

■ *City of Boerne v. Flores*

Date: June 25, 1997

Author: Justice Anthony Kennedy

Genre: court decision

Summary Overview

This landmark U.S. Supreme Court case, *City of Boerne v. Flores*, was a decision regarding the extent to which the U.S. Congress could pass laws meant to prevent the violation of religious rights guaranteed under the Constitution. In this case, since the Supreme Court ruled that Congress had exceeded its authority to enforce religious protections at the state and local level, some liberals saw it as a positive move toward limiting religious influence in government and protecting secular governance. On the other hand, many others believed that the ruling weakened protections for religious minorities or certain religious freedoms they deemed important.

In this case, the Catholic Archbishop of San Antonio, Texas, sued the city of Boerne, Texas, over its imposition of zoning laws that prevented the Church from expanding a historically significant building in a historic preservation district. The archbishop cited a recent 1993 law, passed by the U.S. Congress, called the Religious Freedom Restoration Act (RFRA) to justify his claim that his and his congregation's religious freedom was paramount over the city's zoning laws. The Court ruled against the plaintiff, and went further by declaring RFRA unconstitutional in that it prevented states and local authorities from enforcing laws that were religiously neutral.

Defining Moment

In 1993, Archbishop Patrick Flores applied for a permit to enlarge a Catholic Church building, constructed in 1923, in order to accommodate the congregation, which had outgrown it. The church building was located in a historic preservation district, and authorities from the city of Boerne denied the permit because it would violate the city's zoning laws protecting the historic character of the district. Archbishop Flores responded by filing a lawsuit challenging the zoning law, citing the Religious Freedom Restoration Act (RFRA), which had been passed by the U.S. Congress earlier that same year.

The RFRA had been passed in the aftermath of the Supreme Court's decision in the case of *Employment Division v. Smith*, in which the Court upheld a state law declaring the use of peyote, a mild hallucinogen that is a sacrament in the Native American Church, illegal. The act remedied that by outlawing laws that "substantially burden[ed]" the free exercise of religion, and Flores argued that, as the congregation had

outgrown its current building, placing limits on their ability to expand the building created an undue burden on them regarding the free expression of religion.

Author Biography

Supreme Court Justice Anthony Kennedy was appointed to the Court by President Ronald Reagan in 1988 and served until his retirement in 2018. During his time on the Court, Kennedy, ideologically a moderate conservative, often served as the swing vote on First Amendment cases. Focusing his jurisprudence on the idea of the neutrality of government regarding the exercise of religion, Kennedy proved more committed to the Constitution as a living document, requiring constant interpretation and context, than to his conservative ideals. As a result, his opinions could align with either side of the political spectrum. Along with advocating neutrality in the idea of religious expression, Kennedy was known as the most vigilant justice in the protection of the freedom of speech.



Historical Document

City of Boerne v. Flores

...The stringent test RFRA demands of state laws reflects a lack of proportionality or congruence between the means adopted and the legitimate end to be achieved. If an objector can show a substantial burden on his free exercise, the State must demonstrate a compelling governmental interest and show that the law is the least restrictive means of furthering its interest. Claims that a law substantially burdens someone's exercise of religion will often be difficult to contest. See [*Employment Division v. Smith*, 494 U. S., at 887 ("What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is 'central' to his personal faith?"); *id.*, at 907 ("The distinction between questions of centrality and questions of sincerity and burden is admittedly fine ...") (O'CONNOR, J., concurring in judgment)]. Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law. If "compelling interest" really means what it says ..., many laws will not meet the test [The test] would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind." *Id.*, at 888. Laws valid under *Smith* would fall under RFRA without regard to whether they had the object of stifling or punishing free exercise. We make these observations not to reargue the position of the majority in *Smith* but to illustrate the substantive alteration of its holding attempted by RFRA. Even assuming RFRA would be interpreted in effect to mandate some lesser test, say, one equivalent to intermediate scrutiny, the statute nevertheless would require searching judicial scrutiny of state law with the attendant likelihood of invalidation. This is a considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of their citizens.

The substantial costs RFRA exacts, both in practical terms of imposing a heavy litigation burden on the States and in terms of curtailing their traditional general regulatory power, far exceed any pattern or practice of unconstitutional conduct under the Free Exercise Clause as interpreted in *Smith*. Simply put, RFRA is not designed to identify and counteract state laws likely to be unconstitutional because of their treatment of religion. In most cases, the state laws to which RFRA applies are not ones which will have been motivated by religious bigotry. If a state law disproportionately burdened a particular class of religious observers, this circumstance might be evidence of an impermissible legislative motive. Cf. *Washington v. Davis*, 426 U. S. 229, 241 (1976). RFRA's substantial-burden test, however, is not even a discriminatory-effects or disparate-impact test. It is a reality of the modern regulatory

state that numerous state laws, such as the zoning regulations at issue here, impose a substantial burden on a large class of individuals. When the exercise of religion has been burdened in an incidental way by a law of general application, it does not follow that the persons affected have been burdened any more than other citizens, let alone burdened because of their religious beliefs. In addition, the Act imposes in every case a least restrictive means requirement—a requirement that was not used in the pre-*Smith* jurisprudence RFRA purported to codify—which also indicates that the legislation is broader than is appropriate if the goal is to prevent and remedy constitutional violations.

