Lemon's purpose requirement aims at preventing the relevant governmental decisionmaker from abandoning neutrality and acting with the intent of promoting a particular point of view in **religious** matters. While the government's characterization of its purpose is entitled to deference, it is the duty of the courts to distinguish a sham secular purpose from a sincere one.

**HN18 -** When a state-sponsored **activity** has an overtly **religious** character, courts have consistently rejected efforts to assert a secular purpose for that **activity**.

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205. Little Sisters of the Poor Home for the Aged v. Burwell

United States Court of Appeals for the Tenth Circuit | Jul 14, 2015 | 794 F.3d 1151

**Overview:** Plaintiffs, who alleged that acts required to opt out of Affordable Care Act's contraception mandate substantially burdened their religious exercise, were not entitled to preliminary injunctions because they had not established a likelihood of success on the merits on their RFRA and First Amendment claims or a likely threat of irreparable harm.

**HN14 -** To determine whether plaintiffs have made a prima facie claim under the **Religious** Freedom Restoration Act (RFRA), 42 U.S.C.S. § 2000bb-1 et seq., courts do not question whether the petitioner correctly perceived the commands of his or her faith. But courts do determine whether a challenged law or policy substantially burdens plaintiffs' **religious** exercise. RFRA's statutory text and **religious** liberty case law demonstrate that courts—not plaintiffs—must determine if a law or policy substantially burdens **religious** exercise. RFRA states the federal government shall not substantially burden a person's exercise of **religion**. 42 U.S.C.S. § 2000bb-1(a). Courts must give effect to every clause and word of a statute when possible. The court therefore considers not only whether a law or policy burdens **religious** exercise, but whether that burden is substantial. If plaintiffs could assert and establish that a burden is "substantial" without any possibility of judicial scrutiny, the word "substantial" would become wholly devoid of independent meaning. Furthermore, accepting any burden alleged by plaintiffs as "substantial" would improperly conflate the determination that a **religious** belief is sincerely held with the determination that a law or policy substantially burdens **religious** exercise.

**HN10 -** Under the **Religious** Freedom Restoration Act, 42 U.S.C.S. § 2000bb-1 et seq., the government shall not substantially burden a person's exercise of **religion** even if the burden results from a rule of general applicability unless 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. 42 U.S.C.S. § 2000bb-1.

**HN12 -** Analysis under the **Religious** Freedom Restoration Act (RFRA), 42 U.S.C.S. § 2000bb-1 et seq., follows a burden-shifting framework. A plaintiff establishes a prima facie claim under RFRA by proving the following three elements: (1) a substantial burden imposed by the federal government on a (2) sincere (3) exercise of **religion**. 42 U.S.C.S. § 2000bb-1(a). The burden then shifts to the government to demonstrate its law or policy advances a compelling interest implemented through the least restrictive means available. The government must show that the compelling interest test is satisfied through application of the challenged law to the person—the particular claimant whose sincere exercise of **religion** is being substantially burdened. This burden-shifting approach applies even at the preliminary injunction stage.

206. Espinoza v. Mont. Dep't of Revenue

Supreme Court of the United States | Jun 30, 2020 | 140 S. Ct. 2246

**Overview:** Montana revenue department regulation prohibiting families from using certain scholarships at religious schools based on the Montana Constitution's no-aid provision violated the Free Exercise Clause of the U.S. Constitution because the Free Exercise Clause protected against laws that imposed special disabilities on the basis of religious status.

**HN9 -** The Free Exercise Clause, which applies to the States under the Fourteenth Amendment, protects **religious** observers against unequal treatment and against laws that impose special disabilities on the basis of **religious** status. Those basic principles have long guided the U.S. Supreme Court. A State cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation. The Free Exercise Clause protects against laws that penalize **religious activity** by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens.

**HN17 -** The U.S. Supreme Court has repeatedly upheld government programs that spend taxpayer **funds** on equal aid to **religious** observers and organizations, particularly when the link between government and **religion** is attenuated by private choices.

**HN7 -** The **Religion** Clauses of the First Amendment provide that Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof. The U.S. Supreme Court has recognized a "play in the joints" between what the Establishment Clause permits and the Free Exercise Clause compels.

207. Commack Self-Service Kosher Meats, Inc. v. Hooker

United States Court of Appeals for the Second Circuit | May 10, 2012 | 680 F.3d 194

**Overview:** New York's Kosher Law Protection Act of 2004 did not violate the Establishment Clause because they had a secular purpose extending to the general public (protecting against fraud in the market), did not foster an excessive government entanglement with religion, and neither advanced nor impeded religion.

**HN11 -** The Establishment Clause of the First Amendment, which is applicable to the states through the Fourteenth Amendment, provides that 'Congress shall make no law respecting an establishment of **religion**. U.S. Const. amend. I. The United States Supreme Court has interpreted this Clause to protect against three main evils: sponsorship, financial support, and active involvement of the sovereign in **religious activity**.

**HN18 -** The Kosher Law Protection Act of 2004 (Kosher Law), N.Y. Agric. & Mkts. Law §§ 201-a through 201-d, does not enforce **religious** law or **religious** requirements. The Kosher Law merely requires food products marketed as kosher to be labeled as kosher. Thus, the Kosher Law does not entangle the State with **religion** because it does not require the State to enforce laws based on **religious** doctrine or to inquire into the **religious** content or **religious** nature of the products **sold**.

**HN2 -** In promulgating the Kosher Law Protection Act of 2004 (Kosher Law), N.Y. Agric. & Mkts. Law §§ 201-a through 201-d, the New York Legislature noted that a significant number of consumers within the state seek to **purchase** food products that are kosher, and that many of those consumers do so for reasons unrelated to **religious** observance. § 2. The Legislature found it essential that consumers be provided clear and accurate information about the food they are purchasing, and that this goal is furthered by requiring vendors of food and food products represented as kosher to make available to consumers the basis for that representation.

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208. Hart v. Cult Awareness Network

Court of Appeal of California, Second Appellate District, Division Seven. | Jan 28, 1993 | 13 Cal. App. 4th 777

**Overview:** Member of the Church of Scientology did not prove that the Cult Awareness Network's denial of his membership application was religious discrimination where the group was not a business establishment within the meaning of the Unruh Civil Rights Act.

**HN10 -** Implicit in the right to engage in activities protected by U.S. Const. amend. I is a corresponding right to associate with others in **pursuit** of a wide variety of political, social, economic, educational, **religious**, and cultural ends.

**HN13 -** The establishment of **religion** clause of U.S. Const. Amend. I means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any **religion**. No person can be punished for entertaining or professing **religious** beliefs or disbeliefs, for church attendance or non-attendance. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any **religious** organizations or groups and vice versa.

**HN4 -** The term "business establishments" in the Unruh Civil Rights Act, Cal. Civ. Code § 5, is used in the broadest sense reasonably possible. The word "business" embraces everything about which one can be employed, and it is often synonymous with calling, occupation, or trade, engaged in for the purpose of making a livelihood or gain. The word "establishment", as broadly defined includes not only a fixed location, such as the place where one is permanently fixed for residence or business, but also a permanent **commercial** force or organization or a permanent settled position (as in life or business).

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209. Southside Fair Housing Committee v. New York

United States Court of Appeals for the Second Circuit | Mar 26, 1991 | 928 F.2d 1336

**Overview:** Injunction against sale of public land to exclusive religious group to build school, housing, and synagogue was properly denied because the sale did not constitute an establishment of religion and there was no showing of racial discrimination.

**HN8 -** Under the Lemon test, lines have been drawn with reference to the three main evils against which the Establishment Clause, U.S. Const. amend. I, was intended to afford protection: sponsorship, financial support, and active involvement of the sovereign in **religious activity**. The three-part test states that, first, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits **religion**, and finally, the statute must not foster an excessive government entanglement with **religion**. Additionally, in recent years, courts have paid particularly close attention to whether the challenged governmental practice either has the purpose or effect of endorsing **religion**. Asking whether challenged action has the purpose or effect of endorsing **religion** helps give content to Lemon's primary effect prong. Outside the school-aid context, the Lemon test itself tends to focus on the question of endorsement.

**HN11 -** One way in which government action could violate the primary effect test would be that the government's actions promoted a particular **religious** group by impermissibly providing a subsidy to the primary **religious** mission of the institutions affected. The fact that such a group may have paid market value for government land is not alone dispositive of a primary effect claim. For example, if there were warring bidders for various sites, and the government consistently **sold** to one **religious** group, even though other groups were making bids of equal value, then the fact that the **religious** group's bid represented market value would not be dispositive of a challenge under the Establishment Clause, U.S. Const. amend. I, because the consistent choice of one **religious** group over other groups would represent impermissible favoritism.

**HN13 -** The courts must sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. There is no constitutional requirement for government to be hostile to **religion** and to throw its weight against efforts to widen the effective scope of **religious** influence. Under U.S. Const. amend. I, the state is required to be a neutral in its relations with groups of **religious** believers and non-believers; the amendment does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.

