DOWNLOAD PDF RELIGIOUS INTERESTS IN GENERALLY APPLICABLE DOMESTIC GUARANTEES

Chapter 1 : 12 Rules for Mixing Religion and Politics | People For the American Way

Related to the question whether religious exercise should be exempted from generally applicable laws is the question whether the exercise "of religion" extends to behavior motivated by norms.

It requires also that people be free to act upon their beliefs. Religious freedom includes the freedom to worship, to print instructional material, to train teachers and to organize groups for their employment and schools in which to teach, including religion. From the Colonial era to the present, religions and religious beliefs have played a significant role in the political life of the United States. Religion has been at the heart of some of the best and some of the worst movements in American history. Many of the early colonists fled religious persecution in their former countries and cherished their right to worship, as they believed in their new country. The guiding principles that the framers intended to govern the relationship between religion and politics are set forth in Article VI of the Constitution and in the opening 16 words of the First Amendment of the Bill of Rights. This constitutional framework reflects the deep concern that the founders of The American nation had about the relationship between church and state, and about the right of individuals to practice their religion freely. Now that America has expanded from the largely Protestant pluralism of the 17th century to a nation of some 3, religious groups, it is more vital than ever that every citizen understand the appropriate role of religion in public life and affirm the constitutional guarantees of religious liberty, or freedom of conscience, for people of all faiths and none. The philosophical ideas and religious convictions of Roger Williams, William Penn, John Leland, Thomas Jefferson, James Madison and other leaders were decisive in the struggle for freedom of conscience. The United States is a nation built on ideals and convictions that have become basic democratic principles. These principles must be understood and affirmed by every generation if the American experiment in liberty is to endure. Religious freedom is protected by two clauses in the First Amendment: It allows no law. It is also noteworthy that the clause forbids more than the establishment of religion by the government. It forbids even laws respecting an establishment of religion. The establishment clause sets up a line of demarcation between the functions and operations of the institutions of religion and government in our society. It does so because the framers of the First Amendment recognized that when the roles of the government and religion are intertwined, the result too often has been bloodshed or oppression. As written, the First Amendment applied only to Congress and the federal government. In the wake of the Civil War, however, the 14th Amendment was adopted. From that point on, all government action, whether at the federal, state, or local level, must abide by the restrictions of the establishment clause. Some, including Chief Justice William Rehnquist, argue that the term was intended to prohibit only the establishment of a single national church or the preference of one religious sect over another. Others, including a majority of the justices of the current Supreme Court, believe the term prohibits the government from promoting religion in general as well as the preference of one religion over another. In the words of the Court in Everson: Neither a state nor the federal government may set up a church. Neither can pass laws that aid one religion, aid all religions, or prefer one religion over another. Neither can force 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 Neither a state or the federal government may, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. Lemon test The first of these tests is a three-part assessment sometimes referred to as the Lemon test. The test derives its name from the decision Lemon v. Kurtzman, in which the Court struck down a state program providing aid to religious elementary and secondary schools. Using the Lemon test, a court must first determine whether the law or government action in question has a bona fide secular purpose. This prong is based on the idea that government should only concern itself in civil matters, leaving religion to the conscience of the individual. Second, a court would ask whether the state action has the primary effect of advancing or inhibiting religion. Finally, the court would consider whether the action excessively entangles religion and government. While religion and government must interact at some points while co-existing in society, the concern here is that they

do not so overlap and intertwine that people have difficulty differentiating between the two. Although the test has come under fire from several Supreme Court justices, courts continue to use this test in most establishment-clause cases. Lemon test redux In its decision Agostini v. Felton, the Supreme Court modified the Lemon test. The Court in Agostini identified three primary criteria for determining whether a government action has a primary effect of advancing religion: Coercion test Some justices propose allowing more government support for religion than the Lemon test allows. These justices support the adoption of a test outlined by Justice Anthony Kennedy in his dissent in County of Allegheny v. Under such a test, the government would be permitted to erect such religious symbols as a Nativity scene standing alone in a public school or other public building at Christmas. But even the coercion test is subject to varying interpretations, as illustrated in Lee v. Weisman, the Rhode Island graduation-prayer decision in which Justices Kennedy and Antonin Scalia, applying the same test, reached different results. She expressed her understanding of the establishment clause in the case of Lynch v. The justices have simply incorporated it into the first two prongs of Lemon by asking if the challenged government act has the purpose or effect of advancing or endorsing religion. The endorsement test is often invoked in situations where the government is engaged in expressive activities. Therefore, situations involving such things as graduation prayers, religious signs on government property, religion in the curriculum, etc. Neutrality While the Court looks to the endorsement test in matters of expression, questions involving use of government funds are increasingly determined under the rubric of neutrality. Under neutrality, the government would treat religious groups the same as other similarly situated groups. This treatment allows religious schools to participate in a generally available voucher program, allows states to provide computers to both religious and public schools, and allows states to provide reading teachers to low-performing students, even if they attend a religious school. Simmons-Harris, , and Mitchell v. It also indicates that the faith-based initiatives proposed by President Bush might be found constitutional, if structured appropriately. The concept of neutrality in establishment-clause decisions evolved through the years. Cited first as a guiding principle in Everson, neutrality meant government was neither ally nor adversary of religion. The rationale in Everson looked to the benefit to the parent, not to the religious school relieved of the responsibility of providing busing for its students. Later cases recognized that all aid is in some way fungible, i. In the case of Zelman v. Simmons-Harris, the plurality decision clearly defines neutrality as evenhandedness in terms of who may receive aid. A majority of the Court continues to find direct aid to religious institutions for use in religious activities unconstitutional, but indirect aid to a religious group appears constitutional, as long as it is part of a neutrally applied program that directs the money through a parent or other third party who ultimately controls the destination of the funds. While many find this approach intuitively fair, others are dissatisfied. Various conservative religious groups raise concerns over diminishing the special place religion has historically played in constitutional law by treating religious freedom the same as every other kind of speech or discrimination claim. Neutrality means not favoring one religion over another, not favoring religion over non-religion and vice versa. Free Exercise Clause "Congress shall make no law â€¦ prohibiting the free exercise of religion " is called the free-exercise clause of the First Amendment. It states that the government shall make no law prohibiting the free exercise of religion. The courts place some limits on the exercise of religion. The Supreme Court has held that religious freedom must give way to reasonable restrictions that have been adopted to protect the health, safety and convenience of the entire community. For example, courts would not hold that the First Amendment protects human sacrifice even if some religion required it. The Supreme Court has interpreted this clause so that the freedom to believe is absolute, but the ability to act on those beliefs is not. If a law specifically singled out a specific religion or particular religious practice, under current Supreme Court rulings it would violate the First Amendment. Recent interpretation The Supreme Court has been closely divided on this issue. In its decision Employment Division v. Under current constitutional law as explained in Smith, a government burden on a religious belief or practice requires little justification as long as the law in question is determined to be generally applicable and does not target a specific religion or religious practice. There, the Court closely analyzed a facially neutral and generally

