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The First Amendment and State Bans on Teachers' Religious Garb

Analyzing the Historic Origins of Contemporary Legal Challenges in the United States

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Annotated List of Cases

1. *Abington School District v. Schempp*, 374 U.S. 203 (1963). (Landmark U.S. Supreme Court Establishment Clause case that held in an 8–1 decision that state-mandated prayers and bible readings in public schools were unconstitutional. The *Schempp* court also cites *O'Connor v. Hendrick*, 184 N.Y. 421 (N.Y. Ct. App. 1906); *Commonwealth v. Herr*, 229 Pa. 132 (Pa. Sup. Ct. 1910); *Zellers v. Huff*, 55 N.M. 501, 236 P.2d 949; and *Berghorn v. Reorganized School District No. 8*, 364 Mo. 121 (Mo. Sup. Ct. 1953). Please note, the *Schempp* court asks readers to compare these cases with the ruling of Texas Commissioner of Education, as described in the American Jewish Yearbook: the Texas Supreme Court "upheld two lower-court decisions rejecting the suit on the ground that plaintiffs had not exhausted their administrative remedies." In response, J. W. Edgar, Education Commissioner of Texas, described himself as "powerless to stop nuns from teaching in public schools in religious garb or a local school board from leasing church-owned property for public-school use." He said doing so would require "the force of court action or of statute." In affirmation, "the state board upheld Commissioner Edgar's decision by a vote of 14–1" on January 25, 1961.)

2. *Achbita v. G4S Secure Solutions*, C-157/15 (Court of Justice of the European Union, Mar. 14, 2017). ("The prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion or belief within the meaning of that directive.")

3. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). (Chief Justice Roberts cites Adarand in Gonzales 2006 when saying that "the fundamental purpose of strict scrutiny is to take 'relevant differences' into account.")

4. *Agostini v. Felton*, 521 U.S. 203 (1997). (In a 5–4 decision, the U.S. Supreme Court held that there was no evidence to affirm the previous claim in *Aguilar v. Felton* [1985] that public schoolteachers entering private religious schools would not create an excessive entanglement of religion and the state.)

5. *Aguilar v. Fel*ton, 473 U.S. 402 (1985) (In a 5–4 decision, the U.S. Supreme Court held that the Establishment Clause prohibited public schoolteachers from being paid by the state to work in private religious schools. This decision was overturned twelve years later by the in Agostini v. Fenton, 1997.)

6. *Aktas v. France*, No. 43563/08, 17 July 2009. (One of six cases issued in 2009 by the European Court of Human Rights that unanimously affirmed a school's decision to expel Muslim and Sikh students for wearing religious garb.)

7. *Altschuler v. Coburn*, 38 Neb. 881, 889 (Neb. Sup. Ct. 1894). (One of the state-court decisions that originated the strict scrutiny standard.)

8. *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011). (Overturned the taxpayers' standing as narrowly defined in *Flast v. Cohen*, 392 U.S. 83 1968.)

9. *Bayrak v. France*, No. 14308/08, 17 July 2009. (One of six cases issued in 2009 by the European Court of Human Rights that unanimously affirmed a school's decision to expel Muslim and Sikh students for wearing religious garb.)

10. *Bender v. Williamsport Area School District*, 475 U.S. 534, 556 (1986). (U.S. Supreme Court held that a school board member did not have standing to appeal a Federal District Court decision that held that "refusal to allow the club to meet on the same basis as other student groups because of its religious activities violated the First Amendment.")

11. *Berghorn v. District No. 8*, 364 Mo. 121 (Mo. Sup. Ct. 1953). ("The Missouri case shows that in some instances the nuns lived in the schools, which were surmounted by crosses; religious holidays were observed; religious instruction was given in some of the schools; and acolytes, or altar boys, were excused during school hours to attend weddings and funerals in the adjoining church. In effect, several of the schools involved in the Berghorn case were in reality Catholic schools rather than public schools with Catholic Sisters teaching in them," as quoted in *Rawlings v. Butler*, 290 S.W.2d 801 (Ky. Ct. App., 1956). The Mo. Sup. Ct. relied on the state constitution's "right to worship," "no maintenance" of religion, "no direct or indirect public money for religion," "no preference," and "no public funds for education controlled by religion" clauses to rule the schools were essentially parochial schools and that "teacher-nuns" [e.g., Roman Catholics] were "disqualified from teaching in any public school in the State of Missouri.")

12. *Betenbaugh v. Needville Independent School District*, 611 F.3d 248 (5th Cir. 2010). (School violated the Texas state Religious Freedom Restoration Act for reprimanding a five-year-old American Indian student for wearing long hair and braids during a kindergarten class.)

13. *Bishop v. Aronov*, 926 F.2d 1066, 1077 (11th Cir. 1991). (Eleventh Circuit upheld direction of the University of Alabama to instruct a professor not to teach "intelligent design theory" during an extracurricular class, on the grounds that the public classroom was not an "open forum"; therefore, the university could determine its curriculum.)

14. *Board of Education v. Allen*, 392 U.S. 236 (1968). (Textbooks given to students benefited the children, not the parochial schools; therefore, the U.S. Supreme Court found in a 6–3 decision no violation of the Establishment Clause.)

15. *Booher v. Worril*, 57 Ga. 235, 238 (Ga. Sup. Ct. 1876). (One of the state-court decisions that originated the strict scrutiny standard.)

16. *Bougnaoui v. Micropole*, C-188/15 (Court of Justice of the European Union, Mar. 14, 2017). ("The willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be considered a genuine and determining occupational requirement.")

17. *Braunfeld v. Brown*, 366 U.S. 599 (1960). (Pennsylvania's "blue law" did not violate the Establishment Clause, a statute that allowed some stores to open on Sundays, which was not extended to a store owned by an Orthodox Jew.)

18. *Brown v. Board of Education*, 347 U.S. 483 (1953). (In a unanimous decision, the U.S. Supreme Court used strict scrutiny to find "separate but equal" facilities laws to violate the Equal Protection Clause of the Fourteenth Amendment.)

19. *Buford v. Southeast DuBois County Schools*, 472 F.2d 890 (7th Cir. 1973), cert. denied, 411 U.S. 967, 93 S. Ct. 2151 (1973). (Establishment Clause case regarding integration of Protestant students from a public school and Catholic students from a private school, with brief but incidental mention of Catholic teachers' religious garb.)

20. *Burwell v. Hobby Lobby*, 134 U.S. 2751 (2014). (Expanded the legal definition of "religion" to closely held, for-profit corporations. Under the federal Religious Freedom Restoration Act, Hobby Lobby Stores and Conestoga Wood Specialties received an accommodation for the federal requirement that employment-based health care plans must cover FDA-approved contraceptive services.)

21. *Caminetti v. United States*, 242 U.S. 470 (1917). (In addressing the Plain Meaning Rule, the U.S. Supreme Court held that "the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, . . . the sole function of the courts is to enforce it according to its terms.")

22. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). (The case that the U.S. Supreme Court used to incorporate the Free Exercise Clause of the First Amendment to the U.S. Constitution to the states. The U.S. Supreme Court overturned the Connecticut Supreme Court's decision that found three Jehovah's Witnesses (the Cantwell family) guilty of soliciting without a permit and breaching the peace. The U.S. Supreme Court unanimously ruled that the Jehovah's Witnesses "raised no such clear and present menace to public peace and order." In building upon the freedom of speech and freedom of press cases of 1925 and 1931, the high court instructed Connecticut that the Fourteenth Amendment has rendered state legislatures just as "incompetent" as Congress to enact laws that prohibit the free exercise of religion.)

23. *Chalifoux v. New Caney*, 976 F.Supp. 659 (S.D. Tex. 1997). (A school district's gang-apparel policy violated the students' Free Exercise rights when requiring students not to wear Catholic rosaries in fear that they were gang symbols.)

24. *Cheema v. Thompson*, 67 F.3d 883 (9th Cir. 1995). (The Ninth Circuit Court of Appeals ruled that a school's suspension of three Sikh students for wearing kirpans—a small ceremonial knife—did not meet the third prong of the strict scrutiny standard under the federal Religious Freedom Protection Act, in that the school had less restrictive alternatives before them to achieve the compelling interest of school safety. The U.S. Supreme Court later ruled in City of Boerne v. Flores (1997) that the federal RFRA was only applicable to federal laws, not to state or local laws such as the one in Cheema.)