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210. Lawson v. Wainwright

United States District Court for the Southern District of Florida | Jul 18, 1986 | 641 F. Supp. 312

**Overview:** Officials and chaplains of the Florida Department of Corrections violated § 1983 and the First Amendment rights of inmates of the Hebrew Israelite faith. They were enjoined from denying religious materials and practices to the inmate class.

**HN1 -** Incoming **religious literature** addressed to an inmate is to be screened according to the procedure set out in the Florida Department of Correction's Admissible Reading Material rule, Fla. Admin. Code Ann. r. 33-3.12, which provides in part that under (1)(b) **religious** materials shall be subject to the provisions of this rule, except that: 1. **Religious** publications shall not require inclusion in the Approved Periodical List; 2.

The institutional chaplain, rather than the superintendent or his designee, shall be the reviewing authority; and 3. Any decision of a chaplain disapproving a **religious** publication may be appealed to the Chaplaincy Services Coordinator within 14 days of notice of the disapproval. This regulation does not require that an inmate be informed of this alternative appeal route, nor of the nature of the rejected book or periodical.

**HN5 -** Fla. Admin. Code Ann. r. 33-3.04 explicitly provides that **religious literature** is exempted from the approved reading list requirement.

**HN11 -** The Admissible Reading Material Rule does not give a local chaplain unbridled discretion in deciding whether certain **literature** is suitable for introduction to the prison; instead, the rule sets out the following criteria, inter alia, for review.Reading material shall be disapproved if it: (c) is dangerously inflammatory in that it advocates or encourages riot, insurrection, escape, disruption of the institution, violence or violation of law or Department or institution rule, the violation of which would present a serious threat to the security order, or rehabilitative objectives of the institution; or (e) otherwise presents a clear and substantial threat to the security or rehabilitative objectives of the correctional system, or to the safety of any person. Fla. Admin. Code, 33-3.12(6)(c), (e). Thus, by its own regulation, the Department of Corrections may exclude **religious literature** only where it is shown that the excluded book or periodical advocates or encourages riot, insurrection, escape, etc. or otherwise presents a clear and substantial threat to the legitimate government objective of safety, security and rehabilitation.

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211. ⚠ Gregoire v. Centennial School Dist.

United States Court of Appeals for the Third Circuit | Jun 22, 1990 | 907 F.2d 1366

**Overview:** A permanent injunction was issued enjoining a school district from denying a religious group the right to rent a high school auditorium for an evening performance that would include Christian gospel message and distribution of religious literature.

**HN18 -** The usual setting for an entanglement clause violation is when a state official, in order to avoid giving state aid to **religion**, must make determinations as to what **activity** or material is **religious** in nature, and what is secular and therefore permissible. A content-neutral access policy eliminates the need for these distinctions.

**HN2 -** **Religious** discussion and worship are forms of speech and association protected by the first amendment.

**HN3 -** A school district is under no obligation to open its facilities to expressive **activity** by outsiders. The state, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. It is when the government opens facilities not generally available to the public that legal questions relating to equal access arise.

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212. ⚠ Chittenden Town Sch. Dist. v. Vermont Dep't of Educ.

Supreme Court of Vermont | Jun 11, 1999 | 169 Vt. 310

**Overview:** School districts paying tuition for students to attend high school at nonpublic sectarian schools selected by their parents, without restrictions on the purpose or use of tuition funds for religious worship, violated the Vermont Constitution.

**HN10 -** The **mere fact** that public **funds** are expended to an institution operated by a **religious** enterprise does not establish the fact that the proceeds are used to support the **religion** professed by the recipient. Vt. Const. ch. I, art. 3 is not offended by mere compelled support for a place of worship unless the compelled support is for the "worship" itself.

**HN11 -** Vt. Const. ch. II, § 68, the section on public education, provides that all **religious** societies, or bodies of people that may be united or incorporated for the advancement of **religion** and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the general assembly of this state shall direct.

**HN17 -** The major deficiency in a tuition-payment system is that there are no restrictions that prevent the use of public money to fund **religious** education. Schools to which the tuition is paid by the district can use some or most of it to fund the costs of **religious** education, and presumably will. A statutory system, with no restrictions on the purpose or use of tuition **funds**, violates Vt. Const. ch. I, art. 3.

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213. Bronx Household of Faith v. Bd. of Educ.

United States District Court for the Southern District of New York | Nov 16, 2005 | 400 F. Supp. 2d 581

**Overview:** Because the activities of plaintiff church did not fall within a separate category of speech, and were not mere religious worship, divorced from any teaching of moral values, the church could not constitutionally be prohibited from the limited public forum established by defendant school board and district.

**HN18 -** The United States Supreme Court has declined to employ Establishment Clause jurisprudence using a modified heckler's veto, in which a group's **religious activity** can be proscribed on the basis of what the youngest members of the audience might misperceive.

**HN1 -** The First Amendment requires the state to be a neutral in its relations with groups of **religious** believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.

**HN2 -** The United States Supreme Court has rejected definitively the treating of "quintessentially **religious**" activities as different in kind from the teaching of character and morals from a particular viewpoint.

214. McCreary County v. ACLU

Supreme Court of the United States | Jun 27, 2005 | 545 U.S. 844

**Overview:** District court properly granted preliminary injunction enjoining counties from displaying Ten Commandments in courthouses; determination of counties' purpose was sound basis for ruling that displays violated U.S. Const. amend. I's Establishment Clause, and history of exhibits was properly considered in evaluating counties' claim of secular purpose.

**HN2 -** The touchstone for the court's analysis of whether government action has a "secular legislative purpose" is the principle that the First Amendment mandates governmental neutrality between **religion** and **religion**, and between **religion** and nonreligion. When the government acts with the ostensible and predominant purpose of advancing **religion**, it violates that central Establishment Clause value of official **religious** neutrality, there being no neutrality when the government's ostensible object is to take sides. Lemon's "purpose" requirement aims at preventing government from abandoning neutrality and acting with the intent of promoting a particular point of view in **religious** matters. Manifesting a purpose to favor one faith over another, or adherence to **religion** generally, clashes with the **understanding**, reached after decades of **religious** war, that liberty and social stability demand a **religious** tolerance that respects the **religious** views of all citizens. By showing a purpose to favor **religion**, the government sends the message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members. Further, the purpose apparent from government action can have an impact more significant than the result expressly decreed.

**HN4 -** One consequence of the corollary that Establishment Clause analysis does not look to the veiled psyche of government officers could be that in some of the cases in which establishment complaints failed, savvy officials had disguised their **religious** intent so cleverly that the objective observer just missed it. But that is no reason for great constitutional concern. If someone in the government hides **religious** motive so well that the objective observer, acquainted with the text, legislative history, and implementation of the statute cannot see it, then without something more the government does not make a divisive announcement that in itself amounts to taking **religious** sides. A secret motive stirs up no strife and does nothing to make outsiders of nonadherents, and it suffices to wait and see whether such government action turns out to have (as it may even be likely to have) the illegitimate effect of advancing **religion**.

**HN8 -** The United States Supreme Court has stressed the significance of integrating the Ten Commandments into a secular scheme to forestall the broadcast of an otherwise clearly **religious** message. Displaying the text of the Ten Commandment is different from a symbolic depiction, like tablets with 10 Roman numerals, which could be seen as alluding to a general notion of law, not a sectarian conception of faith. Where the text is set out, the insistence of the **religious** message is hard to avoid in the absence of a context plausibly suggesting a message going beyond an excuse to **promote** the **religious** point of view.

215. International Society for Krishna Consciousness, Inc. v. Houston

United States District Court for the Southern District of Texas, Houston Division | Nov 09, 1979 | 482 F. Supp. 852

216. Engel v. Vitale

Supreme Court of New York, Special Term, Nassau County | Aug 24, 1959 | 18 Misc. 2d 659

**Overview:** Parents seeking to have a daily school prayer invalidated as unconstitutional, were not completely successful because a school board was permitted to authorize the daily prayer, but could not require students to say it.

**HN6 -** The right thus recognized to adhere to and publicly to express **religious** beliefs extends to evangelization in the public **streets**, in the sale of **religious** tracts, and in public parks, as well as in a company town. It does not, however, even on **religious** grounds, permit withdrawal of children from school in the face of a statute requiring attendance until age 16.

**HN8 -** The "establishment of **religion**" clause, U.S. Const. amend. I means at least this: neither a state nor the federal government can set up a church. Neither can pass laws, which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any **religion**. No person can be punished for entertaining or professing **religious** beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any **religious** organizations or groups and vice versa. The clause against establishment of **religion** by law is intended to erect a wall of separation between church and state.

**HN9 -** The First Amendment, U.S. Const. amend. I does not require separation in every respect, the question in each case being one of degree. In refusing to accommodate a public service to the **religious** nature of people's spiritual needs is to prefer nonbelievers to believers. Government may not finance **religious** groups nor undertake **religious** instruction, nor blend secular and sectarian education nor use secular institutions to force one or some **religion** on any person. It may not coerce anyone to attend church, to observe a **religious** holiday, or to take **religious** instruction. A system whereby public schools do no more than accommodate schedules to a program of outside **religious** instruction does not violate the amendment.

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217. International Soc. for Krishna Consciousness, Inc. v. Colorado State Fair & Industrial Exposition Com.