applicable law and determined that it was neither neutral nor generally applicable. Since the law burdened a religious practice here the animal sacrifice ritual of the Santeria religion , the government would have to demonstrate that it had a compelling interest in passing the law. In Hialeah, the government could not meet this burden and the law was stuck down. Pre-Smith understanding The first Supreme Court case that addressed the issue of free exercise was Reynolds v. As that standard was easy for the government to satisfy, for almost a century the courts generally rejected religious-freedom claims against generally applicable laws. It is important to note also that until the decision of Cantwell v. In effect, the Supreme Court did not have opportunity to review this issue until the midth century, when various free-exercise clause cases made their way through the state courts to the Supreme Court. In its decision Sherbert v. Verner, the Supreme Court found that the Constitution afforded at least some degree of government accommodation of religious practices. When she could not find other employment that would not require her to work on Saturday, she filed a claim for unemployment benefits. South Carolina law provided that a person was ineligible for benefits if he or she failed, without good cause, to accept available suitable employment when offered. The state denied Sherbert benefits, saying she had not accepted suitable employment when offered, even though she was required to work on her Sabbath. The decision was upheld by the South Carolina Supreme Court. Supreme Court reversed the state court decision. The state in Sherbert could not demonstrate such compelling interest: Has the government significantly burdened a sincerely motivated religious practice? If so, is the burden justified by a compelling state interest? The Smith revolution It was clear that the Supreme Court was struggling with the issue of requiring accommodations based on the compelling-interest standard. In Smith, two counselors were fired from their jobs with a private drug rehabilitation organization because they ingested peyote at a ceremony of the Native American Church. Supreme Court held that the free-exercise clause permits the state to prohibit sacramental peyote use and the state can thus deny unemployment benefits to persons discharged for such use. Justice Antonin Scalia, writing for the majority, declined to apply the balancing test of Sherbert v. Verner, greatly limiting the scope of that precedent. Instead Scalia reached back to the early opinion in Reynolds v. Scalia found that the Court had never in fact invalidated any government action on the basis of the Sherbert compelling-interest test except the denial of unemployment compensation that Smith was itself an unemployment compensation case is not addressed in the decision. Scalia further stated that the only decisions in which the Court had held that the First Amendment barred the application of a generally applicable law to religiously motivated conduct involved not just free-exercise clause claims, but those claims in conjunction with other constitutional protections, such as freedom of speech and the press or the right of parents to direct the education of their children Yoder. The act, which was signed by President Clinton on Nov.

Chapter 2 : Religious Freedom and the Sanctity of the Confessional - Volokh Conspiracy : www.nxgvision.c

Important Considerations in the Pricing. tee provided by a domestic parent company for the and financial guarantees. Applicable methodologies are listed.

The pace of new state Religious Freedom Restoration Acts was slowed last year when Indiana experienced harsh pushback from major corporations unwilling to do business in a state that permits discrimination against LGBTQ customers. This year, Indiana was quickly out of the gate but then took a U-turn after it considered the worst recent development in RFRAs, which would have compounded the mischief caused by RFRAs and extended the same ridiculous test to the other elements of the First Amendment, like the freedom of speech. As I explain here , legislatures have no business monkeying around with the level of First Amendment rights, whether free exercise or free speech. The only activity has been in West Virginia and Georgia, which shows that the more we discuss and dissect the RFRAs, the worse they look. Members of Congress had this experience over the years with the federal RFRA, as I recount in a recently filed an amicus brief for Rep. Burwell case pending at the Supreme Court. The bill had the advantage of letting members look like they were guaranteeing religious liberty and the virtue of not foolishly toying with the standards under the First Amendment. In its zeal to ensure that no good Georgian would ever have to deal with same-sex couples married or not if they did not want to, the bill also likely unintentionally opens the door to discriminating against unmarried heterosexual couples. Because there are likely many whose conduct violates their faith and these believers gladly take their money in the marketplace. Has such an objection ever even occurred to them? Do they scan the headlines and police news blotter each morning to create a list of people they will not serve that day based on who was charged with domestic abuse or drunk driving? How about those believers of faiths that disapprove of divorce, contraception, or abortion? The short answer is: That is the very essence of invidious discrimination. The stink of discrimination is all over it as well, as one Episcopalian priest pointed out. West Virginia has led the country in the protection of its population from communicable diseases, unlike California, whose previous vaccination exemption was wide enough for anyone to refuse to immunize their children from common communicable diseases. In California there have been serious outbreaks in recent years, leading the state to backtrack on its exemption. There is little question that the West Virginia RFRA would open the door for religious believers to refuse to vaccinate their children. What California should have taught everyone, though, is that once that no-vaccination door is open, it is hard to shut it, and the cost is the re-introduction of previously eradicated dangerous diseases. They also put children at serious risk. West Virginia is the one state now taking seriously a bill that both discriminates and endangers. It is no wonder that these bills are locked up in committee in the other states where they have been introduced.

Chapter 3 : Structuring a lending transaction in the United States - Lexology

The federal Religious Freedom Restoration Act of , which provided for the possibility of religious exemptions from generally applicable laws, was passed by overwhelming majorities in Congress and signed by a liberal president.

The court also held that the Convention does not apply to hoasca. The Tenth Circuit affirmed. American Civil Liberties Union, U. There, in affirming the grant of a preliminary injunction against the Government, this Court reasoned that the burdens with respect to the compelling interest test at the preliminary injunction stage track the burdens at trial. Section bb b 1 expressly adopted the compelling interest test of Sherbert v. There, the Court looked beyond broadly formulated interests justifying the general applicability of government mandates, scrutinized the asserted harms, and granted specific exemptions to particular religious claimants. United States, U. That question was litigated below. Before the District Court found that the Government had not carried its burden of showing a compelling interest in preventing such harm, the court noted that it could not ignore the congressional classification and findings. If such use is permitted in the face of the general congressional findings for hundreds of thousands of Native Americans practicing their faith, those same findings alone cannot preclude consideration of a similar exception for the or so American members of the UDV who want to practice theirs. Those cases did not embrace the notion that a general interest in uniformity justified a substantial burden on religious exercise, but instead scrutinized the asserted need and explained why the denied exemptions could not be accommodated. They show that the Government can demonstrate a compelling interest in uniform application of a particular program by offering evidence that granting the requested religious accommodations would seriously compromise its ability to administer the program. While there may be instances where a need for uniformity precludes the recognition of exceptions to generally applicable laws under RFRA, it would be surprising to find that this was such a case, given the longstanding peyote exemption and the fact that the very reason Congress enacted RFRA was to respond to a decision denying a claimed right to sacramental use of a controlled substance. The Government has not shown that granting the UDV an exemption would cause the kind of administrative harm recognized as a compelling interest in, e. It cannot now compensate for its failure to convince the District Court as to its health or diversion concerns with the bold argument that there can be no RFRA exceptions at all to the Controlled Substances Act. The Government argues unpersuasively that it has a compelling interest in complying with the U. Under RFRA, invocation of such general interests, standing alone, is not enough. A religious sect with origins in the Amazon Rainforest receives communion by drinking a sacramental tea, brewed from plants unique to the region, that contains a hallucinogen regulated under the Controlled Substances Act by the Federal Government. The Government concedes that this practice is a sincere exercise of religion, but nonetheless sought to prohibit the small American branch of the sect from engaging in the practice, on the ground that the Controlled Substances Act bars all use of the hallucinogen. The sect sued to block enforcement against it of the ban on the sacramental tea, and moved for a preliminary injunction. The District Court granted the preliminary injunction, and the Court of Appeals affirmed. We conclude that the Government has not carried the burden expressly placed on it by Congress in the Religious Freedom Restoration Act, and affirm the grant of the preliminary injunction. I In Employment Div. In Smith, we rejected a challenge to an Oregon statute that denied unemployment benefits to drug users, including Native Americans engaged in the sacramental use of peyote. In so doing, we rejected the interpretation of the Free Exercise Clause announced in Sherbert v.

Chapter 4 : Freedom of Religion in Israel

-Domestic: does business within its state of incorporation. Foreign: formed in X state, doing business in Z state. -Foreign corporation must be authorized ("qualified") to do business in states outside its state of incorporation.

