# THE EVOLUTION OF RFRA

The U.S. Supreme Court hands down its decision in *Employment Division v. Smith*, declaring that the First Amendment's Free Exercise Clause does not prohibit neutral, generally applicable laws that burden religious practice. *Smith* involved two Native Americans whose religious ceremonies included ingestion of the illegal hallucinogenic drug peyote. As a result of this practice, they were fired from their jobs as drug rehabilitation counselors and subsequently denied unemployment benefits by the state of Oregon. In denying their free exercise claim, the Supreme Court departs from the longstanding principle that government must demonstrate a "compelling state interest" before interfering with religious practices. This ruling runs counter to decades of court precedent and mobilizes a broad, diverse range of religious liberty advocates to take corrective action.

## APRIL 17, 1990

After being approved by unanimous voice vote in the House of Representatives, RFRA passes the Senate 97-3.

## OCT. 27, 1993

**President Bill Clinton is joined by Vice President Al Gore and members of Congress on Nov. 16, 1993, as he signs the landmark Religious Freedom Restoration Act. Supporters shown are (from left): Rep. Don Edwards, D-Calif.; Sen. Orrin Hatch, R-Utah; Gore; Rep. Charles Schumer, D-N.Y.; Sen. Howard Metzenbaum, D-Ohio; and Sen. Mark Hatfield, R-Ore.**

A unanimous Supreme Court decides *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, in which it strictly enforces RFRA's standard requiring government to prove that infringements on religious exercise are justified by a compelling state interest. The Court rejects the government's argument that it has a compelling interest in applying the Controlled Substances Act without allowing exceptions for a small religious sect that ingests a prohibited substance as part of its religious ceremonies. This is the first RFRA case to reach the Court since 1997, when it invalidated RFRA's application to state laws in *Boerne*.

## FEBRUARY 21, 2006

## JUNE 11, 1993

In *Church of the Lukumi Babalu Aye v. City of Hialeah*, its first free exercise case after *Smith*, the Supreme Court invalidates a Florida city ordinance prohibiting animal sacrifices performed as part of religious rituals. The challenged regulations were passed after residents learned that a Santeria church, whose members practice animal sacrifice as part of their religious ceremonies, planned to establish a presence within the city limits. The regulations exempted animal slaughter undertaken for a number of non-religious purposes, such as food consumption. Unlike the law upheld in *Smith*, these regulations were neither neutral nor generally applicable and were thus subject to strict scrutiny review.

## JUNE 25, 1997

The U.S. Supreme Court holds in *City of Boerne v. Flores* that RFRA, as applied to the states, is an unconstitutional exercise of congressional power. RFRA continues to apply to the federal government but is no longer enforceable against state and local governments.

## 2000

Congress passes the Religious Land Use and Institutionalized Persons Act, providing enhanced free exercise protections in the areas of land use and citizens in government custody.

## 2011-PRESENT

The Obama administration announces that, under the Affordable Care Act, all employer-provided health insurance plans must cover FDA-approved contraceptive methods. Dozens of nonprofit and for-profit employers challenge the requirement in courts around the country, raising free exercise and RFRA claims. While the rule is subsequently amended to exempt religious employers and accommodate objecting religiously-affiliated employers, it continues to apply to secular, for-profit employers. Federal courts of appeals disagree over whether secular corporations can "exercise religion" under the statute. Petitions for review are pending before the U.S. Supreme Court.

***"The bill we are reintroducing today restores the compelling interest test by statute. Not every free exercise claim will prevail. The previous standard had worked well for many years, and it deserves to be reinstated. Few issues are more fundamental to our country. America was founded as a land of religious freedom and a haven from religious persecution."***

***-Sen. Ted Kennedy, D-Mass.***

***"The free exercise of religion is not a 'luxury' afforded our citizenry, but a well conceived and fundamental right. It is clear to me a legislative response is essential to the preservation of the full range of religious freedoms the First Amendment guarantees to the American people. This bill will reaffirm those rights."***

***-Sen. Orrin Hatch, R-Utah***

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