Supreme Court of Colorado | Mar 03, 1980 | 199 Colo. 265

**Overview:** When a religious corporation sought to enjoin enforcement of resolution that prevented corporation from soliciting donations and distributing literature at state fair, court held that resolution was unconstitutional violation of freedom of religion.

**HN1 -** The federal constitution, through the First and Fourteenth Amendments, establishes that neither Congress nor the legislature of a state, can make any law respecting an establishment of **religion**, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press. U.S. Const. amends. I, XIV. Implementing this rule of the constitution, it has been recognized that hand **distribution** of **religious** tracts is an age-old form of missionary **evangelism**; it is more than preaching; it is more than

**distribution** of **religious literature**. Its purpose is as evangelical as the revival meeting; and as a form of **religious activity**, it occupies the same estate under the First Amendment as do worship in churches and preaching from pulpits. And the **mere fact** that **religious literature** is **sold**, or contributions solicited, does not put this form of **evangelism** outside the pale of constitutional protection.

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218. Lemon v. Kurtzman

Supreme Court of the United States | Jun 28, 1971 | 403 U.S. 602

**Overview:** Statutes that provided aid to church-related elementary and secondary schools were found unconstitutional, as they fostered excessive entanglement between government and religion in contravention of the Establishment Clause of the First Amendment.

**HN2 -** The three main evils against which the Establishment Clause was intended to afford protection: sponsorship, financial support, and active involvement of the sovereign in **religious activity**.

**HN5 -** In order to determine whether the government entanglement with **religion** is excessive, the court must examine the character and purposes of the institutions that are benefited, the nature of the aid that the state provides, and the resulting relationship between the government and the **religious** authority.

**HN3 -** Three tests gleaned from the Supreme Court Establishment Clause cases are: first, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits **religion**; finally, the statute must not foster an excessive government entanglement with **religion**.

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219. Marsa v. Wernik

Supreme Court of New Jersey | Jun 08, 1981 | 86 N.J. 232

**Overview:** The commencement of public meetings of a town governing body with a brief invocation, prayer, or silent meditation, did not violate the Establishment Clause.

**HN5 -** Where conduct itself is undertaken directly by governmental officials or personnel, the third element of the tripartite test for whether a law violates the Establishment Clause, U.S. Const. amend. I--excessive government entanglement--is effectively embraced by the other standards of the test. In such a situation, if direct governmental action constitutes a "**religious**" practice under the initial components of the three-prong test, namely, the absence of a secular purpose or a primary or principal effect inhibiting or advancing **religion**, then, by definition, government itself can be said to be actually and directly engaged and inextricably "entangled" in **religion**. In contrast, if the **activity** offends neither of these standards, then **religion** would not be at all involved. In that converse posture, where government itself is not directly engaged in a **religious activity** or function, and is not otherwise supervising, working through or dealing with **religious** entities, there would be no entanglement by government in the **religious** domain.

**HN9 -** Government may not, under the First Amendment, prefer one **religion** over another or **religion** over nonreligion but must remain neutral on both scores. Neutrality is breached where readings are obviously of a **religious** nature, or, even if the purpose of readings is not strictly or exclusively **religious**, reading from the Bible clearly and indisputably has a **religious** character inconsistent with use merely for nonreligious **moral** inspiration.

**HN1 -** The "establishment of **religion**" clause of U.S. Const. amend. I means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any **religion**. No person can be punished for entertaining or professing **religious** beliefs or disbeliefs, for church attendance, or non-attendance. No tax in any amount, large or small, can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any **religious** organizations or groups and vice versa. The clause against establishment of **religion** by law was intended to erect a wall of separation between church and state.

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220. Rosenberger v. Rector & Visitors of the Univ. of Va.

United States Court of Appeals for the Fourth Circuit | Mar 14, 1994 | 18 F.3d 269

**Overview:** A university's denial of funding to religious publication was constitutional because of compelling state interest in preserving itself from entanglement with religion that justified presumptive unconstitutional condition placed on access to benefits.

**HN4 -** Congress shall make no law prohibiting the free exercise of **religion**. See U.S. Const. amend. I, cl. 2.

**HN5 -** Article I, Section 16 of the Virginia Constitution provides inter alia that "all men are equally entitled to the free exercise of **religion**, according to the dictates of conscience," and that the Virginia General Assembly shall not confer any peculiar privileges or advantages on any sect or denomination. Va. Const. art. I, § 16, cls. 2, 6.

**HN8 -** Article I, Section 11 of the Virginia Constitution, provides inter alia that the right to be free from any governmental discrimination upon the basis of **religious** conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination. Va. Const. art. I, § 11, cl. 3.

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221. Coulee Catholic Sch. v. Labor & Indus. Review Comm'n

Supreme Court of Wisconsin | Jul 21, 2009 | 2009 WI 88

**Overview:** Because a Catholic school was committed to a religious mission - the inculcation of the Catholic faith and worldview - and respondent's teaching position was important and closely linked to that mission, her age discrimination claim under the Wisconsin Fair Employment Act unconstitutionally impinged upon her employer's right to religious freedom.

**HN15 -** A functional analysis of the ministerial exception has two steps. The first step is an inquiry into whether the organization in both statement and practice has a fundamentally **religious** mission. That is, does the organization exist primarily to worship and spread the faith? Any inquiry will be highly fact-sensitive. It may be, for example, that one religiously-affiliated organization committed to feeding the homeless has only a nominal tie to **religion**, while another religiously-affiliated organization committed to feeding the homeless has a religiously infused mission involving teaching, **evangelism**, and worship. Similarly, one **religious** school may have some affiliation with a church but not attempt to ground the teaching and life of the school in the **religious** faith, while another similarly situated school may be committed to life and learning grounded in a **religious** worldview.

**HN4 -** The right to practice one's **religion** according to the dictates of conscience is fundamental to our system of government. The United States is a nation committed to and founded upon **religious** freedom.

**HN5 -** The right to practice one's **religion** according to the dictates of conscience is fundamental in a court of law not because **religious** freedom is broadly understood to be a basic human right, but because our nation's founders recognized and enshrined this right in our nation's Constitution. Roughly 60 years later, Wisconsinites saw fit to include more specific and more extensive protections for **religious** liberty in its state Constitution.

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222. Shepherd Montessori Ctr. Milan v. Ann Arbor Charter Twp.

Court of Appeals of Michigan | Nov 06, 2003 | 259 Mich. App. 315

**Overview:** A trial court erred, where it prematurely dismissed a religious school's claim that defendant zoning board violated federal law, as the school set forth a prima facie case that its proposed use was a free exercise of religion and equal protection.

**HN13 -** For a governmental regulation to substantially burden **religious activity**, it must have a tendency to coerce individuals into acting contrary to their **religious** beliefs. Conversely, a government regulation does not substantially burden **religious activity** when it only has an incidental effect that makes it more difficult to practice the **religion**. Thus, for a burden on **religion** to be substantial, the government regulation must compel action or inaction with respect to the sincerely held belief; mere inconvenience to the **religious** institution or adherent is insufficient.

**HN1 -** The **Religious** Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.S. § 2000cc, et seq., prohibits a governmental entity from imposing a land use regulation upon a person, or upon a **religious** institution or assembly, which substantially burdens the free exercise of **religion**.

**HN11 -** Challenges of zoning ordinances under the **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc et seq., are expressly contemplated. 42 U.S.C.S. 2000cc-5(5).

The use of the land does not have to be a core **religious** practice. Rather, the term **religious** exercise includes any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief. 42 U.S.C.S. § 2000cc-5(7)(A). Further, RLUIPA expressly states explicitly that the use, building, or conversion of real property for the purpose of **religious** exercise shall be considered to be **religious** exercise of the person or entity that uses or intends to use the property for that purpose. 42 U.S.C.S. § 2000cc-5(7)(B).

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223. Beckwith Elec. Co. v. Sebelius

United States District Court for the Middle District of Florida, Tampa Division | Jun 25, 2013 | 960 F. Supp. 2d 1328

**Overview:** As a corporation was a "person" under First Amendment and Religious Freedom Restoration Act, and the corporation here was inculcated with its majority shareholder's religious beliefs, both the corporation and the shareholder had standing to challenge regulatory mandate compelling health care coverage that would include emergency contraceptives.

**HN1 -** In enacting the **Religious** Freedom Restoration Act, 42 U.S.C.S. § 2000bb et seq., Congress recognized that laws neutral toward **religion** may burden **religious** exercise as surely as laws intended to interfere with **religious** exercise, and legislated "the compelling interest test" as the means for the courts to strike sensible balances between **religious** liberty and competing prior governmental interests. Congress, in effect, adopted the "compelling interest test" as set forth in Sherbert and Yoder.

**HN20 -** Under the **Religious** Freedom Restoration Act, 42 U.S.C.S. § 2000bb et seq., "exercise of **religion**" is defined as "any exercise of **religion**, whether or not compelled by, or central to, a system of **religious** belief." 42 U.S.C.S. § 2000bb-2 (defining "exercise of **religion**" as defined in 42 U.S.C.S. § 2000cc-5).

