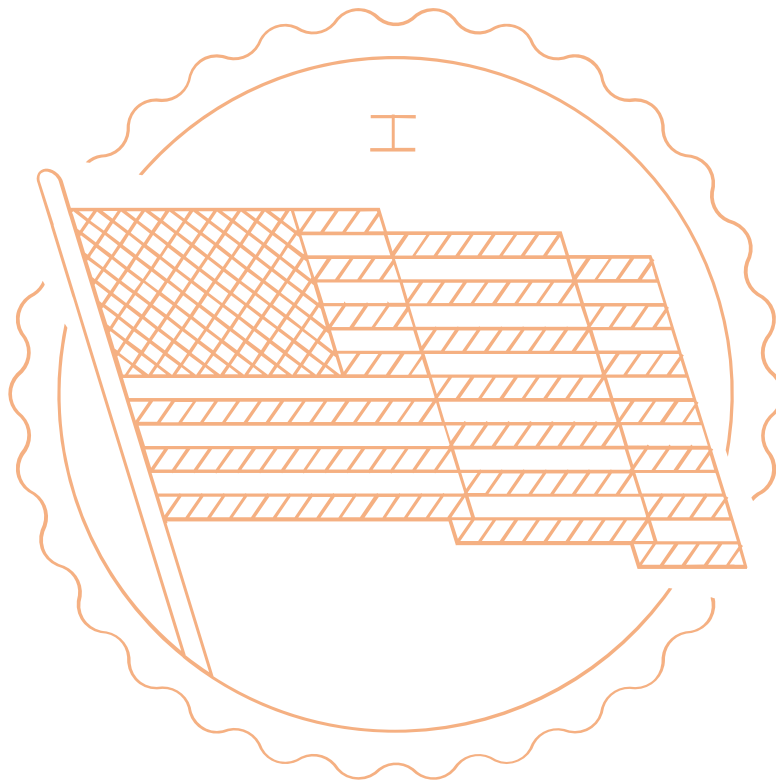


INTERACTIVE
CONSTITUTION

FREE EXERCISE

LESSON PLAN



FREE EXERCISE LESSON PLAN

GRADE LEVELS:

7th and 8th

AUTHOR:

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INTRODUCTION/LESSON OVERVIEW:

Free exercise is the right to practice what you believe. The founding generation included this in the Constitution because they had experienced a world in which the government restricted which religious practices should or could be practiced. Many Americans agree that the right to free exercise of religion is important, yet there are disagreements over what to do in situations where religious liberties conflict with the laws of the nation.

The free exercise of religion is one of the foundational principles of the First Amendment and yet its implementation can lead to very challenging constitutional questions. In this lesson students will learn what free exercise is and will examine four Supreme Court cases to understand why and how the application of free exercise has changed over time.

Essential Questions:

- What is the free exercise clause? Why did the founders include it in the Constitution?
- How has the Supreme Court's application of the free exercise clause changed over time?
- How does the Supreme Court apply the free exercise clause today?
- How can the Supreme Court balance the right of religious liberty with laws passed by the elected branches?

Objectives:

- Students will analyze the evolution of Supreme Court standards set on the issue of the free exercise clause.
- Students will evaluate modern questions surrounding religious liberty.

Materials:

- Warm up/Exit Ticket Page — one for each student, printed double sided
- Four stations set up — each with a different Supreme Court Case Summary Sheet and an electronic device open to www.oyez.org
- Graphic Organizers — one for each student
- Homework — can be printed on the back side of graphic organizer

PROCEDURES:

Warm up/Activation of Prior Knowledge

- Class will begin with the text of the free exercise clause displayed on the board. Students can read the clause and discuss what they think it means.
- The teacher will then pass out the Warm up/Exit ticket sheet and instruct students to work with a partner next to them, or table groups if applicable, to complete the handout.
- Students can share their thoughts with the entire class.

Preparing for Group Activity:

- The teacher should show a clip of the video on free exercise from the following link:
<https://constitutioncenter.org/ic-2019/big-question/freedom-of-religion-free-exercise-clause>.
 - The portion of the video appropriate for this lesson runs from the beginning until 2:52.
- As students watch, they should answer the following questions:
 - What is an example of when the government has limited free exercise rights?
 - According to Justice Kagan, why are free exercise rights so important?
- After the video, the class should engage in a discussion of their understanding of free exercise as they review the answers to the video questions.

