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Antidisestablishmentarianism: The Religion Clauses at the End of the Millenium

Martin H. Belsky

ANTIDISESTABLISHMENTARIANISM: THE RELIGION CLAUSES AT THE END OF THE MILLENNIUM*

Martin H. Belsky†

When I was in sixth grade, I learned a great word—"antidisestablimentarianism." I was told it was one of the longest words in the English language. I thought the word was "cool." I did not know what it meant and I did not care. I should have.

Webster's Unabridged Dictionary defines "antidisestablimentarianism" as "strong opposition to the disestablishment of a State Church."[1] In other words, it means fighting the strict separation of Church and State.[2]

In recent years, antidisestablishmentarianists have gained a majority of the United States Supreme Court.[3] In fact, two cases decided in June of 1997[4] indicate that the supposed "wall"[5] provided by the First Amendment of the Constitution between government's secular authority and religion is crumbling.[6]

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* Based on remarks delivered at the Conference, *Practitioner's Guide to the October 1996 Supreme Court Term*, at the University of Tulsa College of Law, October 31, 1997.

† Dean and Professor of Law, University of Tulsa College of Law.

1. WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY 80 (2d ed., Unabridged 1970). For a discussion of the historical basis for the "disestablishment clause" in the Constitution, see John Witte, Jr., *The Essential Rights and Liberties of Religion in the American Constitutional Experiment*, 71 NOTRE DAME L. REV. 371, 401-03 (1996).

2. Modern antidisestablishmentariantists call the separation of church and state an unsupported myth. *See, e.g.*, DAVID BARTON, THE MYTH OF SEPARATION (1989).

3. *See* Richard S. Myers, *The Supreme Court and the Privatization of Religion*, 41 CATH. U. L. REV. 19, 79 (1991). Justices O'Connor, Scalia, Kennedy, Thomas and Chief Justice Rehnquist can all be said to have indicated an "anti-disestablishment" perspective, challenging those dedicated to a "strict" separation of church and state. *See* Julian R. Kossow, *Preaching to the Public School Choir: The Establishment Clause, Rachel Bauchman, and the Search for the Elusive Bright Line*, 24 FLA. ST. U. L. REV. 79, 81 n.10 (1996).

4. *See* Agostini v. Felton, 117 S. Ct. 1997 (1997); and City of Boerne v. Flores, 117 S. Ct. 2157 (1997).

5. The phrase "wall of separation" was used by Thomas Jefferson to describe the theory of the separation of church and state established by the First Amendment. *See* Everson v. Board of Education, 330 U.S. 1, 16 (1947). *See also* Arlen Specter, *Defending the Wall: Maintaining Church/State Separation in America*, 18 HARV. L.J. & PUB. POL'Y 575, 579-80 (1994) (describing Jefferson's role).

6. For an analysis of what "religion" means in the context of the First Amendment, see George C. Freeman, III, The Misguided Search for the Constitutional Definition of "Religion,", 71 GEO. L.J. 1519 (1983).

I. A LITTLE HISTORY

The First Amendment of the United States Constitution provides that the government shall make "no law respecting an establishment of religion, or prohibiting the free exercise thereof."[7] The intent of both the "establishment" and "free exercise" provisions has been to protect religious freedom,[8] especially for those of minority religions.[9] Government would not establish any religion and would not discriminate against any one because of religious practices.[10]

Beginning in the 1960's, the Supreme Court applied these limitations rigorously.[11] First, to determine if any government rule complied with the Establishment Clause, the Court established a three-part test.[12] Second, to determine if any government rule interfered with one's religion, the Court mandated a strict scrutiny of that rule.[13]

A. *The Establishment Prong*

The three-part review of laws under the establishment prong of the religion clauses was described in *Lemon v. Kurtzman*.[14] "First, the statute [or rule] must have a secular purpose."[15] In other words, there must be a valid non-religious reason for the new law.[16] "[S]econd, its principal or primary effect must be one that neither advances nor inhibits religion."[17] In short, the new regulation must be neutral towards religion and religions.[18] "[F]inally, the statute must not foster 'an excessive government entanglement with religion.'"[19] Any rule that forced government at any level to become intertwined with religious institutions or principles was prohibited.[20]

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7. U.S. CONST. amend. I. This provision was later applied to state and local governments, through the Fourteenth Amendment. *See Everson*, 330 U.S. at 8.

