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*by Eva Brady**

I. Introduction

Though religious freedom has been held among the most highly esteemed of all American rights, in the past twenty years, this freedom has been drastically reduced by the loss of the Sherbert Test—the compelling interest test for cases involving religious rights. This test mandates that citizens are to be exempt from laws of general applicability when these laws conflict with their free exercise of religion. Laws of general applicability are laws that are not aimed at restricting religious freedoms but happen to do so as an unintended consequence. This exemption holds except in cases in which the burden on the person's religion:

(1) "Is in furtherance of a compelling governmental interest; and
(2) Is the least restrictive means of furthering that compelling governmental interest."[1]

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1 Religious Freedom Restoration Act 42 U.S.C. § 2000bb-3 (1993).

II. Background

A. Institution of the Compelling Interest Test

Two main cases originally established the compelling interest test for cases concerning religious freedom: *Sherbert v. Verner*[2] in 1963 and *Wisconsin v. Yoder*[3] in 1972. In *Sherbert v. Verner*, a Seventh Day Adventist woman was fired from her job in South Carolina because she refused to work on Saturdays for religious reasons. Unable to find other suitable work because of her religious convictions, she filed for unemployment. However, South Carolina denied her unemployment because she rejected suitable work when it was offered to her. The U.S. Supreme Court reversed the ruling of the state and appellate courts by ruling that the denial of unemployment compensation was an infringement of the appellant's First Amendment right to the free exercise of religion. The Supreme Court also argued that there was no compelling state interest (or strong governmental interest) in denying the appellant unemployment because of her religious convictions. They also ruled that allowing for an exception to South Carolina's unemployment policy on behalf of a Seventh Day Adventist was not "establishing" the religion.[4] This case laid the framework for the compelling interest test.

Nine years later, *Wisconsin v. Yoder* upheld the ruling and cemented the precedent set in *Sherbert v. Verner*. In this case, Amish and Mennonite parents were convicted by the Green County court of Wisconsin for violating the Wisconsin state law requiring compulsory school attendance by withdrawing their children from school when they had completed the eighth grade. After eighth grade, these children were educated by their parents in practical work that would help them to benefit their communities. The parents argued that the compulsory school attendance laws restricted the practice of their religion which valued keeping themselves and their children

2 Sherbert v. Verner, 374 U.S. 398 (1963).

3 Wisconsin v. Yoder, 406 U.S. 205 (1972).

4 *Sherbert*, 374 U.S. at 1799.

"aloof from the world." The Supreme Court of Wisconsin reversed the previous court decision and ruled that the compulsory school attendance laws were a violation of their rights to religious freedom. On *certiorari*, the U.S. Supreme Court affirmed this ruling on the grounds that there was no compelling state interest to burden these people's beliefs by making them adhere to the compulsory school laws.[5] However, despite these and other cases[6] that successfully applied the Sherbert Test, the test was soon to come under scrutiny in *Employment Division v. Smith*.[7]

B. Overthrow of the Compelling Interest Test

In 1990, twenty-seven years after the institution of the Sherbert Test, one case was able to revoke the compelling interest test. It was replaced instead with a rational basis test for religious cases, which came to be known as the Smith Test. The case was brought before the courts by two men who had been fired from their jobs at a drug rehabilitation facility because they had ingested the drug peyote during their religious sacramental services in a Native American church. Peyote use was against Oregon's criminal law, and thus they were dismissed from their jobs on the basis of work-related misconduct. Because they were fired for misconduct, they were unable to receive unemployment compensation. On remand, the Supreme Court of Oregon ruled that prohibiting the sacramental use of peyote was a violation of the First Amendment. However, the U.S. Supreme Court reversed this ruling on the grounds that the state law regarding peyote use was constitutional and not aimed at restricting the individuals' religious beliefs; thus the state could deny the defendants' unemployment compensation.[8]

The U.S. Supreme Court also ruled that under the free exercise clause of the Bill of Rights, such laws of general applicability did not need a compelling interest test, but would rather be subjected

5 *Yoder*, 406 U.S.