25. *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010). (State-sponsored student religious groups must uphold general nondiscrimination laws.)

26. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993). (U.S. Supreme Court unanimously held that the City of Hialeah violated the Free Exercise Clause of the First Amendment when banning the religious practice of animal sacrifice when the city permitted the killing of animals for other purposes, such as food production. "A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases.")

27. *City of Boerne v. Flores*, 521 U.S. 507 (1997). (The U.S. Supreme Court found that Congress overstepped its constitutional enforcement powers when seeking to apply the federal RFRA to the states, thus limiting RFRA to federal laws.)

28. *Cleveland v. United States*, 329 U.S. 14. (1946). (The U.S. Supreme Court upheld the Mann Act that prohibited the transport of girls and women across state lines to enter polygamous marriages.)

29. *Cochran v. Louisiana*, 281 U.S. 370 (1930). (Permissible to provide state-sponsored textbooks to children in private religious schools because the books are not religious in nature. The children are the benefactors, not the parochial schools.)

30. *Combs v. Dubois*, 540 F.3d 231 (3rd Cir. 2008); *Combs v. Dubois*, 468 F.Supp.2d 738 (W.D. Pa. 2006). (U.S. Court of Appeals for the Third Circuit ruled in 2008 that homeschooling parents failed to demonstrate under both the federal Smith and Sherbert standards how their belief that "education is religion" prevents Pennsylvania from issuing reporting requirements for parents who homeschool their children. The Western District court held that only one of the four types of substantial burden in the Pennsylvania Religious Freedom Protection Act of 2002 needed to be demonstrated by a plaintiff to trigger a judicial review under strict scrutiny.)

31. *Commonwealth v. Eubanks*, 511 Pa. 201; 512 A.2d 619 (Pa. Sup. Ct. 1986). ("Pennsylvania, more than any other sovereignty in history, traces its origins directly to the principle that the fundamental right of conscience is inviolate," citing the papers of William Penn.)

32. *Commonwealth v. Herr*, 229 Pa. 132 (Pa. Sup. Ct. 1910). (In a one-paragraph affirmation of the Pennsylvania Superior Court's decision, thus overturning Hysong. Note: the Pennsylvania Supreme Court comprised none of the same members who had heard Hysong.)

33. *Commonwealth v. Herr*, 39 Pa. Super. 454 (Pa. Super. 1909). (The Superior Court of Pennsylvania, lower than the Pennsylvania Supreme Court, held that the 1895 anti-religious-garb law did not violate a Mennonite woman's rights to wear "unusual plain dress" under the state constitution's "right to worship," "right of conscience," "no interference," "no preference," and "no religious tests for office" clauses. The court also held that the state's anti-religious-garb law did not violate the Due Process Clauses

of the Fifth and Fourteenth Amendments to the U.S. Constitution. Note: this occurred before the U.S. Supreme Court applied the federal Bill of Rights to state laws.)

34. *Commonwealth v. Herr*, Court of Quarter Sessions of Lancaster County, No. 26 (Lancaster Mun. Ct. 1908). (The County Court held that "... the legislature did not see fit to make any universal rule. It adopted no general style of dress; but it did attempt to exclude certain persons, who, on account of their religious sentiments, saw fit to adopt a plain garb, from holding employment under the commonwealth.")

35. *Cooper v. Eugene School District No. 41*, 301 Ore. 358 (Or. Sup. Ct. 1986), app. dismissed, 480 U.S. 942 (1987). (The Oregon Supreme Court found that a female Sikh teacher's right to free exercise of religion under the Oregon Constitution was "reasonably denied" when her employment was terminated, and her teaching license revoked, for wearing a turban while teaching. The Third Circuit claims in *Reardon* that the U.S. Sup. Ct. denied Cooper's appeal for "lack of a substantial federal question," an argument that is proven incorrect in this book.)

36. *County of Allegheny v. American Civil Liberties U*nion, 492 U.S. 573 (1989). (In a 5–4 decision, the U.S. Supreme Court ruled that a creche (Nativity scene of Jesus' birth) displayed in a courthouse with the words "Glory to God for the birth of Jesus Christ" violated the Establishment Clause. Six justices agreed that the "particular physical setting" of the court's display of a menorah, a nine-branched candelabrum used by Jews to celebrate Hanukkah, was permissible.)

37. *Coushatta v. Big Sandy*, 817 F.Supp. 1319 (E.D., Tex. 1993). (Federal district court ruled in favor of Native American students' wearing of traditional hair length while in school regardless of the school dress code that restricted male students' hair length to reaching the top of a shirt collar. After finding that sincerity of religious belief does not depend on the belief's being part of a traditional religion, universally practiced within the religion, or even explicitly mandated by the religion, the court held that the school board did not meet the requisite "compelling government interest" standard.)

38. *Cutter v. Wilkinson*, 544 U.S. 709 (2005). (U.S. Supreme Court unanimously affirmed the constitutionality of the Religious Land Use and Institutionalized Persons Act, explaining that the act sought to alleviate burden government creates on persons' religious exercise in prisons.)

39. *Dahlab v. Switzerland*, No. 42393/98 (ECHR 2001). (European Court of Human Rights held that a public schoolteacher's hijab was a "powerful external symbol" that was irreconcilable with the state's commitment to gender equality. Although there were no complaints from parents or students, the court affirmed the school's ban on teachers wearing Islamic garb.)

40. *Davis v. Beason*, 133 U.S. 333 (1890). (U.S. Supreme Court held that the practice of polygamy was a "nonsensical" tenet of religion and must be "subordinate to the criminal laws of the country." Thus, the court, in both Reynolds and Beason, distinguished between religious beliefs and religious "acts"—citizens were free to

believe, but some religious actions or behavior could be regulated because it violated the "morality of . . . all civilized and Christian countries.")

41. *De Jonge v. Oregon*, 299 U.S. 353 (1937). (U.S. Supreme Court's application of the freedom of assembly right in the First Amendment of the U.S. Constitution to all state and local laws.)

42. *DeVeaux v. City of Philadelphia*, Docket #2005-3103, Control #021818 (Phila. Ct. Com. Pl. 2005). (Fire department substantially burdened a firefighter's free exercise of religion when "suspending his job without pay for refusing to shave his beard." The court offered further justifications for using the "plain meaning" legal methods with new or non-interpreted statutes, such as the Pennsylvania Religious Freedom Protection Act, because they lacked "guidance from prior precedents.")

43. *Dogru v. France*, 27058/05 (ECHR 2008). (European Court of Human Rights unanimously affirmed France's decision to expel Muslim students who "attended physical education classes wearing their headscarves" and found no violation of Article 9 (freedom of thought, conscience, and religion) of the European Convention on Human Rights.)

44. *Downing v. West Haven*, 162 F.Supp 2d 19 (U.S. Dist. Ct., D. Conn. 2001). (A federal district court in Connecticut affirmed a school's decision to terminate the employment of a public schoolteacher who wore a T-shirt that said, "Jesus 2000—J2K" as "objectively reasonable in light of interest in avoiding an Establishment Clause violation.")

45. *Dupont v. Employment Division*, 80 Or. App. 776 (Or. Ct. App. 1986). ("Unemployment benefits could not be denied to woman discharged after missing work to attend religious convention important to her personal well-being on basis it was a sincere religiously motivated action.")

46. *Edwards v. Aguillard*, 482 U.S. 578 (1987). (In a 7–2 decision, the U.S. Supreme Court held that the teaching of "creation science" alongside a science curriculum about evolution violated the Establishment Clause. The Court gave particular attention to younger students because differences in maturity "warrants a difference in constitutional results," Justice Brennan wrote.)

47. *Edwards v. South Car*olina, 372 U.S. 229 (1963). (U.S. Supreme Court's application to all state and local laws the First Amendment right to petition, as articulated in the U.S. Constitution.)