8. *See* EZRA STILES, THE UNITED STATES ELEVATED TO GLORY AND HONOR 55 (1793), *quoted in* Witte, *supra* note 1, at 373. Ezra Stiles was the President of Yale University in 1793.

9. *See, e.g.*, Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993); *Everson*, 330 U.S. at 16.

10. *See* Elhanan Winchester, A Century Sermon on the Glorious Revolution, *in* POLITICAL SERMONS OF THE AMERICAN FOUNDING ERA, 1730-1805, at 969, 988-99 (Ellis Sandoz ed., 1991), *quoted in* Witte, *supra* note 1, at 373.

11. *See* John Sexton, *The Warren Court and the Religion Clauses of the First Amendment*, *in* THE WARREN COURT: A RETROSPECTIVE 104, 111 (Bernard Schwartz ed., 1996) (calling the Warren Court approach a "freeze frame" perspective).

12. *See* Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).

13. *See* Sherbert v. Verner, 374 U.S. 398 (1963).

14. 403 U.S. 602 (1971). In *Lemon*, the Supreme Court declared unconstitutional Pennsylvania and Rhode Island statutes that provided state aid to parochial schools.

15. *Id.* at 612.

16. *See* Wallace v. Jaffree, 472 U.S. 38 (1985) (statute mandating a moment of silence for meditation or prayer had only religious purpose); Epperson v. Arkansas, 393 U.S. 97 (1968) (statutory mandate against teaching of evolution lacked secular purpose).

17. *Lemon*, 403 U.S. at 612.

18. *See* Edwards v. Aguillard, 482 U.S. 578 (1987) (primary purpose of act, forbidding the teaching of evolution in public schools unless accompanied by teaching of "creation science," was to advance religion); Abington School District v. Schempp, 374 U.S. 203 (1963) (mandated Bible reading and statement of Lord's Prayer in school had primary purpose of advancing religion).

19. *Lemon*, 403 U.S. at 613 (quoting Walz v. Tax Commission, 397 U.S. 664, 674 (1970)).

20. *See* Lynch v. Donnelly, 465 U.S. 668 (1984) (Christmas exhibit with creche in city park did not

Numerous statutes and government actions were found unconstitutional as violating one or more of these standards. For example, government could not use its money to support education programs in parochial schools as it would "entangle" government with the religious institution.[21] Mandated moment of silence to allow for meditation or prayer in public schools lacked any "secular purpose."[22] And, prohibiting the teaching of evolution unless "creation science" was also taught violated the Constitution because the "primary effect," or purpose, was the advancement of a particular religious belief.[23]

B. The Free Exercise Prong

The strict scrutiny test of any law that might infringe on the free exercise of one's religion was described in *Sherbert v. Verner*.[24] If a law or regulation substantially infringed on a religious practice, the government had to show a "compelling government interest" for the provision and even then, had to show that the restriction was the narrowest tailored or least restrictive method to achieve that significant interest.[25] Under this test, the Supreme Court upheld the right of a Jehovah's Witness to quit his job in a defense factory and still get unemployment insurance because of an "honest conviction" that his religion barred him from doing any war-related work.[26] It declared invalid a state bar to unemployment compensation for anyone who would not work on the Sabbath.[27] It ousted a law that required Amish parents to send their kids to school, in violation of their religion, after the eighth grade.[28] In each of these cases, the Court had doubts that there was a compelling interest and stated that even if there was such an interest, the laws were not the least restrictive means to carry out those purposes.[29]

II. THE MODERN TREND

In the last decade, the make-up of the Supreme Court has changed and so has the level of scrutiny of laws and regulations.[30] A majority of the Court now rejects the three-part *Lemon* test and has said that a rule or regulation does

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entangle City with religion); *Lemon*, 403 U.S. at 613-15 (providing aid to parochial schools would entangle state in parochial school programs).

21. *See Lemon*, 403 U.S. at 613-15.

22. *See Wallace*, 472 U.S. at 56.

23. *See Edwards*, 482 U.S. at 591-92.

24. 374 U.S. 398 (1963).