**HN5 -** A stated purpose of the **Religious** Freedom Restoration Act, 42 U.S.C.S. § 2000bb et seq., is to provide a claim or defense to persons whose **religious** exercise is substantially burdened by the government. § 2000bb(b)(2).

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224. H-Chh Assocs. v. Citizens for Representative Gov't

Court of Appeal of California, Second Appellate District, Division One | Jul 28, 1987 | 193 Cal. App. 3d 1193

**Overview:** Shopping center management's application process to allow citizens to engage in political petitioning that conferred unbridled discretion to deny application on basis of general, subjective criteria only was overbroad and constitutionally invalid.

**HN12 -** While the solicitation of political or other **funds** to be used to support the promulgation of views is indeed not "pure speech," it is **activity** protected by the First Amendment.

**HN2 -** The United States Supreme Court has held that the invitation to public use of a shopping center is not a sufficient dedication of privately owned property to public use to entitle citizens to utilize it as a forum for the exercise of First Amendment rights. Accordingly, a privately owned center could prohibit the **distribution** of printed material unless that material communicated information relating to the center's business -- provided there existed adequate alternate means of communication.

**HN7 -** It is not the medium chosen, but the content of the message which distinguishes **commercial** speech from other expression; hence, regulation to the extent permitted for **commercial** speech is not appropriate simply because a **commercial** medium has been selected for the communication of noncommercial ideas.

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225. ## United Christian Scientists v. Christian Sci. Bd. of Dirs.

United States Court of Appeals for the District of Columbia Circuit | Sep 22, 1987 | 829 F.2d 1152

**Overview:** A statute granting a church extended copyright was unconstitutional under the Establishment Clause because it lacked a secular legislative purpose, and its conferral of publication veto power had the primary effect of advancing religion.

**HN7 -** The U.S. Const. amend. I guarantee that Congress shall make no law respecting an establishment of **religion**, is more than a pledge that no single **religion** will be designated as a state **religion**. It is also more than a mere injunction that governmental programs discriminating among religions are unconstitutional. The Establishment Clause instead primarily proscribes sponsorship, financial support, and active involvement of the sovereign in **religious activity**. Neither a state nor the federal government can pass laws which aid one **religion**, aid all religions or prefer one **religion** over another.

**HN10 -** Government cannot exert its authority in the domain of **religious** conviction. Government may not convey any message of endorsement or disapproval of **religious activity**, or use its power or prestige to control, support or influence any matter of **religious** faith.

**HN14 -** The state has no legitimate interest in protecting any or all religions from views distasteful to them. The Establishment Clause prohibits any and all official judgments concerning the rectitude of **religious** belief. Government in this democracy, state and national, must be neutral in matters of **religious** theory, doctrine, and practice. It may not aid, foster, or **promote** one **religion** or **religious** theory against another or even against the militant opposite.

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226. ## HEB Ministries, Inc. v. Tex. Higher Educ. Coordinating Bd.

Supreme Court of Texas | Aug 31, 2007 | 235 S.W.3d 627

**Overview:** In a declaratory judgment action brought against Texas Higher Education Coordinating Board, Texas Supreme Court concluded that Tex. Educ. Code Ann. § 61.313's restriction on the use of the name

"seminary" by schools offering only religious programs of study violated the Free Exercise guarantees of the First Amendment and Tex. Const. art. I, § 6.

**HN8 -** A system of government that makes itself felt as pervasively as ours could hardly be expected never to cross paths with the church. In fact, the state and federal governments impose certain burdens upon, and impart certain benefits to, virtually all our activities, and **religious activity** is not an exception. The United States Supreme Court has enforced a scrupulous neutrality by the state, as among religions, and also as between **religious** and other activities, but a hermetic separation of the two is an impossibility it has never required. Neutrality is what is required. The State must confine itself to secular objectives, and neither advance nor impede **religious activity**.

**HN3 -** The First Amendment's Establishment Clause prohibits any law respecting an establishment of **religion**. Correspondingly, Tex. Const. art. I, § 6, states that no preference shall ever be given by law to any **religious** society. The Texas Supreme Court has referred to this provision and Tex. Const. art. I, § 7, as Texas' equivalent of the Establishment Clause.

**HN6 -** The "establishment of **religion**" clause of the First Amendment means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. Since the government cannot determine what a church should be, it cannot determine the qualifications a cleric should have or whether a particular person has them. Likewise, the government cannot set standards for **religious** education or training.

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227. McCullen v. Coakley

United States District Court for the District of Massachusetts | Aug 22, 2008 | 573 F. Supp. 2d 382

**Overview:** Facial challenge to constitutionality of Mass. Gen. Laws ch. 266, § 120E1/2 was rejected because fixed buffer zone outside reproductive health care facilities was justified without reference to content of regulated speech, was narrowly tailored to serve significant governmental interests, and left open ample alternative communication channels.

**HN29 -** The Free Exercise Clause is made applicable to the states (and, therefore, to municipalities) through the Fourteenth Amendment. The clause states that Congress shall make no law prohibiting the free exercise of **religion**. If, however, a law is neutral and of general applicability, it need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular **religious** practice.

**HN7 -** By addressing political speech on public **streets** and sidewalks, Mass. Gen. Laws ch. 266, § 120E1/2 (2007), plainly operates at the core of the First Amendment. But First Amendment interests nonetheless must be harmonized with the state's need to exercise its traditional police powers.

**HN8 -** Mass. Gen. Laws ch. 266, § 120E1/2 (2007) is content-neutral for three reasons. First, the statute does not directly regulate speech. Indeed, it does not mention speech or expression at all, much less prohibit certain types of messages, statements, **literature** or signage. Instead, and permissibly, it merely

regulates the places where communications may occur. Moreover, the statute continues to apply during a reproductive health care facility's business hours only, and only if the buffer zone is clearly delineated.

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228. Fleming v. Jefferson County Sch. Dist. No. R-1

United States District Court for the District of Colorado | Nov 01, 2001 | 170 F. Supp. 2d 1094

**Overview:** School district and officials violated plaintiffs' free speech rights by inviting plaintiffs to paint tiles to honor slain children and friends and prohibiting plaintiffs from painting the date of the attack or religious content on the tiles.

**HN16 -** Under a neutral policy, the fact that **religious** speech was made along with nonreligious speech would not violate the Establishment Clause. Even if **religion** is benefitted incidentally, so long as the government treats **religious** and nonreligious speech evenhandedly and cannot be deemed to be sponsoring the **religious activity**, the government cannot plausibly argue that it is justified in denying private **religious** speech on public property because it fears the Establishment Clause will be offended. In fact, the guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including **religious** ones, are broad and diverse.

**HN17 -** Endorsement of **religion** will be found only where the speech at issue has a principal or primary effect of advancing or endorsing **religion**. The Establishment Clause prohibits only those school activities which, in the eyes of a reasonable observer, advance or **promote religion** or a particular **religious** belief.

**HN4 -** **Religious** speech and speech from a **religious** viewpoint are protected by the First Amendment. Private **religious** speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.

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229. Weir v. Nix

United States District Court for the Southern District of Iowa, Central Division | May 25, 1995 | 890 F. Supp. 769

**Overview:** State's failure to provide a prisoner with the opportunity to witness the immersion portion of the baptismal ceremony, central to his fundamentalist Christian beliefs, was a violation of the prisoner's right to free exercise of religion.

**HN3 -** One who claims a challenged government action violates his or her free exercise of **religion** must first establish that the belief in question is **religious** in nature, is sincerely held, and that the government action actually infringes upon the free exercise of the individual's belief. The required threshold showing of an actual infringement upon a sincerely held **religious** belief is not satisfied unless the infringement amounts to a "substantial burden" on the exercise of the belief as now expressly codified in the **Religious** Freedom Restoration Act of 1993. 42 U.S.C.S. § 2000bb-1(b). The requirement of a "substantial" burden differentiates those burdens which have only an incidental effect or merely inconvenience the exercise of

the person's **religion** from those which burden the exercise of the **religion** by pressuring the adherent to commit an act forbidden by the **religion** or by preventing him or her from engaging in conduct or having a **religious** experience which the faith mandates. Only the latter are constitutionally or statutorily significant.

**HN2 -** The Free Exercise Clause to the First Amendment to the United States Constitution provides that Congress shall make no law prohibiting the free exercise of **religion**. It is applicable to the states by incorporation into the Fourteenth Amendment. Prisoners have the right to a reasonable opportunity to exercise their **religious** beliefs. The "exercise of **religion**" often involves not only belief and profession but the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation.

**HN6 -** The **Religious** Freedom Restoration Act of 1993 provides that government may not substantially burden a person's exercise of **religion** unless the government demonstrates the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. 42 U.S.C.S. § 2000bb-1(a) and (b). A person whose rights under the statute are violated may obtain appropriate relief against a government in a judicial proceeding. 42 U.S.C.S. § 2000bb-1(c). The term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a state, or a subdivision of a state. 42 U.S.C.S. § 2000bb-2(1). The statute is retroactive, 42 U.S.C.S. § 2000bb-3(a), and applies to prisoners.