48. *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 U.S. 2028 (2015). (U.S. Supreme Court ruled that the burden was on the employer to notify job applicants of the dress policy and ask the applicants if they need an accommodation. The case did not rule on the merits of the Title VII claims that an applicant's denial of a job for wearing a hijab to an interview was motivated by discriminatory intent [disparate treatment] or that the denial of the applicant's employment had a disproportionate adverse effect [disparate impact]).

49. *EEOC v. READS, Inc.*, 759 F.Supp. 1150 (U.S. Dist. Ct. of Pa. 1991). (Federal district court used Title VII to rule in favor of Cynthia Moore, a Muslim teacher who was denied employment because she wore a two-toned green headscarf to an interview. The court held that not "many" children would identify her headscarf as religious; therefore, a school counselor's "head coverings are not 'religious garb'... because although worn for religious purposes they are not perceived as such.")

50. *El Morsli v. France*, 15585/06 (ECHR 2008). (European Court of Human Rights upheld the security-check requirement by immigration officials to remove the veil of a Muslim woman to confirm her identity and promote the interests of public order.)

51. *Employment Division v. Smith*, 494 U.S. 872 (1990); Smith v. Employment Division, 301 Or 209, 721 P2d 445 (1986); Black v. Employment Division, 301 Or 221, 721 P2d 451 (1986). (Native Americans who used peyote for sacramental purposes could not receive an exemption from general laws banning the use of narcotics. Smith applied the general applicability test, which requires that government regulations must be "neutral and generally applicable" and cannot "target religious conduct for distinctive treatment.")

52. *Engel v. Vitale*, 370 U.S. 421 (1962). (In a 6–1 decision, the U.S. Supreme Court found New York State's promotion of voluntary prayer at the start of each day in public schools to violate the Establishment Clause.)

53. *Epperson v. Arkansas*, 393 U.S. 97 (1968). (In a unanimous decision, the U.S. Supreme Court held unconstitutional the Arkansas legislature's statute that prohibited the teaching of human evolution in public schools.)

54. *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985). (U.S. Supreme Court found unconstitutional a Connecticut law that gave employees an "absolute right" not to work on their chosen Sabbath without taking into consideration the "convenience or interests of the employer or those of other employees who do not observe a Sabbath." The court rejected the idea that religiously motivated action is an "absolute right." In some instances, the state may be justified to regulate religion, which is why the Constitution restrains the government's regulatory power by requiring the state to pass the strict scrutiny test as upheld in Sherbert.)

55. *Everson v. Board of Education*, 330 U.S. 1 (1947). (In a 5–4 ruling, the U.S. Supreme Court held that New Jersey's transportation reimbursement program did not violate the Establishment Clause, thereby applying to states and localities the Establishment Clause of the First Amendment.)

56. *Eweida v. United Kingdom*, 48420/10, 59842/10, 51671/10 and 36516/10. (ECHR 2013). (European Court of Human Rights affirmed the rights of a British Airways employee to wear a Christian cross necklace outside her uniform while working.)

57. *Express Agency v. New York*, 336 U.S. 106 (1949). (The rational basis test requires that a law must further any "legitimate government interest deemed reasonable to the court.")

58. *Flast v. Cohen*, 392 U.S. 83 (1968). (Taxpayers' standing to challenge laws; overturned in Arizona Christian School Tuition Organization v. Winn, 563 U.S. 125 2011.)

59. *Flowers v. Columbia College Chicago*, 397 F.3d 532, 535 (7th Cir. 2005). (Seventh Circuit overturned a public high school's decision to prohibit a guidance counselor, who was assigned to the school by Columbia College, from wearing a Rastafarian head covering and dreadlocks.)

60. *Gamaleddyn v. France*, 18527/08 (ECHR 2009). (One of six cases decided in 2009 by the European Court of Human Rights that unanimously affirmed a school's decision to expel Muslim and Sikh students for wearing religious garb.)

61. *Gerhardt v. Heid*, 66 N.D. 44 (N.D. Sup. Ct. 1936). (Public schools employing Catholic nuns who wore habits while teaching did not violate the "no establishment," no "sectarian control," "no aid to religion," and "no diversion of funds from public schools" clauses of the North Dakota Constitution.)

62. *Ghazal v. France*, 29134/08 (ECHR 2009). (One of six cases decided in 2009 by the European Court of Human Rights that unanimously affirmed a school's decision to expel Muslim and Sikh students for wearing religious garb.)

63. *Gish v. Unruhan*, 165 P.2d 417 (Kan. Sup. Ct. 1946). (One of the state-court decisions that originated the strict scrutiny standard.)

64. *Gitlow v. New York*, 268 U.S. 652 (1925). (U.S. Supreme Court's application to states and localities the Free Speech right in the First Amendment to the U.S. Constitution.)

65. *Goldman v. Weinberger*, 475 U.S. 503 (1986); *Goldman v. Secretary of Defense*, 236 U.S. App. D.C. 248, 734 F.2d 1531 (1984). (U.S. Supreme Court ruled against Orthodox Rabbi S. Simcha Goldman for wearing a yarmulke while in an Air Force uniform. The Court of Appeals for the District of Columbia ruled and the U.S. Supreme Court affirmed that "the appropriate level of scrutiny of a military regulation that clashes with a constitutional right is neither strict scrutiny nor rational basis." Congress overturned Goldman with the passage of the 1988 National Defense Authorization Act, permitting accommodations of religious garb for military personnel.)

66. *Gonzalez v. Mathis Independent School District*, Case 2:18-cv-00043, US. Dist. S.D. Texas 2018. "Parents are Hispanic and practice the Roman Catholic religion. As an expression or exercise of their faith and heritage, and in a promise (promesa) to God, Parents have kept a strand of hair on the back of the Children's heads uncut since birth. More recently, the Children have adopted that promise as their own affirmation of faith and heritage and continue to maintain the single long braid down their backs."

67. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006). (In seeking to clarify the court's understanding of Smith, the U.S. Supreme Court unanimously determined in Gonzales that the federal government violated the federal RFRA when it failed to "narrowly tailor" its implementation of the Controlled Substance Act when prohibiting an indigenous religion from using hoasca, a narcotic,

in religious rituals. In writing for the majority, Chief Justice Roberts connected religious diversity to racial diversity, saying, "The Court has noted that '[c]ontext matters' in applying the compelling interest test, Grutter v. Bollinger, and has emphasized that the fundamental purpose of strict scrutiny is to take 'relevant differences' into account.")

68. *Good News Club v. Milford Central School*, 533 U.S. 98 (2001). (In a 6–3 decision, the U.S. Supreme Court held that denying an extracurricular student club from having access to the public school violated the Establishment Clause. The court held, "It cannot be said that the danger that children would misperceive the endorsement of religion [by permitting religiously affiliated student clubs to meet on campus after school hours] is any greater than the danger that they would perceive a hostility toward the religious viewpoint if the Club were excluded from the public forum.")

69. *Grand Rapids v. Ball*, 473 U.S. 373 (1985). (Overturned in *Zobrest v. Catalina Foothills School District*, 509 U.S. 1. In *Agostini v. Felton* 1997, Justice O'Connor characterized *Grand Rapids v. Ball* as a decision that viewed that a "public employee who works on a religious school's premises is presumed to inculcate religion in her work.")

70. *Greer v. Altoona Warehouse Co.*, 20 So. 2d 513 (Ala. Sup. Ct. 1945). (One of the state-court decisions that originated the strict scrutiny standard.)

71. *Grutter v. Bollinger*, 539 U.S. 306 (2003). (In a 5–4 decision, the U.S. Supreme Court held that the University of Michigan Law School's use of race in admissions did not violate the Equal Protection Clause of the Fourteenth Amendment. See *Gratz v. Bollinger*, 539 US 244 (2003), a companion case in which the U.S. Supreme Court held in a 6–3 decision that the university's undergraduate admissions program was not narrowly tailored to meet strict scrutiny and therefore was unconstitutional.)

72. *Harfst v. Hoegen*, 349 Mo. 808 (Mo. Sup. Ct. 1941). (Public funds for private school case that found that it was "unnecessary to consider or discuss" whether the employment of religious-garb-wearing teachers was permissible because the school board violated Missouri's constitution when providing public funds for a private Catholic school.)