25. *See id.* at 402-03. This, of course, is the same test as that required for restrictions on free speech. *See* Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557 (1980) (comparing standards for restrictions on political and commercial speech).

26. *See* Thomas v. Review Board, 450 U.S. 707 (1981).

27. *See* Hobbie v. Unemployment Appeals Comm'n, 480 U.S. 136 (1987).

28. *See* Wisconsin v. Yoder, 406 U.S. 205 (1972).

29. *See* Sexton, *supra* note 11, at 107-08; Paul Marcus, *The Forum of Conscience: Applying Standards under the Free Exercise Clause*, 1973 DUKE L.J. 1217 (1973).

30. One author refers to the Court's new perspective as a "narrowing" of the Free Exercise Clause and a new "multi-principled" reading of the Establishment Clause. Witte, *supra* note 1, at 418, 425.

not violate the Establishment Clause unless it indicates a government "endorsement" of religion[31] or the law actually "coerces" someone to be involved in a religious activity.[32] For example, mandating a moment of silence during the school day for private prayer is neither an endorsement or coercive, and therefore is valid.[33] Providing government funds to student organizations that are religious in nature is not an endorsement of religion nor coercive on anyone to participate, and therefore not unconstitutional.[34]

The Court has also carved out an exception to the "compelling government interest" and "narrow tailoring" tests of any rule that might interfere with a religious practice. In *Employment Division v. Smith*,[35] five justices stated that the Free Exercise Clause does not protect an individual from his or her obligation to comply with a "neutral law of general applicability."[36] Thus, a military regulation that barred the wearing of hats while on duty could be validly used to dishonorably discharge a doctor/rabbi for wearing his yarmulke.[37] Religiously inspired use of peyote could be barred under a general state anti-drug law.[38]

III. THE LAW AT THE END OF THE MILLENNIUM

In June of 1997, the Supreme Court indicated that this modern trend to "antidisestablishmentarianism" would continue. First, in *Agostini v. Felton*,[39] it specifically overruled a 1985 decision applying the old *Lemon* test. Then, in *City of Boerne v. Flores*,[40] it held that Congress' attempts to reassert a broad "compelling government interest test" for free exercise review was invalid.[41]

A. Agostini v. Felton

In 1985, in *Aguilar v. Felton*,[42] the Supreme Court considered a First Amendment challenge to a New York City program that sent public school teachers into parochial schools to provide remedial education.[43] The program had been established pursuant to a federal statute—Title I of the 1965 Elementary and Secondary Act.[44] The Second Circuit, following a series of decisions premised on *Lemon*,[45] declared the New York program unconstitutional.

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31. The "endorsement" requirement has been best articulated by Justice O'Connor. *See, e.g.*, County of Allegheny v. ACLU, 492 U.S. 573, 627 (O'Connor, J., concurring in part and concurring in the judgement).

32. Justice Kennedy has articulated the "coercion" test for the Establishment Clause. *See, e.g.*, Lee v. Weisman, 505 U.S. 577, 587 (1992).

33. *See* Wallace v. Jaffree, 472 U.S. 38, 72-73 (1985) (O'Connor, J., concurring).

34. *See* Rosenberger v. Rector, 115 S. Ct. 2510, 2523 (1995).

35. 494 U.S. 872 (1990).

36. *Id.* at 879.

37. *See* Goldman v. Weinberger, 475 U.S. 503 (1986).

38. *Smith*, 494 U.S. at 879.

39. 117 S. Ct. 1997 (1997).

40. 117 S. Ct. 2157 (1997).

41. *See id.* at 2161-62, 2172.

42. 473 U.S. 402 (1985).

43. *See id.* at 406-07.