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230. Chandler v. James

United States District Court for the Middle District of Alabama, Northern Division | Mar 12, 1997 | 958 F. Supp. 1550

**Overview:** School prayer statute was unconstitutional as it unreasonably restricted the private speech and religion rights of public school students, was not enacted for a secular purpose, and had the primary effect of endorsing religion.

**HN4 -** The U.S. Supreme Court has developed a number of principles designed to aid the courts in their task of insuring government neutrality towards and among religions. The Supreme Court identified the three main evils against which the Establishment Clause was intended to afford protection: sponsorship, financial support, and active involvement of the sovereign in **religious activity**. To determine whether a practice or legislation implicates any of these evils, there are three tests: (1) does the statute have a secular purpose; (2) is the principal or primary effect of the statute to advance or inhibit **religion**; and (3) does the statute foster excessive entanglement with **religion**. If the answer to any of these questions is "yes," then the legislation in question has violated the principle of government neutrality towards and among religions, and is unconstitutional.

**HN2 -** Although the Free Exercise Clause guarantees complete freedom of belief, the guarantee does not extend to protect all **religious activity**.

**HN3 -** The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official **religion** whether those laws operate directly to coerce non-observing individuals or not. When the power, prestige

and financial support of government is placed behind a particular **religious** belief, the indirect pressure upon **religious** minorities to conform to the prevailing officially approved **religion** is plain.

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231. Paulson v. Abdelnour

Court of Appeal of California, Fourth Appellate District, Division One | Nov 30, 2006 | 145 Cal. App. 4th 400

**Overview:** A local initiative proposition transferring ownership of a veterans' memorial site, which contained a large cross, to the federal government did not establish religion in violation of the First Amendment or Cal. Const., art. I, § 4, because the transfer had the valid secular purpose of preserving the historic memorial.

**HN10 -** When government acts with the ostensible and predominant purpose of advancing **religion**, it violates the central establishment clause value of official **religious** neutrality. In determining whether government action is neutral, a secular purpose must be shown. The secular purpose stated must be genuine, not a sham, and it may not be merely secondary to what is primarily a **religious** objective. Government action is tainted where its purpose is entirely motivated by a purpose to advance **religion**, and a court may look to see whether government **activity** is motivated wholly by **religious** considerations. These inquiries, however, are not determinative where it can be found that an articulated secular purpose is implausible or trivial. The purpose requirement aims to prevent government from abandoning neutrality and dividing the citizenry into those who are favored and those who are not.

**HN15 -** It is possible that savvy officials may succeed in disguising **religious** purpose so well that an objective observer acquainted with the text, history and implementation of the government action may not be able to see the government impropriety. This, however, is no reason for great constitutional concern. Because the improper purpose is so hidden, without something more the government does not make a divisive announcement that in itself amounts to taking **religious** sides. A secret motive stirs up no strife and does nothing to make outsiders of nonadherents, and it suffices to wait and see whether such government action turns out to have (as it may even be likely to have) the illegitimate effect of advancing **religion**.

**HN18 -** The third and final prong of the Lemon test provides that a challenged government action may not foster an excessive government entanglement with **religion**. In order to determine whether government entanglement with **religion** is excessive, a court examines the character and purposes of the institutions benefited, the nature of the aid provided by the government and the resulting relationship between the government and the **religious** authority.

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232. Brush & Nib Studios, LC v. City of Phoenix

Supreme Court of Arizona | Sep 16, 2019 | 448 P.3d 890

**Overview:** Under Ariz. Const. art. 2, § 6, the City of Phoenix could not apply its Human Relations Ordinance to force the owners of an art studio to create custom wedding invitations to same-sex wedding ceremonies because the invitations (each with hand-drawn words, images and original artwork) and the process of creating them were protected as pure speech.

**HN33 -** A free exercise claim under Arizona's Free Exercise of **Religion** Act (FERA), Ariz. Rev. Stat. § 41-1493.01 must be based on a **religious** belief. Ariz. Rev. Stat. § § 41-1493(2) (defining the exercise of **religion** as the ability to act or refusal to act in a manner substantially motivated by a **religious** belief). A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation if it is based on **purely** secular considerations; to have the protection of the **Religion** Clauses, the claims must be rooted in **religious** belief. To satisfy this element, a claimant need not prove that a belief is a central tenet of her faith. § 41-1493(2). Under FERA, a claimant is not required to show that one's **religious** exercise is compulsory or central to a larger system of **religious** belief.

**HN34 -** Under Arizona's Free Exercise of **Religion** Act (FERA), Ariz. Rev. Stat. § 41-1493.01, once a court determines that a party has a sincere **religious** belief, it must examine whether the government's regulation imposes a substantial burden on the party's free exercise of that belief. Not every burden is substantial; FERA provides that trivial, technical or de minimis infractions do not substantially burden a person's free exercise of **religion**. Ariz. Rev. Stat. § 41-1493.01(E). Under **Religious** Freedom Restoration Act (RFRA), a government regulation that merely offends a person's **religious** sensibilities is not a substantial burden of free exercise of **religion**. Thus, under the pre-Smith framework adopted by FERA, a substantial burden exists only when government action forces individuals to choose between following the precepts of their **religion** and receiving a government benefit, or it compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their **religious** beliefs.

**HN32 -** Arizona's Free Exercise of **Religion** Act (FERA), Ariz. Rev. Stat. § 41-1493.01 establishes a two-step process. First, the party raising a free exercise claim must prove that: (1) their action or refusal to act is motivated by a **religious** belief, (2) the **religious** belief is sincerely held, and (3) the government's regulation substantially burdens the free exercise of their **religious** beliefs. If the claimant proves these elements, then the burden shifts to the government to show that the law (1) furthers a compelling governmental interest and (2) is the least restrictive means of furthering that compelling governmental interest. § 41-1493.01(C)(1)-(2). Because the text and requirements of FERA and the federal **Religious** Freedom Restoration Act (RFRA) are nearly identical, the Arizona court relies on cases interpreting RFRA as persuasive authority in construing the requirements of FERA.

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233. ⚠ Bd. of Educ. v. Mergens

Supreme Court of the United States | Jun 04, 1990 | 496 U.S. 226

**Overview:** Equal Access Act (EAA) applied to, and was violated by, petitioner school's denial of respondent students' request for a Christian club since it maintained a limited open forum; EAA did not violate the Establishment Clause.

**HN15 -** Even if some legislators were motivated by a conviction that **religious** speech in particular was valuable and worthy of protection, that alone would not invalidate the Equal Access Act, because what is relevant is the legislative purpose of the statute, not the possibly **religious** motives of the legislators who enacted the law. Because the Act on its face grants equal access to both secular and **religious** speech, it is clear that the Act's purpose was not to "endorse or disapprove of **religion**."

**HN16 -** The Establishment Clause, U.S. Const. amend. I, inquiry is whether the government conveys or attempts to convey a message that **religion** or a particular **religious** belief is favored or preferred.

**HN1 -** An "equal access" policy does not violate the Establishment Clause. Such a policy has a secular purpose, does not have the primary effect of advancing **religion**, and does not result in excessive entanglement between government and **religion**.

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234. Church of Jesus Christ of Latter-Day Saints v. Jefferson County

United States District Court for the Northern District of Alabama, Southern Division | Feb 07, 1990 | 741 F. Supp. 1522

**Overview:** Zoning ordinance placed an unconstitutional burden on church's right to free exercise of religion because the ability of the church to locate itself there or not was dependent on the acceptability of that, or any, church to the surrounding community.

**HN1 -** Before a court balances competing governmental and **religious** interest, the challenged government action must pass two threshold tests. The first test distinguishes government regulation of **religious** beliefs and opinions from restrictions affecting **religious** conduct. The government may never regulate **religious** beliefs; but the Constitution does not prohibit absolutely government regulation of **religious** conduct. The second threshold principle requires that a law have both a secular purpose and a secular effect to pass constitutional muster. First, a law may not have a sectarian purpose, governmental action violates the Constitution if it is based upon disagreement with **religious** tenets or practices, or if it is aimed at impeding **religion**. Second, a law violates the free exercise clause if the "essential effect" of the government action is to influence negatively the **pursuit** of **religious activity** or the expression of **religious** belief. This is not to say that any government actions significantly affecting **religion** fail this threshold test. Rather, any nonsecular effect, regardless of its significance, must be only an incident of the secular effect.

**HN2 -** If a government action challenged under the free exercise clause survives passage through the belief/conduct and secular purpose and effect thresholds, the court then faces the difficult task of balancing government interest against the impugned **religious** interest. This constitutional balancing is not a simple process. The balance depends upon the cost to the government of altering its **activity** to allow the **religious** practice to continue unimpeded versus the cost to the **religious** interest imposed by the government **activity**. This principle marks the path of least impairment of constitutional values.

**HN3 -** In general, the burden on the governmental interest depends upon the importance of the underlying policy interests and the degree of impairment of those interests if the regulation were changed to impose no burden on **religious** conduct. One principle that has emerged in free exercise doctrine, the "least restrictive means test," reflects the logic of the calculus. That is simply, if the government can effectuate its policy through a nonburdening technique the degree of impairment equals zero.