73. *Holt v. Hobbs*, 574 U.S. ___ (2015). (In a unanimous decision, the U.S. Supreme Court held that the Arkansas Department of Corrections grooming policy violated the federal RLUPA when prohibiting Gregory Holt (Abdul Maalik Muhammad) from growing a one-half-inch bear for religious reasons. The court emphasized that the policy must meet the state's interests in the least restrictive means possible, which the corrections facility did not.)

74. *Hysong v. Gallitzin*, 164 Pa. 629 (Pa. Sup. Ct. 1894), overturned in *Commonwealth v. Herr*, 229 Pa. 132 (Pa. Sup. Ct. 1910). (In Hysong, the Pennsylvania Supreme Court held that terminating Catholic nuns for wearing habits while teaching in a public school violated their rights under the Pa. Const. "no preference" and "no religious tests for office" clauses. The high court also rejected the state's claim that employing religious-garb-wearing nuns violated the "no aid to religion" clause of the Pa. Const. However, the Hysong court held that "the legislature may, by statute, enact that all

teachers shall wear in the schoolroom a particular style of dress, and that none other shall be worn, and thereby secure the same uniformity of outward appearance as we now see in city police, railroad trainmen, and nurses of some of our large hospitals." The Pennsylvania General Assembly followed by passing the first anti-religious-garb statute in the United States in 1895.)

75. *In re Canvass of Absentee Ballots of November 4, 2004*, 577 Pa. 231, 843 A.2d 1223 (Pa. Sup. Ct. 2004). (This case provided justifications for using the "plain meaning" legal methods with new or uninterpreted statutes in Pennsylvania.)

76. **Incorporation Cases:** The U.S. Supreme Court held that the Due Process clause of the Fourteenth Amendment, as ratified by the states in 1868, incorporated a unified legal system, thus requiring all states and localities to comply with the six clauses in the First Amendment to the U.S. Constitution: freedom of **speech** in *Gitlow v. New York*, 268 U.S. 652 (1925); freedom of the **press** in *Near v. Minnesota*, 283 U.S. 697 (1931); freedom of **assembly** in *DeJonge v. Oregon*, 299 U.S. 353 (1937); the **free exercise of religion** in *Cantwell v. Connecticut*, 310 U.S. 296 (1940); **no establishment of religion** in *Everson v. Board of Education*, 330 U.S. 1 (1947); and the right to **petition** in *Edwards v. South Carolina*, 372 U.S. 229 (1963).

77. *International Refugee Assistant Project v. Trump*, 857 F. 3d 554 (4th Cir. 2017). (President Trump's third proposed travel ban was found unconstitutional and a form of "religious animosity." The president's attempts to restrict travel for people from eight countries, six of which are predominantly Muslim, would violate the Establishment Clause of the First Amendment to the U.S. Constitution. The court explained that "to the objective observer [President Trump's] Proclamation continues to exhibit a primarily religious anti-Muslim objective." The court stated that there is "undisputed evidence that the President of the United States has openly and often expressed his desire to ban [Muslims] from entering the United States." The court held that the President's directive "strikes at the basic notion that the government may not act based on religious animosity.")

78. *J. Singh v. France*, 25463/08 (ECHR 2009). (One of six cases issued by the European Court of Human Rights that unanimously affirmed a school's decision to expel Muslim and Sikh students for wearing religious garb.)

79. *Jacobson v. Massachusetts*, 197 U.S. 11. (1905). (U.S. Supreme Court affirmed the state's police power to promote public health and safety when requiring residents to be vaccinated against smallpox.)

80. *Johnson v. Boyd*, 217 Ind. 348 (Ind. Sup. Ct. 1940). (Indiana Supreme Court relied on the "right to worship," "free exercise," "right of conscience," "no religious test," and "no preference" clauses of the Indiana Constitution to rule that employing Catholic nuns who wore religious garb while teaching did not make public schools parochial schools.)

81. *Kalman v. Cortes*, 723 F.Supp 2d 766 (Pa. Sup. Ct. 2010). (Pennsylvania's blasphemy law found unconstitutional.)

82. *Kennedy v. St. Joseph's Ministries*, 657 F.3d 189 (4th Cir. 2011). (In an ironic twist on the 123-year history of regulating religious garb, which has disproportionately harmed Catholics, Villa St. Catherine, Inc., a Catholic nursing-care facility in Maryland, prohibited Lori Kennedy, a member of the Church of the Brethren, from wearing "modest garb that includes long dresses/skirts and a cover for her hair" while working as a nursing assistant. The Fourth Circuit court held that Kennedy's claims were not applicable because Title VII exempts religious organizations from charges of religious discrimination.)

83. *Kervanci v. France*, 31645/04 (ECHR 2008). (Decided with Dogru v. France, the European Court of Human Rights unanimously upheld France's expelling children, ages 11 and 12, who refused to remove Islamic headscarves during physical education classes and sports activities. The rationale was that "wearing a headscarf as a sign of religious affiliation was incompatible with the proper conduct of physical education and sport classes." The court concluded that "the State may limit the freedom to manifest a religion . . . if the exercise of that freedom clashes with the aim of protecting the rights of others, public order and public safety.")

84. *Key State Bank v. Adams*, 138 Mich. App. 607 (1984). ("Although bank had legitimate business reason for employees to work on Saturday, state could not condition payment of unemployment benefits.")

85. *Kiryas Joel Village v. Grumet*, 512 U.S. 687 (1994). (The New York statute that created a school district based on the residential boundaries of Jews who practiced Satmar Hasidism violated the Establishment Clause.)

86. *Knowlton v. Baumhover*, 182 Iowa 691 (Iowa Sup. Ct. 1918). (Taxpayer sued school district for renting a building owned by the Roman Catholic Church, where students of the public school were exposed to sisters in habits and the religious ornaments in the building. Iowa Supreme Court denied public funding to a private religious school whose students were transferred from a recently closed public school and who, incidentally, employed teachers who wore religious garb. These fact patterns are distinct from a public school that employs a teacher who wears religious garb while teaching.)

87. *Korematsu v. United States*, 323 U.S. 214 (1944). (In a 6–3 decision, the U.S. Supreme Court used the strict scrutiny standard to uphold the constitutionality of President Franklin D. Roosevelt's executive order that was used to incarcerate Japanese Americans in federal internment camps.)

88. *Lamb's Chapel v. Center Moriches Union*, 508 U.S. 384 (1993). (In a unanimous decision, the U.S. Supreme Court held that a New York school district violated the Free Speech Clause when prohibiting religious groups from renting school facilities for an after-school film series. The court also held that granting access would not constitute an establishment of religion because the school was not sponsoring the program and it was an after-hours private event.)

89. *Lautsi and Others v. Italy*, 30814/06 (ECHR, 18 March 2011). (The European Court of Human Rights upheld Italy's law requiring crucifixes be displayed in every public classroom. The court held that "a crucifix on a wall is an essentially passive symbol and . . . cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities.")

90. *Lee v. Weisman*, 505 U.S. 577 (1992). (The U.S. Supreme Court, in a 5–4 decision, held that state-sponsored and state-directed religious exercises, such as a prayer during a public high school's graduation ceremony, violates the Establishment Clause. The effect is "indirect coercion" for the school students to stand and remain silent during the prayers.)

91. *Lemon v. Kurtzman*, 403 U.S. 602 (1971). (In an 8–1 decision, the U.S. Supreme Court found unconstitutional under the Establishment Clause of the U.S. Constitution Pennsylvania's and Rhode Island's statutes that allocated public funds for non-public schools through providing textbooks, 15% of teacher salaries, and teaching materials. The court applied the three-pronged "Lemon Test" to an Establishment Clause claim: the law must have (1) a secular purpose; (2) its primary effect is neither to advance nor inhibit religion; and (3) it does not foster an excessive entanglement between government and religious institutions.)

92. *Leyla Sahin v. Turkey*, 44774/98 (ECHR 2008). ("European Court of Human Rights held by sixteen votes to one, that there had been no violation of Article 9 [freedom of thought, conscience and religion] of the European Convention on Human Rights" when a Muslim medical student was prevented from wearing a headscarf because the ban was "necessary in a democratic society.")

