

CITY OF BOERNE v. FLORES (1997)

In *Employment Division v. Smith* (1990), the Supreme Court changed the test in free exercise cases; it upheld an Oregon law prohibiting the use of peyote, a hallucinogenic drug some American Indians use in religious ceremonies. In doing so, the Court states that the “compelling interest” test did not have to be met for general criminal laws. Instead, the decision stated that the burden of proof for religious discrimination rests on the individual or church. In other words, plaintiffs no longer can claim that the law merely affects them; they now have to prove that the law was specifically crafted to discriminate against them.

In opposition to the *Smith* decision, several religious organizations united to support the passage of the Religious Freedom Restoration Act in 1993, a law designed to restore the previous, more stringent test requiring the government to prove a “compelling interest” in religious exercise cases. However, a 1997 Supreme Court ruling (*City of Boerne v. Flores*) overturned RFRA, stating that Congress had overstepped its bounds by requiring state and local governments to adhere to the law.

Nevertheless, many Americans demand greater protection for free exercise of religion. Supporters warn that without RFRA, similar legislation, or a new court decision overturning *Smith*, the right to challenge laws restricting religious practices, particularly those of religious minorities, will be largely curtailed. Advocates point out that several previous cases resulting in decisions favoring religion, such as the Amish case, might not even get a chance to appear in court under current guidelines. Supporters of RFRA believe that government interests should not win out over the explicit constitutional guarantee of religious freedom, particularly when the issues at stake compromise a believer’s conscience and possibly his or her salvation.

Opponents of RFRA believe that the Constitution and the courts already provide adequate protection for religious practices. Moreover, many critics agree with Justice Anthony Kennedy who, in authoring the majority decision striking down RFRA, stated that there is no evidence of “some widespread pattern of religious discrimination in this country” to warrant a law that gives additional protection for the free exercise of religion. Instead, opponents counter that the government should not tolerate religious practices deemed to threaten “peace and good order.” Furthermore, they assert that under RFRA, frivolous cases flooded the courts, particularly from prison inmates demanded protection for unusual religious practices, such as sweat lodges for American Indians and drugs for members of the Church of Marijuana.