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235. United States v. Hardman

United States Court of Appeals for the Tenth Circuit | Aug 08, 2001 | 2001 U.S. App. LEXIS 17702

**Overview:** Where non-Native American practitioner of a Native American religion was convicted of a Migratory Bird Treaty Act (MBTA) violation, the MBTA did not violate defendant's freedom of religion and equal protection rights.

**HN22 -** There is no basic difference pertaining to neutrality between a law that formally restricts a certain **activity** only when practiced by members of a specific **religion** for **religious** reasons and one that formally permits a certain **activity** only when practiced by members of a specific **religion** for **religious** reasons. Indeed, both create the sort of "**religious** gerrymander" that the **religion** clause of the First Amendment is designed to guard against.

**HN6 -** 50 C.F.R. § 22.22 provides that a permit authorizing the possession of lawfully acquired bald eagles or golden eagles, or their parts, nests, or eggs for Indian **religious** use may be issued if certain criteria are met. In order to obtain a permit under this provision, an individual must be an enrolled member of a federally recognized tribe and must show that the eagles or parts are used for a tribally authorized and bona fide **religious** ceremony. Thus, the statute and regulations are laws of general applicability, promulgated for secular purposes, but contain a **religious** accommodation in favor of persons meeting two distinct qualifying criteria: (1) that the person be an actual practitioner of a bona fide Native American **religion** requiring the use of migratory bird feathers, and (2) that the person be a member of a certain political classification, i.e., a member of a federally recognized tribe. 50 C.F.R. § 22.22.

**HN8 -** The essential requirement of the **Religious** Freedom and Restoration Act is that: 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. 42 U.S.C.S. § 2000bb-1(b).

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236. Bush v. Holmes

Court of Appeal of Florida, First District | Aug 16, 2004 | 2004 Fla. App. LEXIS 12479

**Overview:** Statute that granted use of state funds for tuition in private institutions, particularly religious schools, was facially invalid because the use of such funds used state revenues to aid sectarian schools.

**HN15 -** The no-aid provision of Fla. Const. art. I, § 3 prohibits not only aid to any church, sect or **religious** denomination, but also aid to any sectarian institution. Thus, the no-aid provision does not create a constitutional bar to the payment of an Florida Opportunity Scholarship Program (OSP), Fla. Stat. ch. 229.0537 (1999), voucher to a non-sectarian school, if the state **funds** do not aid indirectly a **religion**, church or sect which owns or operates the school. On the other hand, because an OSP voucher is used to pay the cost of tuition, any disbursement made under the OSP and paid to a sectarian or **religious** school is made in aid of a sectarian institution, the school itself, even if it can be shown that no voucher **funds** benefit or support a church or **religious** denomination.

**HN28 -** Just as in Wash. Const. art. I, § 3, nothing in the history or text of the Florida no-aid provision, Fla. Const. art. I, § 3, suggests animus towards **religion**. Further, like the Washington provision, the Florida no-aid provision is an expression of a substantial state interest of prohibiting the use of tax **funds** directly or indirectly to aid **religious** institutions.

**HN1 -** The first sentence of Fla. Const. art. I, § 3 is synonymous with the federal Establishment Clause in generally prohibiting laws respecting the establishment of **religion**. In addition to the Establishment Clause language, Fla. Const. art. I, § 3 also includes the language of the no-aid provision, which expands the restrictions in state aid and to **religion** by specifically prohibiting the expenditure of public **funds** directly or indirectly to aid sectarian institutions.

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237. Stormans, Inc. v. Selecky

United States District Court for the Western District of Washington | Feb 22, 2012 | 854 F. Supp. 2d 925

**Overview:** Wash. Admin. Code §§ 246-869-010, 246-869-150, and 246-863-095 were unconstitutional under the Free Exercise Clause, U.S. Const. amend. I, because the burden fell almost exclusively on conscientious objectors, disfavored conscientious objections, and prohibited conscientious objections even when they did not threaten access to the "Plan B" pill.

**HN17 -** In the context of free exercise of **religion**, where regulations are not neutral or generally applicable, they are subject to strict scrutiny. This requires a showing that the regulations: (1) advance interests of the highest order; and (2) are narrowly tailored in **pursuit** of those interests. This is the most demanding test known to constitutional law. It requires the courts to look beyond broadly formulated interests justifying the law and instead scrutinize the asserted harm of granting specific exemptions to particular **religious** claimants.

**HN1 -** The law recognizes that every individual possesses a fundamental right to exercise their **religious** beliefs and conscience, and provides that no health care entity, including pharmacies or pharmacists, may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or **religion**.

**HN4 -** The Free Exercise Clause of the First Amendment, U.S. Const. amend. I, provides that congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof. U.S. Const. amend. I. The Free Exercise Clause has been applied to the states through the Fourteenth Amendment, U.S. Const. amend. XIV. Under Supreme Court precedent, a law burdening **religious** exercise generally does not violate the Free Exercise Clause if it is neutral and generally applicable. But if the law is not neutral or not of general application, it is subject to strict scrutiny; that is, it is unconstitutional unless it is narrowly tailored to advance a compelling governmental interest.

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238. S. Jersey Catholic Sch. Teachers Ass'n v. St. Teresa of the Infant Jesus Church Elem. Sch.

Superior Court of New Jersey, Appellate Division | May 16, 1996 | 290 N.J. Super. 359

**Overview:** Compelling governmental interest expressed in grant of fundamental right to organize and bargain collectively by New Jersey state constitution prevailed over claimed unconstitutional burden on catholic elementary schools' free exercise of religion.

**HN12 -** But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not deny that there are areas of conduct protected by the Free Exercise Clause of U.S. Const. amend. I, and thus beyond the power of the state to control, even under regulations of general applicability. A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for government neutrality if it unduly burdens the free exercise of **religion**. When faced with such a claim, the court must closely examine the interests the state seeks to **promote** and the impediments to those objectives that would flow from recognizing an exemption from a generally applicable law. The test is a balancing test requiring consideration of whether: (1) the claims presented are **religious** in nature and not secular; (2) the state action burdens the **religious** exercise; and (3) the state interest is sufficiently compelling to override the constitutional right of free exercise of **religion**.

**HN13 -** In place of the compelling interest test, the Supreme Court has held that a generally applicable and otherwise valid regulatory law which is not specifically intended to regulate **religious** conduct or belief and which incidentally burdens the free exercise of **religion** does not violate the Free Exercise Clause of U.S. Const. amend. I. The Court has retained the compelling interest test for instances where the regulatory law impacts the Free Exercise Clause in conjunction with another constitutional protection, such as freedom of speech and of the press, or the right of parents to direct the education of their children.

**HN17 -** The **mere fact** that a petitioner's **religious** practice is burdened by a governmental program does not mean that an exemption accommodating his practice must be granted. The state may justify an inroad on **religious** liberty by showing that it is the least restrictive means of achieving some.

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239. Stormans, Inc. v. Wiesman

United States Court of Appeals for the Ninth Circuit | Jul 23, 2015 | 794 F.3d 1064

**Overview:** Wash. Admin. Code §§ 246-863-095 and 246-869-010, which required pharmacies to timely deliver all prescription medications, even if the pharmacy owner had a religious objection, did not violate the Free Exercise Clause, as they operated neutrally and were generally applicable, nor did the rules violate the substantive Due Process Clause.

**HN4 -** Washington's "Delivery Rule" is titled "Pharmacies' responsibilities" and applies to pharmacies. Wash. Admin. Code § 246-869-010. That rule requires pharmacies to deliver lawfully prescribed drugs or devices to patients and to distribute drugs and devices approved by the Food and Drug Administration for restricted **distribution** by pharmacies, or provide a therapeutically equivalent drug or device in a timely manner consistent with reasonable expectations for filling the prescription. § 246-869-010(1). The Delivery Rule also prohibits pharmacies from destroying or refusing to return an unfilled **lawful** prescription; violating a patient's privacy; or unlawfully discriminating against, intimidating, or harassing a patient. § 246-869-010(4). By contrast to the Pharmacist Responsibility Rule, the Delivery Rule contains no exemption for pharmacies whose owners object to delivery on **religious**, **moral**, philosophical, or personal grounds. An objecting pharmacy must deliver the drug or device and may not refer a patient to another pharmacy.

**HN11 -** Wash. Admin. Code §§ 246-863-095 and 246-869-010 operate neutrally. As an initial matter, as they pertain to pharmacists, the rules specifically protect religiously motivated conduct. The Washington Pharmacy Quality Assurance Commission created a right of refusal for pharmacists by allowing pharmacies to "accommodate" individual pharmacists who have **religious**, **moral**, philosophical, or personal objections to the delivery of particular prescription drugs. The rules do not require pharmacists to dispense a

prescription medication to which they object. As they pertain to pharmacies, the rules' delivery requirement applies to all objections to delivery that do not fall within an exemption, regardless of the motivation behind those objections. Aside from the exemptions, any refusal to dispense a medication violates the rules, and this is so regardless of whether the refusal is motivated by **religion**, morals, conscience, ethics, discriminatory prejudices, or personal distaste for a patient. By prohibiting all refusals that are not specifically exempted, the rules establish a practical means to ensure the safe and timely delivery of all **lawful** and lawfully prescribed medications to the patients who need them. The object of the rules is to ensure safe and timely patient access to **lawful** and lawfully prescribed medications.