93. *Locke v. Davey*, 540 U.S. 712 (2004). (In a 7–2 decision, the U.S. Supreme Court held that public scholarship funds cannot be used for private theological education and clergy training. Denying theology majors access to the scholarships does not "suggest animus towards religion" but rather promotes a "historic and substantial interest" and prevents the use of public funds to support religious activities. Writing for the majority, Chief Justice Rehnquist wrote, "This case involves the 'play in the joints' between the Establishment and Free Exercise Clauses.")

94. *Loving v. Virginia*, 897 U.S. 113 (1967). (In a unanimous decision, the U.S. Supreme Court found unconstitutional Virginia's anti-miscegenation law under the Equal Protection Clause of the Fourteenth Amendment. Writing for the majority, Chief Justice Earl Warren wrote, "the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State.")

95. *Lowe v. City of Eugene*, 463 P. 2d 360 (1969). ("Public land cannot be set apart for the permanent display of an essentially religious symbol when the display connotes government sponsorship.")

96. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). U.S. Supreme Court's three-part standing test: "First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized and (b) "actual

or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."")

97. *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988). (In a 5–3 decision, the U.S. Supreme Court upheld the U.S. Forest Service's plans for paving a highway through the Six Rivers National Forest at Chimney Rock. The court held, "The First Amendment must apply to all citizens alike, and it can give to none of them a veto over public programs that do not prohibit the free exercise of religion.")

98. *McCollum v. Board of Education*, 333 U.S. 203 (1948). (In an 8–1 decision, the U.S. Supreme Court held that the Champaign Board of Education violated the Establishment Clause when offering voluntary religious instruction to public school students through the Council on Religious Education.)

99. *McGowan v. Maryland*, 366 U.S. 420 (1961). (In an 8–1 decision, the U.S. Supreme Court held that Maryland's blue laws did not violate the religion clauses of the First Amendment because the contemporary practice of the law was secular and designed to promote the "health, safety, recreation, and general well-being" of its residents.)

100. *Meek v. Pittenger*, 421 U.S. 349 (1975). (In a 6–3 decision, the U.S. Supreme Court held that Pennsylvania "auxiliary services" for nonpublic schools (75% of which were religious schools) violated the Establishment Clause, except for the state loaning textbooks. The unconstitutional services included "counseling, testing, psychological services, speech and hearing therapy, and related services for exceptional, remedial, or educationally disadvantaged students.")

101. *Menora v. Illinois*, 683 F.2d 1030 (7th Cir. 1982). (Seventh Circuit Court rhetorically affirmed Jewish student-athletes' request to wear their yarmulkes (skullcaps) during basketball games but not if they were to use bobby pins to secure the yarmulkes to their heads because the pins could jeopardize students' safety. The court recommended finding other ways to secure the yarmulkes, such as using chinstraps or having the kippot (plural of kippah, a brimless cap) sown to headbands or having the students wear full-headed caps. The court both affirmed the dress code while rhetorically affirming the students' free exercise rights, which the court held were not violated in this context.)

102. *Meyer v. Nebraska*, 262 U.S. 390 (1923). (The U.S. Supreme Court found unconstitutional a statute that restricted foreign-language education under the Due Process Clause of the Fourteenth Amendment. This particular case involved fourth graders reading the bible in German at the Zion Parochial School, a one-room schoolhouse.)

103. *Minersville v. Gobitis* [sic, Gobitas], 310 U.S. 586 (1940). (In an 8–1 decision, the U.S. Supreme Court upheld the decision of public schools in Minersville, Pennsylvania to

expel students for refusing to salute the U.S. flag—doing so would violate their religion as Jehovah's Witnesses. The court affirmed the school's interest in promoting "national cohesion" in the name of "national security." Three years later, in light of the developments in Nazi Germany with similar compulsory practices, the U.S. Supreme Court overturned itself in the 1943 case West Virginia v. Barnette, 319 U.S. 624.)

104. *Mississippi v. McGlothin*, 556 So.2d 324 (Miss. Sup. Ct. 1990), cert. denied, 498 U.S. 879. (The Mississippi Supreme Court held that a public schoolteacher's periodic wearing of a head wrap as a religious cultural expression of her identity as an African Hebrew Israelite from Ethiopia was constitutionally protected under both the Free Exercise clause of the U.S. Constitution's First Amendment, as incorporated by the Fourteenth Amendment, as well as under the "no religious tests," "no preference," and "free enjoyment of all religious sentiments" clauses of Mississippi's Constitution. The Mississippi Supreme Court applied the U.S. Supreme Court's strict scrutiny test and did not find applicable the U.S. Supreme Court's decision in Goldman v. Weinberger, in part because Congress had overturned it two years earlier. Three months after the McGlothin case was decided, the U.S. Supreme Court issued Smith (1990), thus overturning McGlothin's federal Free Exercise claim.)

105. *Mitchell v. Hel*ms, 530 U.S. 793 (2000). (In a 6–3 ruling, the court found that the use of public funds for educational equipment and materials did not violate the Establishment Clause because some of the schools were private religious schools. Justice Thomas wrote that "[i]f the religious, irreligious, and areligious are all alike eligible for governmental aid, no one would conclude that any indoctrination that any particular recipient conducts has been done at the behest of the government." Specific to the current study, the court argued that "anti-sectarian" laws were evidence of anti-Catholicism. Justice Thomas wrote, "Opposition to aid to 'sectarian' schools acquired prominence in the 1870's with Congress' consideration (and near passage) of the Blaine Amendment [of 1875], which would have amended the Constitution to bar any aid to sectarian institutions. Consideration of the amendment arose at a time of pervasive hostility to the Catholic Church and to Catholics in general, and it was an open secret that 'sectarian' was code for 'Catholic.'")

106. *Moore v. Board of Education*, 4 Ohio Misc. 257 (Ohio Ct. Com. Pl. 1965). (Case involving the consolidation of private Catholic schools with a public school district.)

107. *Mueller v. Allen*, 463 U.S. 388 (1983). (In a 5–4 decision, the U.S. Supreme Court applied the Lemon test to conclude that Minnesota did not violate the Establishment Clause when allowing taxpayers to deduct private religious school expenses from their state income tax.)

108. *Multani v Commission scolaire Marguerite-Bourgeoys*, 1 S.C.R. 256 (Supp. Ct. Canada 2006). (The Supreme Court of Canada held that a public school failed to meet the legal principle of proportionality—the judicial requirement that there must be a legitimate reason for a regulation. The problem was based on the characterization of the kirpan as a weapon when "over the 100 years since Sikhs have been attending schools in Canada, not a single violent incident related to the presence of kirpans in schools [had]

been reported." The court also held that the school board's interest in promoting the "highest degree of safety" was not proportionate, considering that the school allowed students to use scissors, pencils, and baseball bats.)

109. *NAACP v. Button*, 371 U.S. 415 (1963). (The first case in which the U.S. Supreme Court applied the strict scrutiny standard to the First Amendment protection of freedom of association.)

110. *Near v. Minnesota*, 283 U.S. 697 (1931). (The U.S. Supreme Court applied to state and local laws the federal protection of freedom of the press under the First Amendment to the U.S. Constitution.)

111. *New Haven v. Torrington*, 132 Conn. 194 (Conn. Sup. Ct. 1945). (A case involving public funds to support a Roman Catholic orphan asylum, which was considered unconstitutional.)

112. *Nichol v. Arin*, 268 F.Supp 2d 536 (W.D. Pa. 2003). (A federal district court judge ruled that a teacher's assistant was not a "teacher" under the definition of Pennsylvania's School Code; therefore, Brenda Nichol was not bound by Pennsylvania's anti-religious-garb statute and could freely wear a Christian cross necklace while assisting in the public classroom. The judge issued an extensive nonbinding opinion about the unconstitutionality of the statute, using judicial tests under the Free Exercise, Free Speech, Establishment, and Title VII provisions.)

113. *O'Connor v. Hendrick*, 184 N.Y. 421 (N.Y. Ct. App. 1906). (Members of the Order of the Sisterhood of St. Joseph of the Roman Catholic Church were discharged for refusing to comply with the state superintendent's regulation that prohibited teachers from wearing distinctive religious garb in the public classroom. In a 7–0 opinion with one concurrence, the highest court in the state affirmed the appellate court decision, upholding the superintendent's regulation under New York Constitution's "no aid to religion" clause.)