Human Rights in Israel: There are significant sources for the protection of religious liberty in Israeli law. It is proposed to examine freedom of religion from a number of aspects. In the opening sections, the report will analyze the scope of protection of religious liberty and the constitutional and legal norms which provide that protection. The paper will also discuss the relationship between religion and state in comparative perspectives. Special attention will be paid to the contribution of the Supreme Court to the protection of religious freedom. The latter part of the paper will discuss the state funding of religious institutions. One in ten Israeli individuals identify themselves as Haredi, and one in ten identify as Orthodox as well. The Scope of Protection of Religious Liberty The Palestine Mandate of contained a number of provisions ensuring freedom of religion and conscience and protection of holy places, as well as prohibiting discrimination on religious grounds. Further, the Palestine Order in Council of that same year provided that "all persons Although the Declaration itself does not confer any legally enforceable rights, the High Court has held that "it provides a pattern of life for citizens of the State and requires every State authority to be guided by its principles. In one significant court decision, Justice Moshe Landau stated: In this regard, Justice Haim Cohn has said: The principles of freedom of religion are similar to the other rights of man, as these have been laid down in the Universal Declaration of Human Rights, , and in the Covenant on Political and Civil Rights, These are now the heritage of all enlightened peoples, whether or not they are members of the United Nations Organization and whether or not they have as yet ratified them. This freedom is guaranteed to every person in every enlightened, democratic regime, and therefore it is guaranteed to every person in Israel. Human Dignity and Liberty. However, several decisions and other writings by some of the Justices indicate support for the view that the general right to human dignity protected by the Basic Law includes, inter alia, freedom of religion and conscience, which consequently has the status of a supreme, constitutional legal norm. Human Dignity and Liberty refers to a "Jewish and democratic State". However, Judaism has not been proclaimed the official religion of Israel. Rather, the law and practice in Israel regarding religious freedom may best be understood as a sort of hybrid between non-intervention in religious affairs, on the one hand, and the inter-involvement of religion and government in several forms on the other, most notably by legislation establishing the jurisdiction of religious courts of the different faiths in specified matters of "personal status" by government funding of authorities which provide religious services to several of the religious communities; and by a series of legal institutions and practices which apply Jewish religious norms to the Jewish population. Israel protects the freedom of Jews and non-Jews alike to engage in their chosen form of religious practice or worship. Likewise, in most cases the application of religious precepts by institutions of the State, such as in the prohibition of work on religious days of rest, does not compel Jews or non-Jews to violate the precepts of their chosen faith. However, freedom of religion is not an absolute right, but rather is subject to limitations and derogation. Thus, freedom of religion must be balanced with other rights and interests, and may be restricted for reasons of public order and security. In practice, however, Israeli authorities have exercised their power with great caution. Religious institutions in Israel enjoy wide state financial support, in the form of both direct funding and tax exemptions. Both forms of state support are not uniform with regard to the various religious communities. However, the lack of official recognition of religious communities does not affect the ability of these communities to practice their religion freely or to maintain communal institutions. Similarly, leaders of some of the Christian communities in Israel are also leaders of Christian communities in Arab countries; Israel, for its part, consistently maintains a policy of not intervening therein, allowing visits by religious figures across the border to enable these communities to manage their affairs. Many provisions of Israeli statutory law are devoted to the protection of holy places and sites that serve for prayers and, other religious

purposes. There are, for example, penal sanctions for trespass on places of worship and burial, for indignity to corpses, and for disturbances at funeral ceremonies. The Supreme Court has dealt very stringently with acts which offend religious sentiment. Religion-State Relationship and Freedom of Religion The prevailing view in comparative international law is that the establishment of religion and its recognition by the state, or the separation of religion from the state do not, as such, violate religious freedom or constitute unlawful discrimination for religious reasons or religious intolerance. The nature of the regulation matters and the measure of statutory protection of religious freedom do not vary with states where separation exists or where there is a state-recognized religion. Many countries, which separate church and state nevertheless grant exemptions from certain legal duties such as military service on grounds of religious beliefs, while other countries, which have a state-established religion, do not. The relationship between church and state has no significant effect on the free exercise of religion and, thus, the International Draft Convention on the Elimination of All Forms of Religious Intolerance provides that neither the establishment of a religion, nor the separation of church from state, in and of itself, is an interference with the freedom of religion, unlawful discrimination on religious grounds or religious intolerance. The same applies where the separation of religion and the state lead to preferential treatment of people with no religion, or disbelievers, as against others. It should be noted that, irrespective of state recognition of a particular religion, the religious beliefs of the majority of the population inevitably affect the life of the state. In the United States, for instance, this phenomenon is reflected in the prescription of Sunday as the weekly day of rest. By contrast, in Israel it is Saturday, and the Jewish festivals are also rest days. The right is reserved to non-Jews to choose the rest day customary among them. In Israel, the phenomenon is also manifested in the status enjoyed by the Chief Rabbis. Conceptual and Comparative Analysis The relationship between state and religion can be reflected in different forms. We can divide these forms into five models: Two of these mentioned models are non-democratic: A modern theory of law and government rejects these sorts of non-democratic models. The democratic state must promise and preserve the freedom of religion, which is defined as the freedom of any religion to maintain its religious activity and the freedom of any person to maintain his faith and religion and to fulfill its commandments and rituals Another right that a democratic state must promise is the freedom from religion, which is the freedom of any person not to fulfill the commandments of the religion. The private person is not obliged to any religious duty, religious institute, or religious ritual, he is free of any religious restriction, and he has every right of speech, belief and equality in front of the law. The foundation of the democratic state is a secular law: The first democratic model is the separation of state and religion model. The idea is that there is a distinction between the government and religious principles. This recognition does not mean that other religions are prohibited or that a person must be a member of the established church, but that the state formally prefers a certain religion and gives it a priority over other religions. Examples for states that adopted this model are: The third democratic model is the acknowledged religions model. The United States of America adopted the separation of state and religion model, and, in fact, the U. The first amendment of the federal constitution held that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof". Literally, this clause does not constitute a regime of separation. However, this section was interpreted as the adoption of the separation model. The interpretation was based on two important parts of the section: It should be mentioned that the fact that the United States adopted the separation method does not mean that the approach toward the religion is hostile. On the contrary, the American society is very religious, and anti-religious groups are considered marginal. The religiousness of the American society can be found in all areas of life, for example: An analysis of all of these religious characteristics reveals that state religiousness is mostly not of a specific religion, but rather a reflection of the faith in one god [and not particularly in Jesus]. This is a kind of a new religion, a "civil religion" that contains components of many different religions, although it is closer to Christianity than to any other religion Allegedly, this religiousness of the society contradicts the separation principle, or at least the aim of the separation. But, in fact, there is no conflict between those two principles. England, on the other hand, adopted