**HN3 -** Washington's "Pharmacist Responsibility Rule" amends a section titled "Pharmacist's professional responsibilities," and it applies to the conduct of individual pharmacists. Wash. Admin. Code § 246-863-095. Under that rule, it is considered unprofessional conduct for a pharmacist to: (a) destroy unfilled **lawful** prescriptions; (b) refuse to return unfilled **lawful** prescriptions; (c) violate a patient's privacy; (d) discriminate against patients or their agent in a manner prohibited by state or federal laws; and (e) intimidate or harass a patient. § 246-863-095(4). The foregoing rule does not require an individual pharmacist to dispense medication if the pharmacist has a **religious**, **moral**, philosophical, or personal objection to delivery. A pharmacy may "accommodate" an objecting pharmacist in any way the pharmacy deems suitable, including having another pharmacist available in person or by telephone. § 246-863-095(4).

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240. Kong v. Min De Parle

United States District Court for the Northern District of California | Nov 13, 2001 | 2001 U.S. Dist. LEXIS 18772

**Overview:** Federal statute, which granted exemptions from Medicare and Medicaid requirements for religious non-medical health care institutions, did not violate the Establishment Clause of the First Amendment.

**HN26 -** The Establishment Clause limits the government's power to fund pervasively sectarian institutions. A pervasively sectarian institution is one in which **religion** so pervades its functions that the institution is unable to separate the funded secular activities from its **religious** mission. Conversely, an institution is not pervasively sectarian if its primary function is secular and can be effectively separated from its **religious activity**. The United States Supreme Court has struck down aid to religiously affiliated institutions in two circumstances: (1) where aid is directed to specifically **religious** activities, and (2) where the aid given to a pervasively sectarian institution could be diverted to **religious** ends.

**HN13 -** The purpose prong of the Lemon test asks whether government's actual purpose is to endorse or disapprove of **religion**. A governmental intention to **promote religion** is clear when the state enacts a law to serve a **religious** purpose. A court may invalidate a statute on this basis only if the statute is motivated wholly by an impermissible purpose.

**HN14 -** The alleviation of significant governmental interference with the free exercise of **religion** can constitute a secular legislative purpose. Where government acts with the proper purpose of lifting a regulation that burdens the exercise of **religion**, there is no reason to require that the exemption come packaged with benefits to secular entities. The United States Constitution allows the state to accommodate **religious** needs by alleviating special burdens. It does not require the government to be oblivious to impositions that legitimate exercises of state power may place on **religious** belief and practice.

241. Kreisner v. City of San Diego

United States Court of Appeals for the Ninth Circuit | Mar 03, 1993 | 1 F.3d 775

**Overview:** Appellee city's first-come, first-served policy on granting permits to use a public park was a valid means of regulating the use of a public forum, and a religious display it permitted in one of its parks was constitutional.

**HN2 -** Neither a state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to go or to remain away from church against his will or force him to profess a belief or disbelief in any **religion**. No person can be punished for entertaining or professing **religious** beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**.

**HN3 -** Government may not **promote** or affiliate itself with any **religious** doctrine or organization, may not discriminate among persons on the basis of their **religious** beliefs and practices, may not delegate a governmental power to a **religious** institution, and may not involve itself too deeply in such an institution's affairs.

**HN4 -** The First Amendment, U.S. Const. amend. I, does not prohibit practices which by any realistic measure create none of the dangers which it is designed to prevent and which do not so directly or substantially involve the state in **religious** exercises or in the favoring of **religion** as to have meaningful and practical impact.

242. McCormick v. Follett

Supreme Court of South Carolina | Aug 26, 1943 | 204 S.C. 337

**Overview:** Defendant, a seller of religious books, was properly convicted under a Town ordinance requiring agents selling books to possess a license because the ordinance was a reasonable regulation of the time, place, and manner of the sale of books, including those dealing with religious subjects; the ordinance did not discriminate against religion.

**HN1 -** The sale, and also, presumably, the **distribution** without charge, of **books** and pamphlets dealing with **religious** subjects may be reasonably regulated as to time, place, and manner, without there being any invasion of **religious** freedom as protected by Federal and state Constitutions. Furthermore, transactions of sale and solicitation of sale of such **literature** may be subjected to reasonable and nondiscriminatory taxation. In nearly every case wherein the question has been presented, the view has been taken that a reasonable nondiscriminatory license tax imposed upon the sale of **religious literature** from door to door is not invalid as an invasion of **religious** liberty guaranteed by constitutional provisions.

**HN2 -** Situations will arise where it will be difficult to determine whether a particular **activity** is **religious** or **purely commercial**. The distinction at times is vital.

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243. Grove v. Mead School Dist.

United States Court of Appeals for the Ninth Circuit | Feb 22, 1985 | 753 F.2d 1528

**Overview:** Plaintiffs, parents, had standing to challenge alleged violations of U.S. Const. amend. I because they claimed infringement of their personal freedom to control the religious upbringing and training of their minor children.

**HN10 -** The establishment clause of U.S. Const. amend. I requires government neutrality with respect to **religion**. It was intended to protect against sponsorship, financial support, and active involvement of the sovereign in **religious activity**. To pass constitutional muster, challenged state action (1) must have a secular purpose, (2) must have a primary effect that neither advances nor inhibits **religion**, and (3) must not foster excessive state entanglement with **religion**. The option of nonparticipation does not save state action from an establishment clause challenge.

**HN11 -** Literary or historic study of the Bible is not a prohibited **religious activity**. Not all mention of **religion** is prohibited in public schools.

**HN4 -** A party has standing to challenge alleged violations of the establishment clause of the First Amendment if she is a parent whose right to direct the **religious** training of her child is allegedly affected. Taxpayers may bring an establishment clause challenge only if they show direct and particular economic detriment resulting from the disputed practice. Standing is not established by a citizen's general interest in constitutional governance. Expenditure of public **funds** in an unconstitutional manner is not an injury conferring standing. A **religious** objection to public expenditures will not confer taxpayer standing either.

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244. Madison v. Riter

United States Court of Appeals for the Fourth Circuit | Dec 08, 2003 | 355 F.3d 310

**Overview:** Because Congress could accommodate the religious exercise of a person residing in or confined to an institution without violating the Establishment Clause, the judgment of the district court was reversed.

**HN10 -** For a law to have forbidden effects under the Establishment Clause, it must be fair to say that the government itself has advanced **religion** through its own activities and influence. Evidence of the impermissible government advancement of **religion** includes sponsorship, financial support, and active involvement of the sovereign in **religious activity**.

**HN11 -** The United States Court of Appeals for the Fourth Circuit cannot accept the theory that Congress impermissibly advances **religion** when it acts to lift burdens on **religious** exercise yet fails to consider whether other rights are similarly threatened. There is no requirement that legislative protections for fundamental rights march in lockstep. The **mere fact** that the **Religious** Land Use and Institutionalized Persons Act, 42 U.S.C.S. § 2000cc et seq., seeks to lift government burdens on a prisoner's **religious** exercise does not mean that the statute must provide commensurate protections for other fundamental rights. The United States Supreme Court has clearly established that where government acts with the proper purpose of lifting a regulation that burdens the exercise of **religion**, it sees no reason to require that the exemption comes packaged with benefits to secular entities.

**HN1 -** Section 3(a) (42 U.S.C.S. § 2000cc-1(a)) of the **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc et seq., states no government shall impose a substantial burden on the **religious** exercise of a person residing in or confined to an institution even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person: (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest. 42 U.S.C.S. § 2000cc-1(a). Section 3(b) (42 U.S.C.S. § 2000cc-1(b)) of RLUIPA states that § 3(a) applies whenever the substantial burden at issue is imposed in a program or **activity** that receives Federal financial assistance. 42 U.S.C.S. § 2000cc-1(b)(1).

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245. Anderson v. Salt Lake City Corp.

United States District Court for the District of Utah, Central Division | Sep 16, 1972 | 348 F. Supp. 1170

**Overview:** The municipalities' actions in erecting and maintaining a "Ten Commandments" monument on public property were for the purpose of advancing religion and, accordingly, violated the Establishment Clause.

**HN3 -** "**Religion**" appears only once in the First Amendment. But the word governs two prohibitions and governs them alike. It does not have two meanings, one narrow to forbid "an establishment" and another, much broader, for securing "the free exercise thereof." "Thereof" brings down "**religion**" with its entire and exact content, no more and no less, from the first into the second guaranty, so that Congress and now the states are as broadly restricted concerning the one as they are regarding the other. The First Amendment secures all forms of **religious** expression, creedal, sectarian, or nonsectarian, wherever and however taking place. The word connotes the broadest content, determined not by the form or formality of the teaching or where it occurs, but by its essential nature regardless of those details. "**Religion**" has the same broad significance in the twin prohibition concerning "an establishment." The First Amendment is not duplicitous. "**Religion**" and "establishment" are not used in any formal or technical sense. The prohibition broadly forbids state support, financial or other, of **religion** in any guise, form, or degree. It outlaws all use of public **funds** for **religious** purposes.