114. *Ozawa v. United States*, 260 U.S. 178 (1922). (In a unanimous decision, the U.S. Supreme Court ruled that Japanese immigrant Takao Ozawa was not eligible for citizenship on the grounds that Japanese were not considered "free white persons"—a ruling later referenced by the U.S. Supreme Court in justifying in Korematsu (1944), the 6–3 ruling that upheld President Franklin D. Roosevelt's internment of Japanese Americans during World War II.)

115. *Paddock v. Pulsifer*, 23 P. 1049, 1051 (Kan. Sup. Ct. 1890). (One of the state court decisions that originated the strict scrutiny standard.)

116. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). (In a unanimous decision, the U.S. Supreme Court found unconstitutional Oregon's law that required parents to send their children to public schools. The court held that parents' right to choose their child's education, whether in a public or a private religious school, was protected under the Due Process clause of the Fourteenth Amendment. The state could not force parents "to accept instruction from public teachers only." In Cooper (1986), the

Oregon Supreme Court admitted that the state's anti-religious-garb laws originated from a "period of anti-Catholic intolerance that also gave us the initiative measure against private schools struck down in Pierce v. Society of Sisters, 268 U.S. 510 (1925).")

117. *Prince v. Massachusetts*, 321 U.S. 158 (1944). (In a 5–4 decision, the U.S. Supreme Court affirmed the Massachusetts child welfare law that restricted children, in this case, Jehovah's Witness children, in selling religious literature. The court stated, "The family itself is not beyond regulation in the public interest, as against a claim of religious liberty. And neither the rights of religion nor the rights of parenthood are beyond limitation.")

118. *R. Singh v. France*, 27561/08 (ECHR 2009). (One of six cases decided in 2009 by the European Court of Human Rights that unanimously affirmed a school's decision to expel Muslim and Sikh students for wearing religious garb.)

119. *Rawlings v. Butler*, 290 S.W.2d 801 (Ky. Ct. App., 1956). (The state Court of Appeals held that the Kentucky Constitution's "no aid to religion" clause was not violated when employing habit-wearing Catholic nuns.)

120. *Reynolds v. United States*, 98 U.S. 145 (1878). (In its first case involving the Free Exercise clause of the First Amendment, the U.S. Supreme Court unanimously affirmed President Lincoln's ban on bigamy, plural marriages. The court emphasized the right to belief and the free exercise of one's beliefs. Justice Waite wrote, "Congress was deprived of all legislative power over mere opinion but was left free to reach actions which were in violation of social duties or subversive of good order." The court emphasized that "laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices." Justice Waite proposed the following analogy: "Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice?" Justice Waite asserted that to exempt religious acts from civil law "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. Government could exist only in name under such circumstances.")

121. *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995). (In a 5–4 decision, the U.S. Supreme Court held that the University of Virginia was engaging in viewpoint discrimination by preventing a student from receiving $5,800 in subsidies to publish a religious publication—subsidies offered to other student publications.)

122. *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000). (In a 6–3 decision, the U.S. Supreme Court held that student-initiated, student-led prayers during extracurricular school-sponsored football games violated the Establishment Clause.)

123. *Scopes v. State*, 289 S.W. 363 (Tenn. Sup. Ct. 1927). (Tennessee decision affirming the Butler Act, which banned the teaching of evolution in public schools. This was overturned by the unanimous U.S. Supreme Court decision in Epperson v. Arkansas 1968.)

124. *Shaffer v. Albert Gallatin*, 730 F.2d 910 (3rd Cir. 1984). (In *Combs v. Dubois* (2008), the Third Circuit Court cited Shaffer when stating that, "where the underlying issue of state law is a question of first impression with important implications for public education in Pennsylvania, factors weighing in favor of state court adjudication certainly predominate.")

125. *Sherbert v. Verner*, 374 U.S. 398 (1963). (In a 7–2 decision, the U.S. Supreme Court used the three-part strict scrutiny test to find unconstitutional South Carolina's refusal to provide Adeil Sherbert unemployment benefits after being fired for refusing to work on Saturday, the day of Sabbath in the Seventh-day Adventist tradition.)

126. *Skinner v. Oklahoma*, 316 U.S. 535 (1942). (U.S. Supreme Court found unconstitutional a "three strikes" law that justified the sterilization of African Americans; the first U.S. Supreme Court case to use the exact phrase strict scrutiny.)

127. *State v. Hershberger*, 444 N.W.2d 282 (Minn. Sup. Ct. 1989). ("Statute requiring display of slow-moving vehicle inapplicable to Amish defendants on grounds of violation of free exercise although not all adherents regarded the display as violative of the Amish precepts.")

128. *State v. Taylor*, 122 Neb. 454 (Neb. Sup. Ct. 1932). (The Nebraska Supreme Court affirmed a public school district's use federal funds allocated to the state to lease classrooms in a private Catholic high school to provide special education services to students enrolled in that Catholic high school and in the public schools. This case does not address the question of religious garb worn by teachers in either the public or private school.)

129. *Sternlicht v. Sternlicht*, 583 Pa. 149 (Pa. Sup. Ct. 2005). (The Pennsylvania Supreme Court cited this case to justify using the "plain meaning" legal methods with new or uninterpreted statutes.)

130. *Stone v. Graham*, 449 U.S. 39 (1980). (In a 5–4 per curiam decision [issued without mention of a primary judicial author], the court found unconstitutional a Kentucky statute that required all public school classrooms to display the Ten Commandments. The court used the Lemon test to determine that this law violated the Establishment Clause of the First Amendment to the U.S. Constitution.)

131. *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989). (In a 6–3 plurality opinion, the U.S. Supreme Court found that Texas violated the Free Speech and Establishment clauses of the First Amendment when granting a tax-exemption status to a religious publication when not providing the same exemption to non-religious publications.)

132. *Thomas v. Review Board of Indiana*, 450 U.S. 707 (1981). (In an 8–1 decision, the U.S. Supreme Court found unconstitutional under the Free Exercise clause Indiana's refusal to provide unemployment compensation for an employee who was terminated for not manufacturing weapons that violated the employee's religious beliefs. This decision further reinstated the strict scrutiny standard under Sherbert: The state "may

justify an inroad on religious liberty only by showing that it is the least restrictive means of achieving some compelling state interest.")

133. *Tilton v. Richardson*, 403 U.S. 672 (1971). (In a 5–4 decision, the U.S. Supreme Court found unconstitutional the "20-year clause" in the Higher Education Facilities Act of 1963 that sought to permit the use of federal funds to subsidize the construction of buildings owned by private religious schools. The court held that Congress did not entangle religion and the state when seeking to provide these funds because "college students are less impressionable and less susceptible to religious indoctrination" and could establish a nonreligious building on campus that is indistinguishable between those on public campus and the buildings used for religious purposes on private campuses.)

134. *Tinker v. Des Moines*, 393 U.S. 503 (1969). (In a 7–2 decision, the U.S. Supreme Court found that a school prohibition on students wearing armbands in protest of the Vietnam War violated the students' free speech rights guaranteed under the First Amendment to the U.S. Constitution. In writing for the majority, Justice Fortas briefly mentioned teachers' rights, stating, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.")

135. *Torcaso v. Watkins*, 367 U.S. 488 (1961). (In a unanimous decision, the U.S. Supreme Court held that Maryland's constitutional provision of a religious test for office violated the Establishment, No Religious Test, and Equal Protection clauses of the U.S. Constitution. The court held that no state or federal government could require someone to express a religious belief or disbelief, which made moot the legitimacy of seven similar state constitutions. State legislatures cannot "constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can they aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." By footnoting the non-theistic religions such as Buddhism, Taoism, Ethical Culture, and Secular Humanism, the court broadened the legal definition of religion from that of monotheism.)

136. *United States [Reardon] v. Board of Education*, 911 F.2d 882 (3rd Cir. 1990). (The Third Circuit Court held that Alima Delores Reardon's rights under Title VII of the Civil Rights Act of 1964 were not violated when the Philadelphia school district terminated her employment for wearing a hijab [Muslim headscarf] while teaching.)