6 People v. Woody, 61 Cal. 2d 716 (1964) is another example.

7 Employment Div. v. Smith, 494 U.S. 872 (1990).

8 *Id.*

to a rational basis test.[9] The Smith Test, or rational basis test for cases involving religion, examines the law that burdens the citizen's religious belief to see if the law was aimed at restricting such a belief and if the legislature had a rational reason for enacting such a law. If the law was not aimed at a religious belief and was rationally enacted, then the law is upheld, regardless of the burden that it may place upon religious convictions. The Smith Test denigrated the strict scrutiny that was required by the compelling interest test; this was a big change.

C. Restoration of the Compelling Interest Test

The Sherbert Test was not completely eroded with *Employment Division v. Smith*. Just three years after this case many religious, political, and other organizations joined forces to support the Religious Freedom Restoration Act (RFRA).[10] This act was passed in 1993 by an overriding majority: unanimously in the house and ninety seven to three in the Senate.[11]

The Congress found when implementing RFRA that:

1. the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;
2. laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;
3. governments should not substantially burden religious exercise without compelling justification;
4. in Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify bur-

9 *Id.*

10 42 U.S.C. § 2000bb-3

11 Chris Heinss, *Beyond The Smoke And Mirrors: Defeating The Urge To Nullify Or Glorify Religious Copyright Law*, 33 Colum. L. Rev. 677 (2003).

dens on religious exercise imposed by laws neutral toward religion; and

5. the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.[12]

For these reasons, Congress enacted RFRA in order to restore the compelling interest test and to ensure that it was applied in all cases in which religious freedom was substantially burdened, even by laws of general applicability. RFRA was to be a defense for all citizens who felt their religious freedom was being substantially burdened by the government and was to apply to all cases, both state and federal.[13]

D. Compromise of the Compelling Interest Test

Although RFRA was passed almost unanimously by Congress, its validity was soon to be questioned by the Supreme Court of the United States in *City of Boerne v. Flores*.[14] This case was brought before the courts by an Archbishop in San Antonio, Texas. A parish of his church in the nearby town of Boerne, Texas, had outgrown its church building and the Archbishop had given permission to make plans to enlarge their building. A few months later, however, the city passed an ordinance requiring its Historic Landmark Commission to pre-approve any construction that may affect historic landmarks in the city. The Boerne church building was among these historic landmarks and upon applying for a building permit, the Archbishop was denied permission to enlarge the building. The Archbishop brought his case to the Western District of Texas Court, appealing to RFRA for protection. The District Court ruled that RFRA was unconstitutional on the basis that Congress had superseded the powers given to it in Section 5 of the Fourteenth Amendment. Section 5 states that "the Congress shall have the power to enforce, by appropriate legis-

12 42 U.S.C. § 2000bb-3

13 *Id.*

14 Boerne v. Flores, 521 U.S. 507 (1997).

lation, the provisions of this article."[15] The provisions mentioned in Section 5 refer back to Section 1, which states that no "state [shall] deprive any person of . . . liberty . . . without due process of law."[16] In 1997, this case was brought before the U.S. Supreme Court, which agreed that RFRA superseded Congress's authority and added that it was impractical and unconstitutional.

First, the Court determined that RFRA was an overextension of Congress's Fourteenth Amendment right to ensure that all citizens were not deprived of liberty without due process of law.[17] According to the ruling in *South Carolina v. Katzenbach* as well as the history of the Fourteenth Amendment, Section 5 of the Fourteenth Amendment was intended only to extend to remedial powers.[18] The court claimed that RFRA alters the meaning of the free exercise clause and that it does not have the power to impose the Sherbert Test upon the states. Such an action infringes upon the division of state and federal powers and is damaging to the constitutional structure of the United States. Second, the Court argued that RFRA was unconstitutional by an appeal to *Marbury v. Madison*, which established the precedent for judicial review.[19] Judicial review allows for the Supreme Court to determine the constitutionality of any statutes, laws, or acts of Congress. The Supreme Court had ruled in *Employment Division v. Smith* that the courts did not have to demonstrate a compelling state interest in order to enforce laws of general applicability that may substantially burden religion.[20] In spite of this, Congress passed RFRA, which mandated that the Sherbert Test must be applied to all federal and state cases in which the free exercise of religion was threatened. The Supreme Court's ruling as to the constitutionality of the Sherbert Test should take precedent to the RFRA because it endangers the separation of powers between Congress and the Judi-

15 U.S. Const. amend. XIV, § 5.

16 U.S. Const. amend. XIV, § 1.

17 *Flores*, 521 U.S.