Small Group Stations Activity:

- If the classroom is not already situated in groups, the teacher should create four groups. Each student should receive their own copy of the Supreme Court Graphic Organizer.
- Each station should be dedicated to a different Supreme Court case, and should include several copies of the case summary and a device open to the Oyez page for the specific case. Students can use both resources to complete the graphic organizer.
- The teacher can assign each group a station to begin, moving groups about every six minutes to different stations. The goal is for each group to complete all the stations, so timing may vary depending on period length.

Wrap up/Conclusion:

- After students have visited all stations, they will return to their seats and revisit the scenarios from the Warm up activity by completing the Exit Ticket portion of the page.

Homework:

- For homework, students will choose a Supreme Court decision with which they agreed or disagreed and provide evidence to support their ideas. They will have to use constitutional reasoning to support their answer.

Optional Extension Activities:

- Teachers can show the entire video and have students complete the video guide.
- Students can engage in a civil dialogue to answer the question, “When does the government win? When does the religious objector win?” Students can use resources from class, the video on freedom of religion in its entirety, [found here](#), or other resources from the National Constitution Center’s [Media Library](#).

WARM UP

First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

Read through the following scenarios, and then as a group discuss and answer the question based on your reading of the free exercise clause.

	SCENARIO	YES	NO
1	A man wants to marry more than one woman, in a practice known as polygamy. He claims it is his religious belief that he should be free to practice polygamy and that the law violates the free exercise clause. Is he right?		
2	A parent wants to pull his child out of public school at the end of 8th grade even though state law says he should attend until the age of 16. He believes that sending his child to high school violates his religious beliefs and that the law violates the free exercise clause. Is he right?		
3	Counselors at a private drug rehabilitation center were fired after they ingested a hallucinogenic as part of a Native American ritual. The state then refused their application for unemployment insurance. They claimed that they were only practicing their religion and that the state’s decision violates the free exercise clause. Are they right?		
4	A religious group is sacrificing animals as a part of their religious practices. The local community made a law, specifically targeting them, outlawing the killing of animals as a part of religious ceremony. The group argues that this law violates the free exercise clause. Is this group right?		

EXIT TICKET

What did the Supreme Court decide in the cases presented in the warm up activity?

SCENARIO	COURT CASE	SUPREME COURT DECISION
1		
2		
3		
4		

FREE EXERCISE CLAUSE GRAPHIC ORGANIZER

<i>Reynolds v. United States (1878)</i>	
What was the issue?	What did the Court decide?
Who won — the religious objector or the government?	
<i>Wisconsin v. Yoder (1972)</i>	
What was the issue?	What did the court decide?
Who won — the religious objector or the government?	
<i>Employment Division v. Smith (1990)</i>	
What was the issue?	What did the court decide?
Who won — the religious objector or the government?	
<i>Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah (1993)</i>	
What was the issue?	What did the court decide?
Who won — the religious objector or the government?	

HOMEWORK

Pick One/Change One or Pick One/Save One

Based on what you learned today about the free exercise clause and the Supreme Court's interpretation of it over time, choose one case that you either agree or disagree with.

I am choosing to change/save (*circle one*) the Supreme Court's decision in

_____ (*name the case*).

I have chosen this because (*be sure to refer to the Constitution in your answer*):

1)

2)

STATION 1: *Reynolds v. United States (1878)*

The Supreme Court first addressed the question in a series of cases involving 19th-century laws aimed at **suppressing** the practice of **polygamy** by members of the Church of Jesus Christ of Latter-day Saints (LDS), also known as Mormons. The Court unanimously rejected free exercise challenges to these laws, holding that the free exercise clause protects beliefs but not conduct. “Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices” (*Reynolds v. United States (1878)*). What followed was perhaps the most extreme government **assault** on religious freedom in American history. Hundreds of church leaders were jailed, rank-and-file Mormons were deprived of their right to vote, and Congress dissolved the LDS Church and **expropriated** most of its property, until the church finally agreed to abandon polygamy.