a different answer to the question of the link between state and religion: The King or the Queen is the head of the Established Church, and he must be Anglican in order to rule the kingdom. He cannot convert his religion. In his Coronation Oath, he pledges to maintain the Protestant Reformed Religion established by the law13, and to declare himself as the "Defender of the Faith", which is the Protestant-Christian Faith. The acknowledgment and support of the state in one formal religion can be illustrated in many other examples: Another example is the Law of Blasphemy, which holds that "to reproach the Christian Religion is to speak in subversion of the law. However, this vision has not become the reality. There is no separation of religion and state in Israel. At the same time, there is no recognized religion in the accepted sense. Some have argued that the peculiar nature of Judaism , which embodies a pattern of daily life and not merely a set of religious dogmas, and which intermingles religious and national elements, is not conducive to separation of religion and state. As David Ben-Gurion puts it, "The convenient solution of separation of church and state, adopted in America not for reasons which are anti-religious but on the contrary because of deep attachment to religion and the desire to assure every citizen full religious freedom, this solution, even if it were adopted in Israel, would not answer the problem. Within the Christian religion the following denominations are recognized: Three denominations have applied for State recognition: Their applications are still pending. Apart from the peculiar nature of Judaism, there is the difficulty attending separation, which flows from the approach of the law in Israel to matters of personal status. This approach, predating the establishment of the state, rests on religious affiliation, religious law, and religious jurisdiction. The integration of religion and state in Israel is visible in many fields, some expressly regulated by statutory law18 and some relying on a legal regulation. Among them are the application of a religious test to the Law of Return19, which provides for automatic Israeli citizenship to Jews wishing to reside permanently in Israel; the exclusive application of religious jurisdiction and religious law in matters of marriage and divorce20; the conduct of religious education financed out of state funds21; and the establishment of a special Ministry of Religious Affairs Role of Religious Norms The most difficult problem relating to religious liberty in Israel is posed by the imposition of religious norms and restrictions of a religious nature on all Jews, whether or not they are religiously observant. To determine whether the enforcement of a norm of religious origin infringes freedom of conscience and religion, a distinction must be drawn between a norm of religious origin which is not generally recognized and adopted by the society, and one which is. The enforcement of a norm of the first type â€” such as the application of religious law in marriage and divorce â€” involves a violation of religious liberty; the enforcement of a norm of the second type â€” such as the prescription of a day of rest â€” does not, for in that case the enforced norm is treated like any norm, regardless of source, which has been accepted by society, and which the state may enforce through legislation. The difficulty I find with this distinction is that it implies that there would be nothing wrong with the enforcement of conduct, religious in origin and in substance, provided only that it concerns human relations. Again, I cannot agree with this distinction. That a religious norm is rational does not justify its compulsion until it has won the social approval required to render it a norm binding upon society. It is possible also for such societal approval to be gained by credal norms. Israeli law, at present, provides examples of coercion of religious law that are not accepted norms within Israeli society. The application of Jewish law to marriage and divorce, and the subjection of citizens and residents to the exclusive jurisdiction of the religious courts in such matters, is an improper coercive enforcement of a religious norm. And the very necessity to marry before a religious authority results in a number of restrictions of wider ambit. A woman who has left the faith loses property rights. The marriage of a Cohen , a man whose descent is traditionally traced to the ancient priesthood and a divorcee is forbidden. None of these matters are to be found in any statute.

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tify departures from generally accepted provisions that may negatively affect their interests. It is also important to note that this Guide addresses only standard commercial guar- antee agreements governed by common law legal systems, with specific emphasis on New.

The United States of America was established on foundational principles by the Declaration of Independence: As the Government of the United States of America is not, in any sense, founded on the Christian religion; as it has in itself no character of enmity against the laws, religion, or tranquility, of Mussulmen [Muslims]; and as the said States never entered into any war or act of hostility against any Mahometan [Mohammedan] nation, it is declared by the parties that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two countries. This treaty was submitted to the Senate and was ratified unanimously on June 7, , and then signed by President John Adams on June 10, In accordance with Article VI of the Constitution, on that date this treaty became incorporated as part of "the supreme Law of the Land". This series of litigation has helped to define civil liberties case law in the United States and Canada. Supreme Court, the Court has ruled in favor of them 47 times. In addition, the cases marked the emergence of individual rights as an issue within the U. Supreme Court during the s and s, the Court had handled few cases contesting laws that restricted freedom of speech and freedom of religion. Until then, the First Amendment had only been applied to Congress and the federal government. These cases proved to be pivotal moments in the formation of constitutional law. Supreme Court between and Lemon test[edit] The Supreme Court has consistently held fast to the rule of strict separation of church and state when matters of prayer are involved. Vitale the Court ruled that government-imposed nondenominational prayer in public school was unconstitutional. Weisman , the Court ruled prayer established by a school principal at a middle school graduation was also unconstitutional, and in Santa Fe Independent School Dist. Doe it ruled that school officials may not directly impose student-led prayer during high school football games nor establish an official student election process for the purpose of indirectly establishing such prayer. The distinction between force of government and individual liberty is the cornerstone of such cases. Kurtzman , the Court created a three-part test for laws dealing with religious establishment. This determined that a law was constitutional if it: Had a secular purpose Neither advanced nor inhibited religion Did not foster an excessive government entanglement with religion. Some examples of where inhibiting religion has been struck down: As a result, Congress decided in that this should apply to secondary and primary schools as well, passing the Equal Access Act , which prevents public schools from discriminating against students based on "religious, political, philosophical or other content of the speech at such meetings". In Good News Club v. Milford Central School , U. State constitutions[edit] A Christian flag displayed alongside the flag of the USA next to the pulpit in a church in California. Note the eagle and cross finials on the flag poles. Under the doctrine of Incorporation , the first amendment has been made applicable to the states. Therefore, the states must guarantee the freedom of religion in the same way the federal government must. Many states have freedom of religion established in their constitution, though the exact legal consequences of this right vary for historical and cultural reasons. Most states interpret "freedom of religion" as including the freedom of long-established religious communities to remain intact and not be destroyed. By extension, democracies interpret "freedom of religion" as the right of each individual to freely choose to convert from one religion to another, mix religions, or abandon religion altogether. In office and at work[edit] Requirements for holding a public office[edit] Main article: The same applies to the Vice President , the House of Representatives , the Senate , the members of the Cabinet , and all other civil and military officers and federal employees, who can either make an affirmation or take an oath ending with " so help me God. This applies to Arkansas , [39] Maryland , [40] Mississippi , [41] North Carolina , [42] where the requirement was challenged and overturned in Voswinkel v. Hunt ,[citation needed] South Carolina , [43] Tennessee , [44] and Texas , [45] debatably. Supreme Court decision in Torcaso v.

Watkins held that the First and Fourteenth Amendments to the federal Constitution override these state requirements, [47] so they are not enforced. Issues at the workplace[edit] Problems sometimes arise in the workplace concerning religious observance when a private employer discharges an employee for failure to report to work on what the employee considers a holy day or a day of rest. Anti-Catholicism in the United States Famous editorial cartoon by Thomas Nast showing bishops as crocodiles attacking public schools, with the connivance of Irish Catholic politicians John Higham described anti-Catholicism as "the most luxuriant, tenacious tradition of paranoiac agitation in American history". Two types of anti-Catholic rhetoric existed in colonial society. The first, derived from the heritage of the Protestant Reformation and the religious wars of the 16th century , consisted of the "Anti-Christ" and the "Whore of Babylon" variety and dominated Anti-Catholic thought until the late 17th century. The second was a more secular variety which focused on the supposed intrigue of the Catholics intent on extending medieval despotism worldwide. Branford Clarke illustration in Heroes of the Fiery Cross by Bishop Alma White Published by the Pillar of Fire Church in Zarephath, NJ Because many of the British colonists, such as the Puritans and Congregationalists , were fleeing religious persecution by the Church of England, much of early American religious culture exhibited the more extreme anti-Catholic bias of these Protestant denominations. Monsignor John Tracy Ellis wrote that a "universal anti-Catholic bias was brought to Jamestown in and vigorously cultivated in all the thirteen colonies from Massachusetts to Georgia. Monsignor Ellis noted that a common hatred of the Roman Catholic Church could unite Anglican clerics and Puritan ministers despite their differences and conflicts. For example, in , John Jay urged the New York Legislature to require office-holders to renounce foreign authorities "in all matters ecclesiastical as well as civil. He is always in alliance with the despot , abetting his abuses in return for protection to his own. Constitution by prominent American Catholics like Charles Carroll of Carrollton , the only Catholic signer of the Declaration of Independence, and his second cousins, Bishop John Carroll and Daniel Carroll , allowed Roman Catholics to be included in the constitutional protections of civil and religious liberty. Some American Protestants, having an increased interest in prophecies regarding the end of time, claimed that the Catholic Church was the Whore of Babylon in the Book of Revelation. The nativist movement found expression in a national political movement called the Know-Nothing Party of the s, which unsuccessfully ran former president Millard Fillmore as its presidential candidate in The founder of the Know-Nothing movement, Lewis C. Levin , based his political career entirely on anti-Catholicism, and served three terms in the U. House of Representatives â€” , after which he campaigned for Fillmore and other "nativist" candidates. After many states passed constitutional provisions, called " Blaine Amendments , forbidding tax money be used to fund parochial schools. The Catholics responded to such prejudices by repeatedly asserting their rights as American citizens and by arguing that they, not the nativists anti-Catholics , were true patriots since they believed in the right to freedom of religion. Two weeks after it opened, the Ku Klux Klan burned a cross in front of the church. The law unofficially became known as the Oregon School Law. Many Protestants feared that Smith would take orders from church leaders in Rome in making decisions affecting the country. A key factor that hurt John F. Kennedy in his campaign for the presidency of the United States was the widespread prejudice against his Roman Catholic religion; some Protestants , including Norman Vincent Peale , believed that, if he were elected president, Kennedy would have to take orders from the pope in Rome. I do not speak for my Church on public matters â€” and the Church does not speak for me. Kennedy also raised the question of whether one-quarter of Americans were relegated to second-class citizenship just because they were Catholic. Kennedy went on to win the national popular vote over Richard Nixon by just one tenth of one percentage point 0. The New York Times , summarizing the discussion late in November, spoke of a "narrow consensus" among the experts that Kennedy had won more than he lost as a result of his Catholicism, [71] as Catholics flocked to Kennedy to demonstrate their group solidarity in demanding political equality. Situation of the Latter Day Saint movement â€”90[edit] Main article: Anti-Mormonism Historically, the Latter Day Saint movement , which is often called Mormonism , has been the victim of religious violence beginning with reports by founder Joseph Smith immediately after his First