18 South Carolina v. Katzenbach, 383 U.S. 301 (1966).

19 Marbury v. Madison, 5 U.S. 137 (1803).

20 *Employment Div. v. Smith*, 494 U.S.

ciary.[21] For these reasons and others, the U.S. Supreme Court ruled that RFRA was unconstitutional as it applies to the states.[22] In other words, RFRA would be maintained on a federal level and would still be appealed to in federal cases, but Congress could not impose RFRA upon the states. Thus, it was left up to the states to establish a compelling interest test within their own states if they chose to do so.

In response to this ruling, many states did exactly that; they adopted the compelling interest test within their states in the form of state RFRAs. These states include Arizona, Connecticut, Florida, Idaho, Illinois, Missouri, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, and Texas.[23] These states have all taken this important measure to better protect religious freedom. The compelling interest test protects religious freedom much more effectively than the rational basis test does. The following analysis explains why states that have not yet adopted a compelling interest test to protect religious beliefs ought to do so.

III. Compelling Interest Test v. Rational Basis Test

In Justice Sandra Day O'Connor's dissent in *Flores*, she concluded:

> It has long been the Court's position that freedom of speech—a right enumerated only a few words after the rights to Free Exercise—has a special Constitutional status. Given the centrality of freedom of speech and religion to the American concept of personal liberty, it is altogether reasonable to conclude that both should be treated with the highest degree of respect . . . the rule the Court declared in *Smith* does not faithfully serve the purpose of

21 *Flores*, 521 U.S.

22 *Id.*

23 Erin J. Cox, *Freeing Exercise At Expression's Expense: When RFRA Privileges the Religiously Motivated Speaker*, 56 UCLA L. Rev. 169, 171 (2009).

> the Constitution. Accordingly, I believe it essential for the Court to reconsider its holding in Smith.[24]

Although Justice O'Connor's opinion failed to persuade the court in *Flores,* it made evident the importance of sustaining the compelling interest test. Though both tests have their benefits, the benefits of the compelling interest test are much more defensible and far outweigh those of the rational basis test.

A. Benefits of a Rational Basis Test

As the opinion of the Court in *Employment Division v. Smith* stated, one concern regarding the compelling interest test that would support a rational basis test is that a compelling interest test could allow for too many anomalies in the law.[25] In other words, it could justify the breaking of many laws in the name of religion. For example, there have been instances in which the compelling interest test has permitted the use of illegal drugs where the rational basis test would not.[26] However, as Justice O'Conner argued in her concurring opinion in *Employment Division v. Smith*, a compelling interest test would not necessarily create too many anomalies in the law because it is not very difficult to find a compelling state interest.[27] For example, she claimed that in the *Smith* case the government did have a compelling interest in regulating drug use. O'Connor's opinion can be backed by the fact that there are many cases in which appeals to RFRA or the compelling interest test have failed. These cases tend to fail for several reasons: (1) because they are faulty claims to RFRA, in which the case at hand does not really deal with religious convictions,[28] (2) because they are fraudulent claims, in which the individual does not really hold the religious conviction that he claims

24 *Flores*, 521 U.S. at 564.

25 *Smith* 494 U.S.

26 Compare *Smith*, ibid. to *Gonzales*, Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418 (2006).

27 *Id.*

28 Grace United Methodist Church v. Cheyenne, 451 F.3d 643 (2006).

he does, but is simply using the façade of religion to fulfill his or her purposes,[29] and (3) because there is a compelling governmental interest and upholding the law of general applicability, despite the burden that it would place upon religion, is truly the least restrictive means of upholding that interest.[30] There have been cases that have exemplified each of these three instances. Thus it seems evident that the compelling interest test does not create too many anomalies, but rather simply allows for sufficient exceptions in order to properly protect religious freedom.

Another argument of the Court in *Employment Division v. Smith* is that the compelling interest test had only been used in hybrid cases (cases involving religious freedom in conjunction with another right), and thus that it did not extend to all cases in which religious freedom was concerned.[31] It is true that the compelling interest test had only been used in such cases, as well as in cases involving unemployment compensation; however, it does not follow that the compelling interest test should not extend to all cases concerning religious freedom. Religion should be defensible simply by an appeal to the first amendment, and should not need to be in conjunction with another right in order to deserve full protection.