44. Pub. L. No. 89-10, 79 Stat. 27 (1965) (codified as amended at 20 U.S.C. §§ 6301-8962 (1994)).

45. The Second Circuit referred to *Meek v. Pittenger*, 421 U.S. 349 (1975) and *Wolman v. Walter*, 433

The Supreme Court, in a five to four decision, applied the three-part *Lemon* test and found that such a program provided an "excessive entanglement of church and state in the administration of those benefits."[46] On remand, a permanent injunction was issued barring any use of Title I money for services on the premises of sectarian schools in New York City.[47]

Almost ten years later, a set of parents of parochial school students filed motions seeking to end the injunction, as the law had changed since 1985 and the present law no longer barred use of Title I money for parochial schools. The Supreme Court, again in a five to four decision, held that, the Court's understanding of the law had changed as to "the criteria used to assess whether aid to religion has an impermissible effect."[48] Justice O'Connor, for the majority, stated that recent cases[49] have already indicated that shared time programs like those in New York City do not advance or promote religion,[50] nor create any excessive entanglement between the government and religion.[51]

The earlier *Aguilar* decision had "presumed that full-time public employees on parochial school grounds would be tempted to inculcate religion."[52] This is no longer a presumption.[53] Simply stated, under the new standards, "this carefully constrained program . . . cannot reasonably be viewed as an endorsement of religion."[54]

There was a vigorous dissent penned by Justice Souter, indicating that four Justices do not believe that the standards for application of the Establishment Clause have changed sufficiently to warrant such a complete reversal. There has been a "flat ban on subsidization [that] antedates the Bill of Rights and has been an unwavering rule in Establishment Clause cases."[55] By mixing responsibilities for teaching secular subjects with religious ones, there is an implied approval or endorsement of religion by the schools and that is prohibited by the First Amendment.[56]

Justice Souter also criticized the majority for disregarding the doctrine of *stare decisis*—the importance of precedent and certainty in the law.[57] "[C]onstitutional lines have to be drawn [and] . . . constitutional lines are the price of constitutional government."[58]

U.S. 229 (1977). *See* Felton v. Secretary, 739 F.2d 48, 72 (2d Cir. 1984).

46. *Aguilar*, 473 U.S. at 414.

47. *See* Agostini v. Felton, 117 S. Ct. 1997, 2005 (1997).

48. *Id.* at 2010.

49. *See* Zobrest v. Catalina Foothills School District, 509 U.S. 1 (1993) (federal funds could be used for sign-language interpreter in Roman Catholic high school); Witters v. Washington Dept. of Services for Blind, 474 U.S. 481 (1986) (state vocational tuition grant to blind person to attend Christian college to become pastor not in violation of Establishment Clause).

50. *See Agostini*, 117 S. Ct. at 2012.

51. *See id.* at 2015.

52. *Id.*

53. *See id.* at 2016.

54. *Id.*

55. *Id.* at 2020.

56. *See id.* at 2022.

57. *See id.* at 2025.

58. *Id.* at 2026.

Justice Ginsburg in her dissent, joined by three other colleagues (Souter, Stevens, and Breyer), continued on this theme of judicial consistency. At a minimum, she argued, the Court should not reconsider the original *Aguilar* decision and should wait until another unrelated case is presented to address the possible change in the law.[59]

In response, Justice O'Connor, for the majority, stated that stare decisis "reflects a policy judgement that 'in most matters it is more important that the applicable rule of law be settled than that it be settled right.'"[60] But that policy is "at its weakest" when dealing with constitutional interpretation.[61] Moreover, waiting for another case, and not deciding it because of a prior decision in this case (which O'Connor calls a "'law of the case' doctrine"), "would undoubtedly work a 'manifest injustice.'"[62]

B. City of Boerne v. Flores

As noted earlier, the Supreme Court had said in *Employment Division v. Smith*[63] that certain general laws that impacted religious practices did not need to be reviewed strictly.[64] In *Smith*, Justice Scalia went back to the 1878 decision in *Reynolds v. United States*[65] that held that a ban on polygamy was not a violation of the Free Exercise Clause.[66] *Reynolds* and other cases have indicated that "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)."[67]

The general religious community—Evangelical and other Protestants, Catholics, Muslims, and Jews—was outraged by that decision and joined together and convinced Congress to enact[68] the Religious Freedom Restoration Act of 1993 ("RFRA").[69]

RFRA was specifically intended to "repudiate the *Smith* approach to free exercise analysis and restore the 'compelling government interest' test."[70] Specifically, the statute provided that any law—whether of general applicability or not—that substantially interfered with any religious practice would only be

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59. *See id.*

60. *Id.* at 2016 (quoting Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting)).

61. *Id.*

62. *Id.* at 2017.

63. 494 U.S. 872 (1990).

64. *See id.* at 886.

65. 98 U.S. 145 (1878).