Vision [72] and continuing as the movement grew and migrated from its inception in western New York to Ohio , Missouri , and Illinois. The violence culminated when Smith was assassinated by a mob of men in Carthage Jail in Joseph Smith had surrendered himself previously to the authorities, who failed to protect him. As a result of the violence they were faced with in the East , the Mormon pioneers , led by Brigham Young , migrated westwards and eventually founded Salt Lake City , and many other communities along the Mormon Corridor. Smith and his followers experienced relatively low levels of persecution in New York and Ohio, [73] [clarification needed] although one incident involved church members being tarred and feathered. Smith declared the area around Independence, Missouri to be the site of Zion , inspiring a massive influx of Mormon converts. Locals, alarmed by rumors of the strange, new religion including rumors of polygamy ,[citation needed] attempted to drive the Mormons out. Mormons must be treated as enemies, and must be exterminated or driven from the state The Mormons quickly expanded the town and renamed it Nauvoo , which was one of the largest cities in Illinois at the time. After a succession crisis , most of the Mormons united under Brigham Young , who organized an evacuation from Nauvoo and from the United States itself after the federal government refused to protect the Mormons. Young immediately petitioned for the addition of the State of Deseret , but the federal government declined. Instead, Congress carved out the much smaller Utah Territory. Over the next 46 years, several actions of the federal government were directed at Mormons, specifically to curtail the practice of polygamy and to reduce their political and economic power.

Chapter 6 : Free Exercise Clause - Wikipedia

Since the ordinance was not "generally applicable," the Court ruled that it was subject to the compelling interest test, which it failed to meet, and was therefore declared unconstitutional. In , the Court applied this doctrine in Trinity Lutheran v.

However, they recognize that this case seeks to establish a precedent dangerous to our national tradition of respecting the integrity of religious institutions against the intrusive power of the State. The State proposes a rule of law that forces a church institution, in violation of its own self-identity and constitution, to pay for something in its own workplace that the institution holds and teaches to be sinful. That novel claim by the State, if unchecked here, could support more expansive and corrosive inroads into religious institutions. It is no answer to say that Catholic Charities can simply avoid the mandate by declining to provide its employees with prescription drug coverage. As a matter of social justice, Catholic Charities considers it a religious duty to provide such coverage. And as a matter of the common good, how is the health and welfare of employees better off if there is no prescription drug coverage? One would hope that the State would find some mechanism to promote public health and resolve insurance problems without creating one that actually could reduce health and exacerbate the very problems the State seeks to solve. The freedom to organize religious agencies and institutions is among the most cherished of human rights. Those institutions, whose very purpose is to minister and preach an often counter-cultural message, have a right to be distinctive. To them belong a civil right and a religious duty to speak prophetically to their members and to society, and to constitute themselves, free from state interference, in a manner consistent with their own particular teaching. This case presents an issue of historic consequence for all churches. Apart from an outright ban on churches, a civil mandate that a church agency pay in its own workplace for what the church preaches against is one of the most serious invasions of church autonomy imaginable. Such a mandate forces a church to act in a manner directly contrary to the message it preaches, effectively destroying its ability to organize and govern itself and its agencies. Once allowed, there is little in principle to stop further destructive intrusions into the self-governance and organization of churches, for if a church can be required in its own house to provide or pay for particular programs or services even if repugnant to its deeply held religious convictions, it would seem that no church or church body is safe from the ad hoc nullification of its practices and teaching at the hands of the State. At the outset, it needs to be dramatically emphasized just how far this case is from Employment Division v. This case, in contrast to Smith, involves a command by the State that an agency of a church itself, as a condition of existing under its present constitution in California, pay for what the church explicitly and unqualifiedly holds to be morally evil. See Corporation of Presiding Bishop v. Indeed, Smith distinguished and cited with approval cases that have recognized the right of church autonomy, U. See note 15, infra and cases cited therein. Under such a regime, the government could regulate selection of clergy under a neutral law forbidding discrimination based on sex, forbid the celebration of the Mass through a neutral law forbidding possession and consumption of alcohol, and outlaw kosher slaughterhouses under neutral laws regulating food handling. That is a bad law, a bad policy, and unconstitutional. That affront standing alone is sufficient to warrant reversal of the judgment below. The case for reversal is, however, all the more persuasive when one considers the free speech and associational interests that are also at stake. We address these constitutional interests -- religion, speech and association -- in turn. Freedom of Religion The Free Exercise and Establishment Clauses collectively "Religion Clauses" represent an historic moment in church-state relations. Board of Education, U. On the other hand, it has secured religious liberty from the invasions of the civil authority. Tax Commission, U. The principle of church autonomy and self-governance is well settled. A half century after Watson, the Court applied the same rule to hold that the government may not prescribe the standards of church office. Roman Catholic Archbishop of Manila, U. Decided before the First Amendment had been applied to states through the Fourteenth Amendment, Watson and Gonzalez were based on