A third argument in behalf of the rational basis test was addressed by Justice Stevens as a concurring opinion in *Flores*. Justice Stevens argues that RFRA is a "law respecting an establishment of religion,"[32] which is a violation of the Establishment Clause of the First Amendment that prohibits Congress from making laws respecting the establishment of religion. However, the compelling interest test does not establish a religion, but is rather legislation designed to protect the free exercise of religion as it is protected by the First Amendment.

Another supposed benefit of the rational basis test is that with the compelling interest test it may seem difficult for the courts to decide

29 *See* Trujillo v. Wyoming, 2 P.3d 567 (2000); Nesbeth v. United States 870 A.2d 1193(2005).

30 Best v. Kelly, 879 F. Supp. 305 (1995).

31 *Smith*, 494. U.S.

32 *Flores* 521 U.S. at 536.

if a religious conviction is sincere. In using the rational basis test, there is no need for the courts to make such a decision. However, in many cases it will be obvious whether or not a religious conviction is sincere. For example, in *Wisconsin v. Yoder*,[33] it seems evident that the Amish people's beliefs are sincere because they date back to the 1600s and are strictly adhered to by the Amish population. If the plaintiff was an honest follower of the Amish faith, it would appear that his convictions would likewise be sincere. However, though the sincerity of one's beliefs in many cases may be obvious, there will be cases in which the decision may not be as clear.[34] Yet even if the court is faced with some cases in which the line is not apparent, such situations should not prohibit all others from the right to appeal for a defense of their religious freedom against laws of general applicability.

The rational basis test may also make it easier for the courts to draw a firm line: if the law is rational and not aimed at burdening religion then it stands, regardless of the burden that it may place upon religion. Having a firm line in deciding cases may be convenient; however, is this really a line that we want to draw? If such were the case, then the Amish children would have been forced to go to school regardless of the fact that such a law would severely affect the Amish way of life. Allowing this exception does not dramatically affect others, and thus it seems extreme not to allow such an exception. However, under the rational basis test there is no room for such exceptions. Though the rational basis test may reduce the difficulty of deciding when a religious belief should take precedence over a law of general applicability, religious freedom is something important enough to not be discarded simply because it is "too difficult" to protect.

One final concern is that a compelling interest test may allow for discrimination. It is true that there are some cases in which people's religious preferences have allowed for discrimination.[35] However, while allowing discrimination may not be preferable, it is necessary

33 *Yoder*, 406 U.S.

34 E.g. *Trujillo*, 2 P.3d. and Lewellyn v. State, 592 P.2d 538 (1979).

35 Thomas v. Anchorage Equal Rights Comm'n, 531 U.S. 1143 (2001).

in some instances in order to protect religious freedom. Protecting religious freedom over antidiscrimination is justifiable as religious freedom is explicitly protected within the Constitution and the right against discrimination is not. In addition, not allowing for religious rights to trump anti-discriminatory rights can in effect turn the discrimination against religion. Thus, religious freedom should take precedence over anti-discriminatory laws.

B. Benefits of the Compelling Interest Test

Perhaps the greatest defense of the compelling interest test is that it does a better job protecting religious freedom than does the rational basis test. There are many cases that show that when the compelling interest test is used, religious freedom is more likely to be upheld. For example:

One recent case that applied the rational basis test rather than the compelling interest test was *North Coast Women's Care Medical Group Inc. v. The Superior Court of San Diego County*. In this case, which was brought before the California Supreme court in August of 2008, a lesbian woman was being treated at a fertility clinic to try to become pregnant.[36] However, the doctor she was working with informed her in advance that if an intrauterine insemination (IUI) became necessary, the doctor's religious beliefs would prevent her from performing the procedure on an unmarried woman. Another doctor at the clinic also refused to perform the procedure for religious purposes, and they referred her to another doctor at another clinic who would be willing to perform the procedure. However, there were complications in the procedure and the woman was unable to get pregnant for almost another year. She sued the North Coast Women's Medical Care clinic for damages, claiming that they unfairly discriminated against her on the basis of sexual orientation.