When Congress acts within its sphere of power and responsibilities, it has not just the right but the duty to make its own informed judgment on the meaning and force of the Constitution. This has been clear from the early days of the Republic. In 1789, when a Member of the House of Representatives objected to a debate on the constitutionality of legislation based on the theory that “it would be officious” to consider the constitutionality of a measure that did not affect the House, James Madison explained that “it is incontrovertibly of as much importance to this branch of the Government as to any other, that the constitution should be preserved entire. It is our duty.” 1 Annals of Congress 500 (1789). Were it otherwise, we would not afford Congress the presumption of validity its enactments now enjoy.

Our national experience teaches that the Constitution is preserved best when each part of the Government respects both the Constitution and the proper actions and determinations of the other branches. When the Court has interpreted the Constitution, it has acted within the province of the Judicial Branch, which embraces the duty to say what the law is. *Marbury v. Madison*, 1 Cranch, at 177. When the political branches of the Government act against the background of a judicial interpretation of the Constitution already issued, it must be understood that in later cases and controversies the Court will treat its precedents with the respect due them under settled principles, including stare decisis, and contrary expectations must be disappointed. RFRA was designed to control cases and controversies, such as the one before us; but as the provisions of the federal statute here invoked are beyond congressional authority, it is this Court’s precedent, not RFRA, which must control.

[...]

It is for Congress in the first instance to “determin[e] whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment,” and its conclusions are entitled to much deference. *Katzenbach v. Morgan*, 384 U. S., at 651. Congress’ discretion is not unlimited, however, and the courts retain the power, as they have since *Marbury v. Madison*, to determine if Congress has exceeded its authority under the Constitution. Broad as the power of Congress is under the Enforcement Clause of the Fourteenth Amendment,

RFRA contradicts vital principles necessary to maintain separation of powers and the federal balance. The judgment of the Court of Appeals sustaining the Act's constitutionality is reversed.

It is so ordered.



Glossary

proportionality or congruence: the idea that the effect of a law should be determined by the size of the harm to other rights caused by the law

secundum artem: the legal principle of recognizing precedent, or prior decisions made by a court

Document Analysis

In his majority opinion, Justice Anthony Kennedy writes that, while laws such as the RFRA may be appropriate to proactively protect religious expression, they cannot forbid state or local authorities from passing laws that in themselves are religiously neutral. In the *Boerne* case, this meant that, since the city's zoning ordinance did not privilege one religion over another, or demonstrate hostility toward the free exercise of religion, laws meant to protect religious expression, such as the act, should not apply. Nevertheless, Kennedy writes that restrictions such as those in the RFRA need to be commensurate in their effects with their overall objective, so as not to prove an impediment to state and local governments' ability to govern.

The effect of the decision in *City of Boerne v. Flores* was the limiting of the RFRA, declaring section 5 of the act, which extended its provisions to the states, unconstitutional. This was troubling to both minority and larger religious communities alike. Without the protections afforded by the RFRA, the actions of the government might have the effect of regulating religious practices, which many argued ran counter to the nonestablishment clause in the U.S. Constitution.

The ideas of congruence and proportionality applied, in this case, to any religious practice requiring protection and the legal means of implementing that protection. Practically, this meant that Congress, if it wanted to enforce the act, must find a state or local government to have committed an abuse of power. Moreover, in attempting to correct such abuse, Congress could not pass a remedy that is stronger than the one that had previously existed. This, the Court concluded, would exceed the Constitution's guarantee of equal protection under the law, as guaranteed by the Fourteenth Amendment.

In the short term, the *Boerne* decision meant that historic preservation efforts would be made easier,

as governments would not have to conduct extensive studies to ensure that no religious freedoms were likely to be compromised. However, in response to *Boerne's* new restrictions, three years later Congress acted once again to protect religious practice, by passing the Religious Land Use and Institutionalized Persons Act of 2000. The law gives religious institutions a way to avoid zoning law restrictions on their property use, and also prohibits the hindrance of prisoners' ability to worship as they please.

The *Boerne* decision had a lasting effect, as it imposed a new rule on judging the constitutionality of legislation protecting the exercise of religion. Furthermore, it reinforced the Court's opinion that it alone was the arbiter of which rights are protected under the Fourteenth Amendment. If Congress had the power to determine which rights were covered by the Equal Protection clause, the Court argued, the Constitution would cease to be the supreme law of the land, as Congress would be able to alter it with a simple majority vote. The determination of what rights were covered were, therefore, necessarily a judicial matter.

—Steven L. Danver, PhD

Bibliography and Additional Reading

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