non-constitutional grounds, but those decisions and the principles they stand for were elevated to constitutional status in Kedroff v. The Supreme Court invalidated the legislation, holding that the Free Exercise Clause bars a state legislature from regulating "church administration, the operation of the churches, [or] the appointment of clergy The principle of church autonomy and self-governance was again dispositive in Serbian Eastern Orthodox Diocese v. The "right to organize voluntary religious associations," the Court wrote, "is unquestioned. The First Amendment permits religious organizations "to establish their own rules and regulations for internal discipline and government In each case -- Watson, Gonzalez, Kedroff, and Milivojevich -- interference with church governance was per se unlawful, and the Court made no attempt to apply a balancing test. See also Church of Scientology v. City of Clearwater, 2 F. The Establishment Clause prevents seemingly important justifications from becoming a shield to defend the subtle and incremental advance of government administration into the field of church activities. Curry, The First Freedoms: Direct attempts to interfere with the internal organization and governance of churches are thankfully rare, which perhaps accounts for the relatively few cases on the subject. One particular application of the principle of church autonomy, however, which continues to recur and to be restated and affirmed by the courts, is the constitutionally compelled ministerial exception to laws forbidding discrimination in employment. Roman Catholic Diocese of Raleigh, F. Christian Methodist Episcopal Church, F. Central Texas Annual Conf. Catholic University of America, 83 F. Conference of United Methodist Church, 21 F. The ministerial exception demonstrates the continuing strength of the constitutional right of churches to organize and govern themselves free of state interference. The principle of church autonomy applies not only to intra-church disputes e. Gonzalez involved an attempt, through judicial enforcement of a private trust, to vary church rules on the choice of ministers. Kedroff involved a legislative attempt to decide who would hold power in a church. Any government attempt, whether judicial or legislative, to intrude into the inner workings of a church by artificially declaring some matters non-religious is per se unconstitutional. Saint Nicholas Cathedral, U. The State lacks the constitutional power to determine which issues are "religious" for a religion, or "determine the place of a particular belief in a religion. Review Board, U. Church of Scientology, supra, provides another example of the wide application of the autonomy principle in protecting the internal workings of churches. In that case, the City of Clearwater had enacted an ordinance requiring the Church of Scientology to disclose to the public, and -- more importantly -- to church members, detailed financial and other information. The Eleventh Circuit held that it was constitutionally impermissible for the government to impose its own preferences concerning what information the church should disclose to its members. The court of appeals held that a civil mandate requiring disclosure of information to church members subtly, yet impermissibly, shifted the balance of power from church authorities to church members, an effect that was "as offensive to the Establishment Clause as the delegation of such authority to church leaders that was condemned in Larkin It is rare indeed that one witnesses such an irruption into the organization and polity of a religious organization. Attempts to require a church to pay for programs or services inside its institutions that it specifically preaches against are virtually unprecedented. The only conscientiously opposed funding even attempted in times leading up to adoption of the Religion Clauses involved not compulsory funding by churches of programs or services to which they objected that apparently was never attempted , but compulsory funding of churches and ministers by individual taxpayers -- a practice that met with stiff resistance and culminated in the enactment of the Religion Clauses. Curry, The First Freedoms, supra at 89, , , , , , , The autonomy cases demonstrate that under the Religion Clauses, Catholic Charities has a right to retain its self-identity and distinctiveness as a church organization. Catholic Bishop, U. In that case, the NLRB attempted to insert itself into the relationship between religious schools and their teachers by asserting jurisdiction to certify a union. McConnell, "Accommodation of Religion," Sup. Supreme Court not intervened; indeed, this case is a more egregious violation of religious liberty because the Catholic Church has a specific religious objection to contraceptives while its teaching favors unions and bargaining. The State may not decide "what is or is not secular, what is or is not religious. Here the State has decided that organizations are "truly" religious if they serve and employ

only their co-religionists. As a result, religious organizations that are, in a manner of speaking, insular in their workplace and ministry are exempted from the law, while religious organizations with a missionary outlook are not. This is blatantly unconstitutional. If the Religion Clauses means anything, they mean that the government is estopped from deciding which church organizations are "religious enough" to qualify for an exemption. Such a state-imposed choice is offensive, discriminatory, and unconstitutional under the Religion Clauses. Community for Creative Non-Violence, U. United States, U. United States Jaycees, U. The right to associate "is crucial in preventing the majority from imposing its view on groups that would rather express other, perhaps unpopular, ideas. Thus, like free speech, the right of association is a protection against state-enforced ideology, a guarantee that diversity of thought and belief will be permitted and not banished by the state. There is no question that compulsory funding can violate the constitutional guarantees of free speech and association. State Bar of California, U. In each of the cited cases, the First Amendment was not only implicated, but affirmatively violated, notwithstanding some rather impressive competing interests. In Ellis, for example, "vital national interests in preserving industrial peace," Keller, U. Dale recognizes for purposes of association, just as Clark and Brown recognize for purposes of speech, that what one says and what one does are inseparably linked. See University of Great Falls, F. In the Christian tradition, a religious faith not expressed in conduct is inauthentic. Centuries of Christian belief and practice demonstrate that orthopraxy right conduct flows, and is inseparable, from orthodoxy right belief. See 1 John 2: Indeed, most observers would assume, even if the assumption were incorrect, that a church organization paying for contraceptives in its own house did not genuinely oppose contraceptive practices. Payment of contraceptives by Catholic Charities, a practice it explicitly condemns, "sends a distinctly different message" than the one the church wishes to convey. The challenged mandate forces Catholic Charities to "affirm in one breath that which [it] den[ies] in the next," Hurley v. One can imagine how Planned Parenthood, a sponsor of the legislation challenged here, might react were the facts altered so that it was required to pay its own employees for services that directly contradicted its associational mission and message. Suppose a legislature were to require that all insurance plans that pay for abortion also pay for post-abortion trauma services and counseling based on a legislative finding that such trauma poses a significant public health risk. Planned Parenthood denies that women suffer trauma as a result of abortion, just as Catholic Charities denies that contraceptives benefit either women or men. The same speech and associational interests Planned Parenthood would undoubtedly raise in such circumstances become dispositive when it involves the internal operations of a church, for the latter has a right to autonomy arising out of the Religion Clauses that Planned Parenthood, as a secular organization, does not. In this case, a church agency Catholic Charities has employed persons to further an explicitly religious mission, a mission known to its employees and tacitly agreed to by them. Yet Catholic Charities has been forced by the State to insure these same employees for that which contravenes the body of religious teachings that identify Catholic Charities as Catholic. For at least three reasons, no balancing test is appropriate in this case.

Chapter 7 : Fourth Amendment | Wex Legal Dictionary / Encyclopedia | LII / Legal Information Institute

Even if one might say such an interest is compelling for employees of for-profit private commercial institutions, that interest fails when the subject of regulatory interest is religion and its nonprofit operations.

As the scholar Diana Eck reminds us, for most of our history our religious discourse was dominated by a culturally conservative European heritageâ€”people like me. Alternative visions of faith rarely reached the mainstream. That has changed markedly as we steam deeper into the twenty-first century. Almost 80 percent of Americans still identify themselves as Christians, but they are a far more motley lot than the mainstream media understand or report. Other faiths are now making their presence felt, and our religious landscape is being re-created right before our eyes. Travel the country as I do as a journalist and you see an America dotted with mosquesâ€”in places like Toledo, Phoenix, and Atlanta. By one estimate, there are , religious congregations of one kind or another across the country, and that roughly million people attend worship services regularly. It is important, therefore, to keep reminding ourselves that in the Abrahamic tradition the first murder arose out of a religious act. Adam and Eve have two sons. Cain, a farmer, offers the first fruits of the soil. Abel, a shepherd, offers the first lamb from the flock. Cain is so jealous that their rivalry leads to violence and ends in death. Religion has a healing side; we know this. But it also has a killing side. As I write, conservative Christians have been pressing their agenda toward political outcomes, first through the Republican primary campaign and in local elections as well. For example, I read on the website bullyingstatistics. By now this is a familiar tactic: We Americans have wrestled from the very beginning of our country with the best ways to protect the church and state from encroaching on each other. Some of our forebears feared the church would corrupt the state. Others feared the state would corrupt the church. Churches and religious zealots did get punitive laws passed against what they said were moral and religious evils: But churches also fought to end slavery, help workers organize, and pass progressive laws. Government had its favorites at times; for much of our history, it privileged the Protestant majority. As we argue over how to respect religious liberty, including the liberty not to believe, these thoughtful Rules for Mixing Religion and Politics call on us to acknowledge the tensions that are inherent to protecting in law and policy both freedom of religion and freedom from religion. We can simultaneously share a strong commitment to religious liberty, while disagreeing over the application of that principle in a given circumstance. Over many years of covering these issues, I know that Americans can talk about their beliefs in public without politicizing religion or polarizing the community; I have seen and heard them do it. From experience I know that seriously religious people can press their argument in the public sphere without advocating injury to others. And we can engage with others in serious conversation about the most deeply felt subjects and truly challenge each other, teach each other, and learn from each other. As Salman Rushdie told me in an interview: In free societies you must have the free play of ideas, there must be an argument, and it must be impassioned and untrammeled. Free societies are dynamic, noisy, turbulent, and full of radical disagreement. Soâ€”let there be Rules. The First Amendment to the Constitution guarantees the free exercise of religion and prohibits the establishment of religion by the government. These two principles work together to protect religious freedom and a thriving and perse religious landscape. Most Americans embrace freedom of religious expression and the separation of church and state, but the application of these principles in electoral, political and policy settings is a perennial source of controversy. The appropriate role for religion and religious language in political debate is often the source of confusion and conflict across the political spectrum, particularly as our communities grow more perse religiously. The line between an appropriate accommodation of religion and an inappropriate establishment is not always clear; good faith policymakers frequently engage in complex efforts to balance competing interests. These Rules reflect our understanding of the Constitution and the body of federal court cases on religious liberty as well as our judgment on issues beyond the law. Some things that are legally permissible may still be damaging to religious tolerance and civic discourse, and should be discouraged. We