The claimant in this case appealed under Unruh, one of California's antidiscriminatory statutes. The court applied the rational basis test and found that Unruh was a valid law of general applicability and that under the ruling in *Smith* no further compelling interest

36 N. Coast Women's Care Med. Group Inc. v. The Super. Ct. of San Diego County/Benitez, 2006 Cal. App. 504 (2006).

test was necessary. The doctors at the medical clinic were required to perform artificial inseminations regardless of marital status or sexual orientation, notwithstanding their religious convictions. The rational basis test upheld the antidiscriminatory law over the defendant's right to religious freedom.

Another case that failed to use the compelling interest test, *Sunderland v. United States*, had similar results. In this case a man was convicted of marijuana use, though he appealed to his First Amendment right to use the drug for religious purposes.[37] The Supreme Court of Hawaii held that RFRA was not applicable to the states and that therefore they would hold to the ruling in *Smith*. Because they used the rational basis test rather than the compelling interest test, the court ruled that the drug law was generally applicable and not a hybrid right case and therefore was not subject to exceptions, regardless of the burden that it placed on the individual's religious convictions. Once again, the law of general applicability did not even have to undergo a two pronged test in order for it to burden a citizen's religious freedom.

On the other hand, there have been many cases concerning religious freedom in states that have adopted mini RFRAs that have been successful in protecting religious freedom because of the application of the compelling interest test. Two examples of these cases are *Merced v. Kasson* and *Barr v. City of Sinton*.

In *Merced v. Kasson*,[38] a priest whose religious beliefs required the sacrifice of animals lived in a city in Texas that had six ordinances against animal sacrifice. However, by an appeal to TRFRA, Texas's state RFRA, he was given an injunction to allow him to sacrifice animals for religious purposes despite the city ordinances. TRFRA was able to allow for this because the court saw that the city ordinances were substantially burdening the priest's religion without furthering a compelling governmental interest using the least restrictive means possible. In this case, the use of the compelling interest test helped the court to see that there was no interest more important than this person's religious freedom. However, this

37 Sunderland v. United States, 266 U.S. 226, (1924).

38 Merced v. Kasson, 577 F.3d 578, (2009).

does not mean that there will not be instances in which the government does have a compelling interest. For example, if this case had concerned human sacrifice, the government would have had a compelling interest to prohibit the religious practice in order to preserve human life.

In *Barr v. City of Sinton*,[39] a man offered housing and religious education to recently released prisoners as part of his religious ministry. In response to this, the city passed an ordinance that forbade such actions. This case was brought before a trial court and a court of appeals, both of which found no violations with TRFRA. However, it was soon to be brought before the Supreme Court of Texas, which said that TRFRA requires strict scrutiny of every case that appeals to religion, and that zoning ordinances were not exempt from the scrutiny. Applying this strict scrutiny to the case, the Court found that the man was acting on sincere religious beliefs and that there was no compelling governmental interest to impose this ordinance upon him and thus stop his ministry. Once again, appealing to the compelling interest test allowed this man to practice his religion without burdening his religious practice by laws of general applicability.

Another interesting case that shows the crux of the issue is *Yang v. Sturner*.[40] Originally applying the compelling interest test, the Yangs were granted a summary judgment motion on the basis that their free exercise of religion had been burdened when a doctor performed an autopsy on their dead son without their permission (desecrating a corpse in any way was against their religious beliefs). However, *Smith* concluded right before the damages portion of the case and under the newly instituted rational basis test, the Yangs were unable to collect damages. It seems as if the compelling interest test had remained, they would have collected damages for the burden that had been placed upon their religion. As evidenced in these cases, the compelling interest test often does a more effective job of preserving religious freedom than the rational basis test does.