The belief-action distinction ignored the free exercise clause’s obvious protection of religious practice, but spoke to the concern that allowing believers to disobey laws that bind everyone else would undermine the value of a government of laws applied to all. Doing so, *Reynolds* warned, “would be to make the **professed doctrines of religious belief superior to the law of the land**, and in effect to permit every citizen to become a law unto himself.” *Reynolds* influenced the meaning of the free exercise clause well into the 20th century.

suppressing: limiting

polygamy: having more than one wife

assault: attack

expropriated: took away

professed doctrines of religious belief superior to the law of the land:
the beliefs of a religious group are above the laws passed by elected branches

KEY IDEAS:

- Free exercise clause protects beliefs not conduct
- *Reynolds* set up the idea that allowing believers to disobey laws that bind everyone else would undermine the value of a government of laws applied to all

STATION 2: ***Wisconsin v. Yoder (1972)***

In the 1960s and early 1970s, the Court shifted, strengthening protection for religious conduct by **construing** the free exercise clause to protect a right of religious believers to **exemption** from generally applicable laws which **burden** religious exercise. The Court held that the government may not enforce even a religiously-neutral law that applies generally to all or most of society unless the public interest in enforcement is “compelling” (***Wisconsin v. Yoder (1972)***). *Yoder* thus held that Amish families could not be punished for refusing to send their children to school beyond the age of 14.

Although the language of this “compelling-interest” test suggested powerful protections for religion, these were never fully realized. The cases in which the Supreme Court denied exemptions outnumbered those in which it granted them.

construing: started interpreting in a particular way

exemption: not having to follow

burden: negatively affect

KEY IDEAS:

- The government may not enforce even a religiously-neutral law that applies generally to all or most of society unless the public interest in enforcement is “compelling.”
- The cases in which the Supreme Court denied exemptions outnumbered those in which it granted them.
- The Court *did* have a few key cases granting exemptions, but it never really gave the free exercise clause much bite.

STATION 3:

Employment Division v. Smith (1990)

In 1990, the Supreme Court changed course yet again, holding that the free exercise clause “does not relieve an individual of the obligation to **comply** with a valid and neutral law of **general applicability** on the ground that the law **proscribes (or prescribes)** conduct that his religion prescribes (or proscribes)” (***Employment Division v. Smith (1990)***). Though it did not return to the belief-action distinction, the Court echoed *Reynolds’* concern that religious exemptions permit a person, “by virtue of his beliefs, to become a law unto himself,” contradicting “both constitutional tradition and common sense.” Any exceptions to religiously-neutral and generally-applicable laws, therefore, must come from the “political process.” *Smith* went on to hold that the free exercise clause does not protect the sacramental use of peyote, a hallucinogenic drug, by members of the Native American Church.

comply: follow

general applicability: laws all must follow

proscribes: forbids

prescribes: recommends

KEY IDEAS:

- The free exercise clause does not relieve an individual of the obligation to follow “generally applicable” laws.
- Religious exemptions permit a person, “by virtue of his beliefs, to become a law unto himself.”

STATION 4:***Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah (1993)***

Besides **RFRA (Religious Freedoms Restoration Act)** and other exemption statutes, the free exercise clause itself, even after *Smith*, continues to provide protection for believers against **burdens on religious exercise** from laws that target religious practices, or that disadvantage religion in **discretionary**, case-by-case decision making. In ***Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah (1993)***, for example, the Court unanimously struck down a local ordinance against the “unnecessary” killing of animals in a “ritual or ceremony”—a law that was drawn to apply only to a small and unpopular religious sect whose worship includes animal sacrifice.

RFRA (Religious Freedoms Restoration Act): a law passed by Congress that allows courts to exempt a person from any law that imposes a substantial burden on religious beliefs or actions

burdens on religious exercise: limits on how people practice their religion

discretionary: on a case by case basis

KEY IDEAS:

- The free exercise clause itself, even after *Smith*, continues to provide protection for believers against burdens on religious exercise from laws especially when the challengers argue that there has been some sort of religious discrimination.