137. *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923). (In a unanimous decision, the U.S. Supreme Court upheld the federal government's decision to revoke the citizenship of Bhagat Singh Thind, an Indian Sikh, who previously became naturalized to serve in the U.S. Army during World War I. After completing this service, the court rejected Thind's argument that because he considered himself a "high caste Aryan" of the Caucuses of India, where the term Caucasian originated, he met the federal immigration definition of a "free white person.")

138. *United States v. Carolene Products Co.*, 304 U.S. 144 (1938). (In this case, the U.S. Supreme Court required that lawmakers have a "rational basis" for introducing

economic legislation—the rational basis test being the lowest level of judicial review. Writing for the majority, Justice Stone then used "Footnote Four" to explain that the court may need a "more exacting judicial scrutiny" when laws burden protected classes of minorities, whether religious, ethnic, or racial.)

139. *United States v. Lee*, 455 U.S. 252 (1982). (In a unanimous decision, the U.S. Supreme Court held that an Amish employee, because of his religious beliefs, was not exempt from paying Social Security taxes because the tax was applicable to everyone.)

140. *United States v. McIntosh*, 283 U.S. 605 (1931). (The U.S. Supreme Court upheld the federal government's decision to deny citizenship to a man who refused, on religious grounds, to "bear arms in defense of the United States." In this case, the court made the theological claim that "We are a Christian people . . . with reverence the duty of obedience to the will of God.")

141. *United States v. Meyers*, 95 F.3d 1475 (1996). (In this case, the Tenth Circuit applied the analogy method to legally define religion. Judge Clarence Brimmer, asking whether "the Church of Marijuana" was a legitimate religion, acknowledged that the "threshold for establishing the religious nature of beliefs is low." He used the following criteria for determining that the Church of Marijuana was not a religion. A religion consists of an expression of ultimate ideas, metaphysical beliefs, and a moral or ethical system that result in a comprehensiveness of beliefs, as well as accoutrements of religion, such as a founder/prophet/teacher, important writings, gathering places, keepers of knowledge, ceremonies and rituals, structure or organization, holidays, diet or fasting, appearance and clothing, and propagation.)

142. *United States v. Seeger*, 380 U.S. 163 (1965). (In a unanimous decision, the U.S. Supreme Court rejected Congress's prerequisite that a person needed to believe in a "Supreme Being" to be eligible as a religious conscientious objector. The court defined religion as "a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption." The court reached this conclusion by acknowledging "a vast panoply of beliefs" in a country with a "rich and varied spiritual life"—ranging from monotheism to Buddhism to Hinduism and various Christianities, including Paul Tillich's God above the God of Theism and the Catholic Church's statement in Vatican II that "the whole concept of a God 'out there' . . . is itself becoming more of a hindrance than a help.")

143. *Updegraph v. Commonwealth*, 11 Serg. & Rawle 394 (Pa. Sup. Ct. 1824). (The Pennsylvania Supreme Court upheld the state's blasphemy law that imposed criminal penalties and a fine for anyone "whosoever shall willfully, premeditatedly, and despitefully blaspheme, and speak loosely and profanely of Almighty God, Christ Jesus, the Holy Spirit, or the Scriptures of Truth.)

144. *Wallace v. Jaffree*, 472 U.S. 38 (1985). (In a 6–3 decision, the U.S. Supreme Court found that Alabama's law permitting public schoolteachers to engage in regular prayer and meditation services during the school day violated the Establishment Clause of the First Amendment to the U.S. Constitution.)

145. *Walz v. Tax Com. of New York*, 397 U.S. 664 (1970). (In a 7–1 decision, the U.S. Supreme Court held that property tax exemptions for churches did not violate the Establishment Clause of the First Amendment to the U.S. Constitution.)

146. *Webb v. City of Philadelphia*, 562 F.3d 256 (3rd Cir. 2009); *Web v. City of Philadelphia*, U.S. Dist., No. 05-5238 (E.D. Pa. 2007). (Police officer fired for wearing a tight Muslim neck scarf; 3rd Cir. ruled that Web "failed to meet the statutory notice requirements for the RFPA claim" and failed under the Title VII claim).

147. *Welsh v. United States*, 393 U.S. 333 (1970). (In a companion conscientious objector case to Seeger, the Welsh court held that an objector need not demonstrate "traditional or parochial concepts of religion," but rather, the religious behavior (i.e., nonviolence) would need to be parallel to religious actions, "in the ethical sense of the word." The acts need only be matched "with the strength of a more traditional religious conviction." The court delineated two groups: (1) those whose exemption rests on "moral, ethical, or religious principle" could be classified as "religious conscientious objectors" but not (2) those whose "considerations of policy, pragmatism, or expedience [were] essentially political, sociological, or philosophical.")

148. *West Virginia v. Barn*ette, 319 U.S. 624 (1943). (In a 6–3 decision, the U.S. Supreme Court found unconstitutional compulsory flag-salute practices in public schools, thus overturning the court's decision three years earlier in *Minersville v. Gobitis* [sic, Gobitas]. The Barnette court held, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.")

149. *Westside Community v. Mergens*, 496 U.S. 226 (1990). (In an 8–1 decision, the U.S. Supreme Court affirmed the constitutionality of the Equal Access Act, which allowed "noncurriculum student groups" access to public school facilities, regardless of whether the groups were religious or not.)

150. *Widmar v. Vincent*, 454 U.S. 263 (1981). (In an 8–1 decision, the U.S. Supreme Court held that the University of Missouri's refusal to accommodate extracurricular religious student groups violated the students' Fourteenth Amendment to equal protection (equal access to a public forum) and their First Amendment right to free speech, association, and free exercise of religion.)

151. *Wisconsin v. Yoder*, 406 U.S. 205 (1972). (In a unanimous decision, the U.S. Supreme Court granted religious exemptions to Amish and Mennonite families who refused to send their children to public school after the eighth grade. The court found that the Amish and Mennonite traditions of agrarian living were "aided by a history of three centuries as an identifiable religious sect." The Yoder decision articulated a legal definition of religion as sincere and longstanding. Against the backdrop of the Vietnam War, the court looked favorability on these model minority groups that renounced materialism, lived simply, practiced nonviolence, and lived modestly and devoutly.)

152. *Wolman v. Walter*, 433 U.S. 229 (1977). (In a 7–2 decision, the U.S. Supreme Court affirmed Ohio's use of public funds to issue textbooks and instructional aids/materials to students in private religious schools.)

153. *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986). ("The term 'narrowly tailored,' so frequently used in our cases, has acquired a secondary meaning. More specifically, as commentators have indicated, the term may be used to require consideration of whether lawful alternative and less restrictive means could have been used.")

154. *Zellers v. Huff*, 55 N.M. 501 (N.M. Sup. Ct. 1951). (In primary reliance on the "free from sectarian control" clause of the New Mexico Constitution, the state's supreme court upheld the school board's ban on public schoolteachers' religious garb. The court also rejected the claim that the anti-religious-garb law violated New Mexico's "no religious test for teachers" clause. The court held that "all nuns . . . wearing clothing of religious significance, should be removed from the public school.")

155. *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). (In a 5–4 decision, the U.S. Supreme Court rules that Ohio's school voucher program does not violate the Establishment Clause.)

156. *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993). (In a 5–4 decision, the U.S. Supreme Court ruled that a school district cannot deny a deaf student to keep a sign-language interpreter previously employed at a Roman Catholic high school were the student was previously enrolled.)

157. *Zorach v. Clauson*, 343 U.S. 306 (1952). (In a 6–3 decision, the U.S. Supreme Court held that New York City's release time program did not violate the Establishment Clause.)

Five Bodies of Literature

The interdisciplinary scholarship on regulating public schoolteachers' religious garb in the United States is vast for the mere fact that this legal problem spans 125 years and has impacted, at some point, schools in a majority of states. Scholars from the fields of law and education, as well as religious and civic leaders and journalists, have contributed to this body of knowledge. Their collective contributions reveal that the question of public schoolteachers' religious garb is significant, historic, and relevant today, as noted in the following five bodies of literature.