39 Barr v. City of Sinton, 295 S.W.3d 287 (2009).

40 Yang v. Sturner, 750 F. Supp. 558 (1990).

However, the plethora of cases that demonstrate its success is not the only reason for adopting a compelling interest test over a rational basis test. As Congress found in enacting RFRA, the compelling interest test also seems to "strike a reasonable balance"[41] between freedom of religion and governmental interests. The rational basis test gives almost complete preference to governmental interests; in contrast, the compelling interest test allows for religious freedom while still giving preference to governmental interest when appropriate. For example, the terrorist attacks of September 11, 2001 are obviously not justifiable simply because they were done in the name of religion, and the government has a duty to prevent such acts (even on a much smaller level) that detract from other citizens' basic rights, such as life and liberty. It is the duty of the government to protect the life, liberty, and pursuit of happiness of its citizens, and individuals should not be able to infringe upon these fundamental human rights, even in the name of religion. The compelling interest test is a sensible balance between the two extremes—it allows for religious freedom as far as possible but curtails it when the government has a pressing interest that must be maintained. The compelling interest test contains the flexibility necessary to weigh the interests of religion against the interests of the government, while the rational basis test does not allow for such flexibility.

In addition, the Constitution explicitly protects religious freedom,[42] and it does not seem that the rational basis test protects religious freedom sufficiently from laws of general applicability. Some may argue that this was not the intent of the First Amendment;[43] however, the Constitution states that "Congress shall make no law . . . prohibiting the free exercise [of religion]."[44] Many laws of general applicability can inadvertently prohibit the free exercise of some religions just as can laws directly targeted at prohibiting religious freedom. The com-

41 42 U.S.C. § 2000bb-3

42 U.S. CONST. amend. I.

43 Patrik Weil, *Why the French Lai'cite Is Liberal*, 16 CARDOZO L. REV. 357 (2003).

44 U.S. CONST. amend. I.

pelling interest test most effectively protects religion from laws that would prohibit its free exercise.

An additional defense of the compelling interest test was brought up in Justice O'Connor's concurring opinion in *Employment Division v. Smith*. She claims that very few states would be naïve enough to create a law directly targeting religious freedom.[45] Though there are some exceptions to this in which the rational basis test was effective[46] it is usually not the case that a law is directly targeted at religion or otherwise not rationally legislated. Thus, there are not many cases in which the rational basis test would actually protect religious freedom because under this test if the law does not meet one of these two criteria, it automatically takes preference over religious freedom. Therefore, in order to best protect religious freedom, it will be necessary for states to adopt a compelling interest test.

Upholding a compelling interest test in cases regarding religious freedom is also imperative because the compelling interest test is the highest level of judicial review, while the rational basis test is the lowest level of judicial review.[47] Should not our religious freedom be a precious enough right to protect it with the strictest scrutiny that our judicial system has to offer? Compelling interest tests are utilized in cases involving constitutional rights (such as the right to freedom of speech and the right to vote) as well as in cases involving suspect classes (such as race).[48] Our religious freedom is just as valuable as our other constitutional rights and ought to be protected equally. This is why freedom of religion had previously been protected by the compelling interest test and ought to continue to be so protected. In addition, if classes such as race or gender can qualify as suspect classes, should religion not qualify as well? In

45 *Smith*, 494 U.S.

46 *See* Church of the Lukumi Babalu Aye Inc. v. City of Hialeah, 508 U.S. 520 (1993).

47 Greg Rubio, *Surviving Rodriguez: The Viability of Federal Equal Protection Claims By Undefunded Charter Schools*, 2008 U. Ill. L. Rev. 1643, 1648 (2008).

48 *Id.*

either case, it is only just to apply the compelling interest test to cases involving our religious freedom.

Continuing along the lines of justice, in 2000 Congress enacted the Religious Land Use and Institutionalized Persons Act (RLUPIA).[49] This act mandates a compelling interest test in religious cases involving land use or prisoners. So, in many states, prisoners are currently enjoying far greater protection of their religious freedom than the rest of the population. It seems counter-intuitive and unjust to give convicts greater religious protection than law-abiding citizens.

IV. CONCLUSION

Since *Flores*, it has been left up to the states to adopt their own compelling interest test, as it was ruled that RFRA could not be imposed upon the states. While many states have already taken measures to provide for this test, there are still many that are relying on the rational basis test to protect the religious freedom of their citizens. However, as we can see from this analysis of the benefits and costs of both the compelling interest test and the rational basis test, the benefits of the compelling interest test far outweigh those of the rational basis test. In order for those states that have not yet provided for a compelling interest test within their legislation to better protect the religious freedom of their citizens, it is expedient that they replace the rational basis test with the compelling interest test. The compelling interest test truly is the most sensible balance in protecting religious freedom.

49 42 U.S.C. § 2000bb-3