66. *See id.* at 167.

67. *Smith*, 494 U.S. at 879.

68. *See* Eugene Gressman & Angela Carmella, *The RFRA Revision of the Free Exercise Clause*, 57 OHIO ST. L.J. 65, 66-67 (1996) [hereinafter *RFRA Revision*]. *See* Brief *Amicus Curiae* of the Coalition for the Free Exercise of Religion in Support of Respondents, City of Boerne v. Flores, 117 S. Ct. 2157 (1997) (No. 95-2074) (listing numerous Jewish, Protestant, Catholic, Muslim, and other religiously based congregations, organizations, and foundations).

69. 42 U.S.C. §§ 2000bb to 2000bb-4 (1994).

70. Witte, *supra* note 1, at 420-21.

allowed if it was supported by a compelling government interest and was the least restrictive means to accomplish that interest.[71] Congressional power to enact the statute was premised on the Fourteenth Amendment, Section Five.[72]

The factual situation in *Flores* is relatively straightforward. St. Peter Catholic Church in the City of Boerne, Texas, (near San Antonio) sought to enlarge its building to accommodate its growing congregation. The City Historic Landmark Commission denied the request as in violation of a historic preservation plan. The Archbishop of San Antonio filed suit saying RFRA required a compelling government interest to justify this refusal.

The lower court declared RFRA unconstitutional, as it exceeded Congressional authority under Section Five of the Fourteenth Amendment.[73] The Fifth Circuit reversed, holding that the statute was within Congressional authority under Section Five to enforce and implement the First Amendment (as applied to the states, through the Fourteenth Amendment).[74]

In a six to three opinion by Justice Kennedy, the Supreme Court reversed and found RFRA unconstitutional. RFRA is not "a proper exercise of Congress' remedial or preventive power."[75] By attempting to make a "substantive change" in constitutional protections,[76] Congress, in RFRA, violated "vital principles necessary to maintain separation of powers and the federal balance."[77] Therefore, the *Smith* doctrine still applies. A state or local government may pass and enforce a "neutral law of general applicability" even if it substantially interfers with or burdens a religious tenet or practice.[78] Two Justices concurred in separate opinions.[79]

Justice O'Connor wrote a dissent arguing that *Smith* was "gravely at odds with our earlier free exercise decisions."[80] Therefore, the Court should use the *Flores* case to reconsider and overrule *Smith*.[81] The test should be that stated in *Sherbert v. Verner*[82] and require any law that substantially burdens religiously motivated conduct, to be justified by a compelling government interest

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71. *See* 42 U.S.C. § 2000bb-1(b). *See also Flores*, 117 S. Ct. at 2162.

72. *See* S. REP. NO. 103-111, at 13-14 (1993); H.R. REP. NO. 103-88, at 9 (1993). Section One of the Fourteenth Amendment precludes a state from enacting any law depriving a person of due process or equal protection of the laws. Included in those protections is the free exercise of religion. Section Five authorizes Congress to "enforce" by "appropriate legislation," the provisions of Section One. *See Flores*, 117 S. Ct. at 2162.

73. *See* City of Boerne v. Flores, 877 F. Supp. 355, 357-58 (W.D. Tex. 1995), *rev'd*, 73 F.3d 1352 (5th Cir. 1996), *rev'd*, 117 S. Ct. 2157 (1997).

74. *See Flores*, 73 F.3d at 1364.

75. *See Flores*, 117 S. Ct. at 2168.

76. *Id.* at 2170.

77. *Id.* at 2172.

78. *Id.* at 2161.

79. Justice Stevens wrote a separate concurrence and said that RFRA was a "law respecting the establishment of religion" and therefore in violation of the First Amendment. *Id.* at 2172 (Stevens, J., concurring). Justice Scalia, joined by Justice Stevens, also issued a separate concurrence, "respond[ing] briefly to the claim of Justice O'Connor's dissent . . . that historical materials support a result contrary to the one reached in . . . *Smith*." *Id.* (Scalia, J., concurring).

80. *Id.* at 2178 (O'Connor, J., dissenting).

81. *See id.* at 2176.