**HN4 -** The First Amendment forbids any appropriation, large or small, from public **funds** to aid or support any and all **religious** exercises.

**HN5 -** The "establishment of **religion**" clause of the First Amendment means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to go to or to remain

away from church against his will or force him to profess a belief or disbelief in any **religion**. No person can be punished for entertaining or professing **religious** beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any **religious** organizations or groups and vice versa.

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246. Molko v. Holy Spirit Assn.

Supreme Court of California | Oct 17, 1988 | 46 Cal. 3d 1092

**Overview:** Former members' suit against church for deceptive recruiting practices was not barred by the First Amendment and survived summary judgment because they presented a factual issue regarding brainwashing prior to being told the church's identity.

**HN8 -** The **religion** clauses of Cal. Const., art. I, § 4, and U.S. Const. amend. I, protect only claims rooted in **religious** belief. The free exercise clause protects **religious** beliefs absolutely. While a court can inquire into the sincerity of a person's beliefs, it may not judge the truth or falsity of those beliefs. The government may neither compel affirmation of a **religious**, nor penalize or discriminate against individuals or groups because of their **religious** beliefs, nor use the taxing power to inhibit the dissemination of particular **religious** views.

**HN9 -** While **religious** belief is absolutely protected, religiously motivated conduct is not. Such conduct remains subject to regulation for the protection of society. Government action burdening **religious** conduct is subject to a balancing test, in which the importance of the state's interest is weighed against the severity of the burden imposed on **religion**. The greater the burden imposed on **religion**, the more compelling must be the government interest at stake. A government action that passes the balancing test must also meet the further requirements that (1) no action imposing a lesser burden on **religion** would satisfy the government's interest and (2) the action does not discriminate between religions, or between **religion** and nonreligion.

**HN6 -** The U.S. Const. amend. I provides that Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof. The provision creates two very different protections. The establishment clause guarantees the government will not impose **religion** on us; the free exercise clause guarantees the government will not prevent people from freely pursuing any **religion** they choose. Because the First Amendment refers only to Congress, it originally did not apply to state and local governments. After the Civil War the states ratified the U.S. Const. amend. XIV, and pursuant thereto the U.S. Supreme Court made the free exercise and establishment clauses federally enforceable against the states.

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247. Wilder v. Sugarman

United States District Court for the Southern District of New York | Nov 19, 1974 | 385 F. Supp. 1013

**Overview:** State child placement laws that allowed for placement according to religion when practicable did not violate the Establishment Clause. The statutes represented reasonable accommodation of religious neutrality with protection of Free Exercise rights.

**HN9 -** When **religious**-matching, funding and foster care laws are considered together as one legislative scheme, the cannot ignore the fact that they authorize the funding of foster care by **religious** institutions dedicated to the propagation of their respective faiths. Nor can the court assume, because the funding statutes make no reference to **religion** on their face, that none of the **funds** authorized for care of needy and dependent children are being paid to **religious** agencies for foster care.

**HN5 -** The court will not tolerate either governmentally established **religion** or governmental interference with **religion**. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit **religious** exercise to exist without sponsorship and without interference.

**HN7 -** **Religion** is but one of many factors in the placement of a child for adoption and, second, that placement in conformity with the **religious** wishes of the parents of the child, though desirable, is not mandatory.

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248. ACLU of Ohio Found., Inc. v. Ashbrook

United States District Court for the Northern District of Ohio, Eastern Division | Jun 11, 2002 | 211 F. Supp. 2d 873

**Overview:** State court judge's purpose in displaying religious document in his courtroom was religious and reasonable observer would conclude that in his court, the document and the Bill of Rights were equivalent, so display failed the Lemon test.

**HN24 -** In the context of an Establishment Clause analysis, the court looks to the effect of the Ten Commandments in the particular overall context in which they are placed. This involves an inquiry into the type of documents, if any, surrounding the Ten Commandments and the nature of the display itself. If they are placed within a larger secular context, such as a historical display of the development of law or perhaps within a collection of numerous **moral** codes and are a relatively inconspicuous part of that display, the effect of the inclusion of the Ten Commandments may not be to **promote** or endorse that particular **religious** belief and may be permissible under the Establishment Clause. If, on the other hand, the Ten Commandments are placed within a context that fails to dilute the **religious** nature of the text and suggests the State endorses this particular **religious** belief to the exclusion of others, their presence will violate the Establishment Clause.

**HN13 -** The "establishment of **religion**" clause of the First Amendment means at least this: Neither the state nor the federal government can set up a church. Neither can pass laws which aid one **religion**, aid all religions, or prefer one **religion** over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any **religion**. No person can be punished for entertaining or professing **religious** beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any **religious** activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice **religion**.

Neither a state nor the federal government can, openly or secretly, participate in the affairs of any **religious** organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of **religion** by law was intended to erect a wall of separation between church and state.

**HN16 -** Given the **religious** significance of the text of the Ten Commandments, their display may be considered constitutional where, but only where, a state or governmental body attempts to and does dilute the **religious** aspect of the display in favor of a secular message or purpose. The United States Supreme Court itself has indicated that such dilution is possible in a number of circumstances--such as where the Ten Commandments are integrated in the curriculum of public schools, for instance, aiding in the study of history, civilization, ethics, or comparative **religion**, or are used as part of a decorative element encompassing a secular theme, for instance, in a painting or sculpture identifying great historical lawgivers. Given the **religious** origin and nature of the Ten Commandments, however, courts confronted with their display carefully scrutinize the government's stated secular purpose to determine if it is, in fact, truly secular.

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249. Castle Hills First Baptist Church v. City of Castle Hills

United States District Court for the Western District of Texas, San Antonio Division | Mar 17, 2004 | 2004 U.S. Dist. LEXIS 4669

**Overview:** City's refusal to allow a change in use of a church building's existing fourth floor substantially burdened church's religious exercise, but burden imposed by denial of the church's additional parking use permit was neither substantial nor undue.

**HN10 -** Reference to the larger context of the concept of "substantial burden on **religious** exercise," substantial burden on **religious** exercise, is more helpful and precise than attempting to define what is a "substantial burden" alone. Pinpointing the line between substantial and inconvenience may be aided by reference both by the degree of the burden as well as the implicit effect on the **religious** exercise. The two do not operate in a vacuum, one without the other, but are instead interdependent. The United States Court of Appeals for the Fifth Circuit recognizes this principle and has in the past addressed the whole concept: Regulatory statutes or ordinances that affect **religious activity** are constitutional so long as they impose no undue burden on the ability of the church or its members to carry out the observances of their faith.

**HN38 -** The **Religious** Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 114 Stat. 803-807 (codified at 42 U.S.C.S. § 2000cc et seq.), serves to alleviate significant governmental interference with **religious** freedom, a goal which the United States Supreme Court has recognized as surviving the first prong of Lemon. Congress' action codified in RLUIPA effects the lifting of a regulation that burdens the exercise of **religion**. Such may properly fall within a secular legislative purpose. The second prong of Lemon requires that RLUIPA's principal or primary effect neither advance nor inhibit **religion**. RLUIPA's effect in general is not the advancement of **religion**, but rather permits **religious** organizations to advance their own **religion** by removing governmental obstacles. Finally, the third prong of Lemon is met because RLUIPA presents no unacceptable entanglement of government and **religion**. The Supreme Court has directed that the third prong of Lemon, entanglement, is more accurately subsumed into the effects analysis of the second prong. RLUIPA requires none of the ongoing supervision by the state of **religion**, nor interference in **religious** practice, that characterize entanglement concerns but instead prevents entanglement. Finally, RLUIPA is neutral in its treatment of religions because it applies equally to all.

**HN9 -** In order for a plaintiff to make a prima facie case for a **Religious** Land Use and Institutionalized Persons Act of 2000, 114 Stat. 803-807 (codified at 42 U.S.C.S. § 2000cc et seq.), violation, the plaintiff must demonstrate that the defendant's conduct in denying the special use permits: (1) imposes a substantial burden; (2) on the "**religious** exercise;" (3) of a person, institution, or assembly. 42 U.S.C.S. § 2000cc(a)(1). Upon such a showing, the burden shifts to the defendant to show that the zoning conduct is the least restrictive means of furthering that compelling interest. 42 U.S.C.S. § 2000cc(a)(1)(A)-(B). A determination of substantial burden in the plaintiff's favor will also trigger strict scrutiny.

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250. ## One World One Family Now v. City of Key West

United States District Court for the Southern District of Florida | May 03, 1994 | 852 F. Supp. 1005

**Overview:** A non profit organization's sale of expressive T-shirts from portable tables along a city's public fairways constituted protected First Amendment activity that could only be restricted by content-neutral time, place, and manner restrictions.

**HN2 -** The **distribution** of **literature** and discussion of issues is protected First Amendment **activity**.

**HN6 -** The distinction between **religious** and **commercial activity** is important to the determination of the appropriateness of the regulation as the state may more freely regulate pure **commercial** speech.

**HN4 -** T-shirts carrying messages related to one's political or **religious** mission constitute protected speech, the United States Supreme Court holds that the fact that the expressive materials are **sold** does not alter the protection afforded the speech.