do not believe it was unconstitutional, as some argued, for Texas Gov. Rick Perry to launch his presidential bid with an exclusionary prayer rally sponsored by religiously divisive voices; we do think it was an unfortunate, unwise, and inappropriate decision for someone who was seeking to be president of all Americans. It is important to acknowledge that some situations bring the principles of free expression and nonestablishment into creative tension, and there is room for principled disagreement about just where the lines should be drawn in a given circumstance. Judges as well as policymakers wrestle with these complexities. Other public officials, like teachers and school administrators, often face situations with more ambiguities than bright lines. That lack of clarity, especially when exacerbated by misleading political rhetoric, can lead to bad decisions. Sometimes these mistakes are easily corrected; sometimes they are resolved through litigation. People For the American Way Foundation has participated in several projects over the years in which advocates from across the political and religious spectrum have worked to minimize these mistakes by clarifying the state of the law in legal guides for school officials. Misinformation and misunderstanding can also lead to divisive rhetoric. Sometimes media wrongly portray policy debates as if there are religious voices on only one side of the issue. These are recurring issues. As leaders of an organization whose board and membership include Catholics, Jews and mainstream and evangelical Protestants, we feel this false dichotomy most strongly. Because many Americans derive their values from their faith, religious people and religious beliefs have always played a significant role in American politics and culture, and in fact have been at the forefront of many justice-seeking movements. It is unavoidable that religion and politics will mix. The question is whether they will mix in ways that promote the common good and are true to the spirit of the Constitution, or whether they mix in ways that divide Americans along lines of faith and undermine our sense of community. America is a religiously pluralistic country, with increasing numbers of adherents to minority faiths and a significant and growing number of people who claim no religious affiliation. At the same time, efforts to use religious language and imagery to motivate political involvement have flourished on all points of the political spectrum. All that civic engagement makes it even more important that Americans figure out how to mix religion and politics in ways that respect constitutional principles and democratic values. All Americans, religious or non-religious, should be welcomed to play an active role in their communities and the political life of our nation. These rules are an effort to create guidelines that can build a better, more productive, less divisive public conversation. There can be no religious test for public office, nor a religious test for participation in the political process. Even still, some states kept religious tests on the books well into the 20th century. Some religious leaders and public officials have asserted a de facto religious test for public office, insisting that American Christians must vote for Christian politicians. Some evangelical activists have suggested that it would be wrong, for example, for a Christian to vote for a Mormon presidential candidate, because having a Mormon president might lead people to adopt his faith. One declared candidate in the presidential race announced that he would not appoint a Muslim to his cabinet; other presidential candidates in the past have said they would not permit Hindus or atheists to serve. No American should be discouraged or barred from participation in the political process simply on account of their religious views. The Constitution explicitly forbids the requiring of any religious test as a qualification for holding office. To impose such a test by popular vote is as bad as to impose it by law. To vote either for or against a man because of his creed is to impose upon him a religious test and is a clear violation of the spirit of the Constitution. While it is appropriate to discuss the moral dimensions of public policy issues, religious doctrine alone is not an acceptable basis for government policy. Because government represents all the people, not just those who share the faith of particular government officials, and because the First Amendment prevents the government from establishing religion, it is inappropriate for government policy to be based solely on religious doctrine. Debates over who speaks for God or who has a superior interpretation of scripture should not form the basis for policymaking. This does not mean that government officials and other players in policy debates are expected to abandon their faith as the price for taking part in the political processâ€”or that it is inappropriate to talk about moral or religious values in politics. Laws prohibiting murder and stealing, as

well as laws protecting worker safety and the environment, reflect moral judgments. Those judgments may be rooted in specific religious teaching for some people, but they are also shared broadly across religious and secular lines. In contrast, some elected officials have cited the Bible story of the great flood as a definitive argument against government policy to address global warming. At a hearing, Rep. In , Maryland State Senator and American University law professor Jamie Raskin was asked to testify before a Maryland senate committee considering a proposed amendment to the state constitution to prohibit same-sex couples from getting married. For me, this is an issue solely based on religious principles. But they must respect that not all Americans share their faith, and that even Americans who share their faith might well disagree with their political position on any given issue. This is an area in which there is a clear distinction between what is legal and what is wise or responsible. Claims to speak for God in public policy are protected as free speech by the First Amendment, but that does not mean they will lead to constructive debate or effective policy. Public officials have every right to express their personal religious beliefs, and no right to use the power of their office to proselytize or coerce others to adopt any religious beliefs or practices Public officials are free to talk about their faith, the role it plays in their lives, and how it influences their approach to issues, but must not use the power of their office to proselytize or impose particular religious beliefs or practices on others. This principle is sometimes neglected by those who should know better. Some judges, for example, have inappropriately posted statements of religious dogma on the walls of their courtrooms. Former and running again in Alabama Chief Justice Roy Moore was removed from office after he defied federal court orders to remove a religious display of the Ten Commandments that he had installed, in the middle of the night, in his courthouse rotunda. Public officials who assert the supremacy of their faith over the faith of others risk alienating some of their constituents. Courts have held that the Constitution does not prohibit officials from making references to religion in their official capacities. Government institutions must show neither official approval nor disapproval of religion, or favor one religion over another Government should not take sides when it comes to religion, either to favor one particular religion or to favor religious people generally over nonreligious people. This fundamental principle finds its legal roots in the First Amendment to the Constitution. Government can run afoul of that prohibition in two principal ways. One is excessive entanglement with religious institutions â€¦ The second and more direct infringement is government endorsement or disapproval of religion. Endorsement 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. Disapproval sends the opposite message. This basic principle of church-state separation continues to be contested by some who argue that it is permissible and desirable for the government to promote or favor religion, a narrative of America going back to the Puritans. Recent policies that would reflect inappropriate government favoritism toward religion include prisoners getting favored treatment for enrolling in religious programs or most instances of government-funded religious organizations receiving special exemptions from laws and regulations that apply to other nonprofit organizations. Houses of worship are exempt from civil rights laws in some areas directly related to their religious missionâ€”notably the hiring of clergyâ€”but they do not and should not get a blanket exemption from government regulation. Public schools are often an arena for conflicts on church-state issues. Students in public schools are free to share their faith with other students, to pray over lunch, and to start religious clubs if their high school permits other non-curricular clubs. But public schools may not require students to participate in any religious activity.

Chapter 8 : Freedom of religion in the United States - Wikipedia

That is, it excuses religious actors from some generally applicable laws when their moral code requires some other course of conduct. This violates the condition of reciprocity. Why should we prefer an argument of this kind to arguments that seem to satisfy the canons of fairness?