82. 374 U.S. 398 (1963).

and to be shown to use means that are narrowly tailored to achieve that interest.[83] Justices Souter and Breyer also wrote dissenting opinions.[84]

IV. THE FUTURE

Agostini and *Flores* make it clear that protection of religious rights has moved from the courtroom to the political arena. It will be harder and harder to argue that a law treads on constitutional rights under the First Amendment religion clauses. Only government laws or policies that truly coerce acceptance of or specifically endorse religion will be found unconstitutional.[85] Rather, it will be necessary to argue that our historical separation of church and state means that as a matter of good public policy the government should not impose a rule or entangle itself with religion.[86]

For example, there will be more and more pressure to bring prayer back into the schools,[87] and provide public funding for religious displays and even institutions, even if outrageous.[88] Similarly, the collapse of the RFRA protections might encourage present attempts to craft "general laws" as to health that bar circumcisions[89] and "general laws" as to animal cruelty barring kosher slaughtering.[90]

Opponents of these actions will no longer be able to rely on courts to overturn such attempts.[91] Rather, they must prevent them from happening at all.[92] Those advocating separation of church and state must persuade, for example, public school executives to voluntarily adopt policies not favoring religion over non-religion or one religion over another.[93] Those seeking protection of religious practices must convince legislators to exempt religious practices from "neutral laws of general applicability."[94]

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83. *See id.* at 2177. The Free Exercise Clause, like others in the First Amendment "has special constitutional status" and should be "treated with the highest degree of respect." *Id.* The rule declared in *Smith* does not "faithfully serve" these purposes. *Id.* at 2185.

84. *See Flores*, 117 S.Ct. at 2185-86 (Souter, J., dissenting); *id.* at 2186 (Breyer, J., dissenting).

85. *See, e.g.*, Lee v. Weisman, 505 U.S. 577 (1992) (religious prayer at middle school graduation was subtle but still present coercion on students to attend religious exercise).

86. *See generally* Specter, *supra* note 5.

87. *See, e.g.*, H.R.J. Res. 127, 104th Cong. (1995) (Istook Amendment to specifically allow prayer in public schools).

88. *See, e.g.*, Capital Square Review and Advisory Bd. v. Pinette, 515 U.S. 753 (1995) (Klan cross next to capital building).

89. *Cf.* Zlotowitz v. Jewish Hospital, 84 N.Y.S.2d 61 (N.Y. Sup. Ct. 1948); Fishbeck v. North Dakota, 115 F.3d 580 (8th Cir. 1997).

90. *Cf.* Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1995) (ritual slaughtering ban found unconstitutional; not a neutral law of general applicability, but rather targeted at particular religious groups).

91. *See, e.g., Witness Files Complaint as Yarmulke Is Banned by Texas Court*, N.Y. TIMES, Oct. 6, 1996, at 33 (Texas judge told Orthodox Jew to remove skullcap before being allowed to testify; no legal basis to object; complaint made to Commission on Judicial Conduct).

92. For some skepticism about whether this is possible, see generally Specter, *supra* note 5 (raising concerns about lack of tolerance of religious differences and sensitivities).

93. *See, e.g.*, ANTI-DEFAMATION LEAGUE, RELIGION IN THE PUBLIC SCHOOLS: GUIDELINES FOR A GROWING AND CHANGING PHENOMENON (FOR K-12) (1996).

94. After the *Smith* decision, Oregon enacted a law to exempt religious use of peyote from its general

Policy leaders and politicians must be convinced that accommodation of differences is essential. Pushing a sectarian, religious agenda would be a slap in the face to the American tradition of a secular society and, more particularly, an insult to non-majority religions who are made to feel as only guests, rather than as equal partners, in the American polity.[95]

statute. *See* OR. REV. STAT. § 475.992(5) (1995); and *RFRA Revision*, *supra* note 68, at 95. *See also id.* at 94 (Congress passed law to change military laws barring wearing of headgear after *Goldman v. Weinberger*, 475 U.S. 503 (1986)). *Cf.* Sherr v. Northport-East Northport Union Free School District, 672 F. Supp. 81 (E.D.N.Y. 1987) (religious exemption from inoculation laws).

95. *See* Kossow, *supra* note 3, at 80 n.4 (reporting that Oklahoma Republican Party adopted a platform at its 1996 convention declaring that United States was founded as a Christian nation and that all law should be based upon Christian values).