The first case to closely examine the scope of the Free Exercise Clause was Reynolds v. United States in This interpretation of the Free Exercise Clause continued into the s and the ascendancy of the Warren Court under chief justice Earl Warren. Applying a new standard of " strict scrutiny " in various areas of civil rights law, the Court began to apply this standard to the First Amendment religion clauses as well, reading the Free Exercise Clause to require accommodation of religious conduct except where a state could show a compelling interest and no less burdensome means to achieve that end. One example was Sherbert v. This view of the Free Exercise Clause would begin to narrow again in the s, culminating in the case of Employment Division v. Instead, the Court again held that a "neutral law of general applicability" generally does not implicate the Free Exercise Clause. This was followed by intense disapproval from Congress and the passage of the Religious Freedom Restoration Act in to attempt to restore the prior test. However, in City of Boerne v. Many communities directed laws against the Witnesses and their preaching work. From to , the organization was involved in over forty cases before the Supreme Court, winning a majority of them. The first important victory came in , when in Lovell v. City of Griffin , the Supreme Court held that cities could not require permits for the distribution of pamphlets. In , the Supreme Court decided Schneider v. In , the Court considered Cantwell v. The Council was to grant the certificate only if the organization requesting it was a charity or sponsored a religious cause. The Supreme Court ruled that any law granting a public body the function of determining if a cause is religious or not violates the First Amendment. The ruling in Gobitis, however, did not stand for long. Barnette , the Supreme Court essentially reversed its previous opinion. In the Barnette case, however, Justice Robert H. Jackson wrote, "the very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities Verner the Court held that states must have a "compelling interest" to refuse to accommodate religiously motivated conduct. The case involved Adele Sherbert, who was denied unemployment benefits by South Carolina because she refused to work on Saturdays, something forbidden by her Seventh-day Adventist faith. Yoder , the Court ruled that a law that "unduly burdens the practice of religion" without a compelling interest , even though it might be "neutral on its face," would be unconstitutional. The "compelling interest" doctrine became much narrower in , when the Supreme Court held in Employment Division v. Smith that, as long as a law does not target a particular religious practice, it does not violate the Free Exercise Clause. Since the ordinance was not "generally applicable," the Court ruled that it was subject to the compelling interest test, which it failed to meet, and was therefore declared unconstitutional. In , the Court applied this doctrine in Trinity Lutheran v. Comer , holding that there must be a compelling state interest for express discrimination based on religious status in government funding schemes. Also in , Congress passed the Religious Freedom Restoration Act RFRA , which sought to restore the general applicability of the "compelling interest" standard present prior to Employment Division v. Thus, state and local government actions that are facially neutral toward religion are judged by the Employment Division v. Smith standard rather than RFRA. UDV , RFRA remains applicable to federal statutes, which must therefore still meet the "compelling interest" standard in free exercise cases.

Chapter 9 : States â€“ Religious Freedom Restoration Act perils | Professor Marci A. Hamilton

The Supremacy Clause Article VI of the Constitution provides that the Constitution, laws, and treaties of the U.S. are the supreme law of the land.

Global , USA May 5 Structuring a lending transaction General Who are the active providers of secured finance in your jurisdiction eg, international banks, local banks or non-bank financial institutions? International and domestic banks continue to be the primary arrangers and underwriters of secured financing in the United States. In the syndicated bank loan markets â€" in particular for sub-investment grade borrowers â€" the arranging banks often syndicate all or a portion of the loans that they arrange and underwrite to a variety of market participants, including collateralised loan obligations, debt funds and insurance companies. However, non-bank direct lenders including business development companies, mezzanine debt funds and pension plans have played an increasing role in the US secured financing market as direct providers of secured financing to sub-investment grade borrowers. The increased activity by non-bank lenders in recent years has resulted from a number of factors, including the prudential bank regulators placing increased restrictions on regulated banks through the implementation of the revised leveraged lending guidance. Is well-established market-standard facility documentation used in your jurisdiction for secured lending transactions? Unlike, for instance, in the United Kingdom, there is no well-established standard documentation for corporate secured loan facilities in the United States. While certain provisions are typically included in loan agreements, loan agreements are typically negotiated on a deal-by-deal basis. Syndication Are syndicated secured loan facilities typical in your jurisdiction? Yes, syndicated loan facilities are common in the United States. Almost all large corporates use the syndicated bank loan markets for their bank financings. How are syndicated facilities normally structured? Does the law in your jurisdiction allow a facility agent to be appointed to act on behalf of other banking syndicate members? Typically, one of the financial institutions that is party to the loan agreement usually the lead bank arranging the facility is appointed to act as the administrative agent for the syndicate of lenders under the loan agreement. The administrative agent is responsible for the day-to-day administration of the loan facility. Payments, notices, reports and other communications between the borrower and the lender syndicate are made through the administrative agent. In a secured loan facility, the lenders also appoint a collateral agent to: Typically, the same bank acts in both the administrative agent and collateral agent roles. The agent bank is broadly exculpated and indemnified against claims by the lenders and the borrower. Does the law in your jurisdiction allow security and guarantees to be held on trust by a security trustee for the benefit of the banking syndicate? In the United States, the security is effectively held in trust by the collateral agent for the benefit of the secured parties. The collateral documentation refers to the collateral agent and the collateral agent performs ministerial functions relating to the collateral. Guarantees are typically in favour of the collateral agent on behalf of the secured parties. Special purpose vehicle financing Is it common in secured finance transactions for special purpose vehicles SPVs to be used to hold the assets being financed? Would security generally be given over the shares in the SPV or would lenders require direct asset security? Whether an SPV is used is dependent on the type of transaction. In typical secured corporate lending transactions, SPVs are generally not used. However, for more specialised lending transactions, an SPV may be used. If the latter, which is the most commonly used reference rate in your jurisdiction? Selecting the LIBOR rate typically results in a lower total interest rate than the base rate, but requires advance notice to the lenders for borrowing under the loan agreement usually at least two business days. Base rate loans, in contrast, are typically available on shorter notice, sometimes on a same-day basis, and can be pre-paid at any time without incurring break funding fees. Are there any regulatory restrictions on the rate of interest that can be charged on bank loans? Yes, the maximum rate of interest that can be charged on bank loans is limited by state law in many jurisdictions. The scope and amount of these limits differ significantly by state. Use and creation of guarantees Are guarantees used in your jurisdiction? Yes, guarantees provided by subsidiaries of the borrower

and its parent entities are a common feature of corporate secured loan transactions. In some transactions, sister company guarantees are also provided. What is the procedure for their creation? Guarantees are created by contract, through either provisions included in the loan agreement or, more commonly, a separate guaranty executed by the guarantor. Generally, no filing is required in order to create an enforceable guaranty. Do any laws affect or restrict the granting or enforceability of guarantees in your jurisdiction eg, upstream guarantees? It is important to review the applicable state law of the relevant guarantor, as jurisdictions differ on the permissibility of certain types of guarantee and whether board or shareholder approval is required or provides safe harbour protection under state law. The enforceability of guarantees may also be limited by federal and state fraudulent conveyance laws. In addition, guarantees and security interests may also be voided outside of bankruptcy under similar state fraudulent conveyance statutes. Because a guarantor receives no proceeds of the loan that it is guaranteeing, guarantees may be challenged in bankruptcy court as constructive fraudulent conveyances on the basis that the guarantor did not receive reasonably equivalent value in exchange for its guaranty. However, upstream and cross-stream guarantees are more vulnerable to legal challenge because it is harder to demonstrate that the guarantor received reasonably equivalent value and there is conflicting case law on this point. Subordination and priority Describe the most common methods of structuring the priority of debts and security. One way of achieving payment subordination is to include provisions in the loan document identifying the debt as subordinated debt, as applicable, and setting forth the terms of the subordination. Debt claims may also be structurally subordinated to one another. This type of subordination occurs when one creditor has a claim against a parent company and the other creditor has a claim against a subsidiary of the parent company. The creditor of the subsidiary has recourse to the assets and cash flows of the subsidiary and, in the event of insolvency, must be paid in full before the parent company receives any payment on account of its equity interest. Documentary taxes and stamp duty Are any taxes, stamp duty or other fees payable on the granting of a loan, guarantee or security interest, or on its enforcement? US federal law and New York state law generally do not impose any taxes or other fees in connection with the making of a loan or the granting of a security interest or guaranty. Click here to view the full article.