1. Legal Scholars
2. Government Officials
3. Educators and Researchers
4. Religious and Civil Liberties Groups
5. Journalists

The following bibliography is classified by field of study and by date, to illustrate the developments within different disciplines at distinct time periods. Some annotations are added to bring greater clarity to issues featured in the study and to formally archive statements made by various government offices on this longstanding legal matter.

I. Legal Scholars

158. "Use of Religious Dress by Teachers." *Supplement to Cumming & Gilbert's General Laws and Other General Statutes of the State of New York*, 1906.

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161. Scanlan, Charles Martin. "The Law of Church and Grave: The Clergyman's Handbook of Law. New York, 1909." *The Making of Modern Law*. Farmington Hills, Michigan: Cengage Gale, 2012.

162. Clarence, F., et al. *Annotated Consolidated Laws of the State of New York as Amended to January 1, 1910*. New York, 1910.

163. "In the absence of a prohibition, a distinctive religious garb may be worn." In Willis A. Estrich, "Religious Teaching in the Public Schools." *Lancaster Law Review* (September 1914): 415–416.

164. Lincoln, Charles Z. "Religious Garb." *Civil Law and the Church*. New York: Abington Press, 1916, 629.

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313. Report of the Secretary of the Interior. *Education Report*, 1892: No. 1158. ("Sisters of Charity are religious persons, and as such have no place in the public school to propagate religious doctrine; but if they be women of education and teaching ability, it lies wholly within the authority of the board of education to employ them to do the legitimate work of the school. If, however, to any class of patrons their presence is obnoxious or unacceptable by reason of the significance of their religious garb, the board must either retire them or require them to wear the usual garb of teachers in the classroom.")

314. Proctor, John R., President of the Civil Service Commission of the United States, June 6, 1895. (Federal order appointing "superintendents, teachers, and matrons" from previously federally contracted schools to transfer to government appointments, including Catholic nuns and priests who wore religious garb.)

315. Clark, S. W., Attorney General of South Dakota. Letter to Hon. H. A. Ustrud, Superintendent of Public Instruction. "Teachers and Schools—(1) Sister of Charity May be Employed to Teach—(2) Sister of Charity May Wear Garb While Teaching." Office of the Attorney General, State of South Dakota, June 30, 1909. ("... I do not think there is any provision of law that would prevent [the public schoolteacher from wearing religious garb while teaching]. It would seem to me that this is a question of propriety that must be determined by the teacher and by the district school board, rather than by the legal or judicial officers of the state. There is certainly nothing in the law that prohibits or prescribes any certain mode of dress."

316. Valentine, Robert G., Commissioner of Indian Affairs. Circular Order No. 601, January 27, 1912. ("In Government schools all insignia of any denomination must be removed from all public rooms, and members of any denomination wearing distinctive garb should leave such garb off while engaged at lay duties as Government employees. If any case exists where such an employee cannot conscientiously do this he will be given a reasonable time, not to extend, however, beyond the opening of the next school year after the date of this order, to make arrangements for employment elsewhere than in Federal Indian Schools. Respectfully, Robert G. Valentine, Commissioner."

317. Taft, William H., President of the United States. Letter to Secretary of the Interior, February 3, 1912. ("Dear Mr. Secretary... The Commissioner's order has been made without consultation either with you or with me... I fully believe in the principles of the separation of the Church and State on which our Government is based, but the questions presented by this order are of great importance and delicacy. They arise out of the fact that the Government has for a considerable period taken over for the use of the Indians certain schools theretofore belonging to and conducted by distinctive religious societies or churches. As a part of the arrangements then made the school employees who were in certain cases members of religious orders, wearing the distinctive garb of these orders, were continued as teachers by the Government, and by ruling of the Civil Service Commission or by executive action they have been included in the classified service under the protection of the civil service law. The Commissioner's order almost necessarily amounts to a discharge from the Federal Service of those who have thus entered it. This should not be done without a careful consideration of all phases of the matter, nor without giving the persons directly affected an opportunity to be heard. As the order would not in any event take effect until the beginning of the next school year, I direct that it be revoked and that action by the Commissioner of Indian Affairs in respect thereto be suspended until such time as will permit a full hearing to be given to all parties in interest and a conclusion to be reached in respect to the matter after full deliberation."

318. Macfarland, Henry B. F. "Hearing Before the Secretary of the Interior: In the Matter of the Circular Order, No. 601, of the Commissioner of Indian Affairs, of January 27, 1912: Respecting Religious Garb and Insignia in Government Indian Schools." Office

of Indian Affairs, Department of the Interior, United States, January 27, 1912, 3–25. ("... Circular Order No. 601, in terms, deals only with "Government schools," and "Government employees," while engaged in their official duties in such schools... We must repeat, with emphasis, that our contention is that in Government schools Government employees while on duty should not wear a sectarian garb, or exhibit sectarian insignia, because it is a violation of the Constitution to do so... The obvious analogy to the Government Indian schools is found in our public schools. In the national capital the public school system is directly under the authority of the Congress of the United States. Suppose that the Board of Education of the District of Columbia, an agent of Congress, should take over a sectarian private school with its officers and teachers and they should continue to wear during their school duties their sectarian garb and insignia, and exhibit sectarian insignia upon the public school room walls, does anyone suppose that Congress would permit such a practice to continue? Does anyone suppose that if the question were taken to the courts it would be allowed to continue? No one has any such idea. This suggests the touchstone in the present case. It is this, can Congress through its agents establish a religion, pro tanto, in a Government school without violating the Constitution of the United States? There can be one answer to this question. Neither Congress nor its agents can do so, and all are equally bound to prevent such a thing from being done, or, when it is brought to notice, continued." The hearing was approved on April 13, 192 by Charles L. Thompson, President of the Home Missions Council; M. K. Sniffen, Secretary of the Indian Rights Association; and E. B. Sanford, Secretary of the Federal Council of the Churches of Christ in America.)

319. Hilton, Clifford L., Assistant Attorney General of Minnesota. Letter to W. F. Odell, Attorney-at-law. "Education—Teachers—Wearing Religious Garb in Schools." Office of the Attorney General, State of Minnesota, March 31, 1915. ("I may inform you that Attorney General W. J. Donahower advised Honorable John W. Olson, the then Superintendent of Public Instruction, that the wearing of such garb by teaching in public schools was unlawful. The statutes of this state make the opinions of the Attorney General, rendered to the Superintendent of Public Instruction, decisive until the question involved shall be decided otherwise by a court of competent jurisdiction.")

320. Report of the Attorney General of Indiana, 1920. ("... it is my opinion that a rule of a school board or trustee forbidding teachers during the hours when schools are in session from wearing a distinctive garb indicating religious or denominational membership would be a reasonable rule and would be upheld by the courts... It is my opinion that the wearing a distinctive religious uniform or garb by a teacher in the school room is a continuous teaching of religion and constant reminder that the wearer is attached to a particular form of worship.... They have ceased to be civilians and have become ecclesiastical persons, are known by their religious names and wholly devoted to religious work.")

321. Report of the Attorney General of Indiana, 1923. ("... in the absence of any rule or regulation prescribed by statute or by some appropriate school officer thereunto authorized by statute, I am of the opinion that an action for recovery of money paid [to religious-garb-wearing teachers] by the trustee under the circumstances herein stated could not be successfully maintained.)

322. Van Winkle, I. H. "Public Letter: 'In re enforcement of law prohibiting teachers from wearing religious garb in the school room.'" Opinion of the Oregon Attorney General, The State of Oregon, March 12, 1923.

323. G.W.A., Nebraska Attorney General. Letter to Hon. John M. Matzen, State Superintendent. "Schools—Teachers—Wearing of Religious Garb." Office of the Attorney General, State of Nebraska, August 24, 1926. "I am of the opinion that the word 'teacher' as used in the [anti-religious-garb statute] applies only to those who hold certificates to teach in Nebraska and are employed to teach in some of the publics schools of the state. I do not think it applies to those who are merely being trained to teach in some one of the several state normal schools, and as an incident to said training, but without compensation are giving instruction (under the direct supervision of a member of the faculty of a state normal school) for short periods of time to pupils in a public school of the state." Signed, GWA.

324. Turner, Edward C., Attorney General of Ohio. Letter to Bureau of Inspection and Supervision of Public Offices. "Schools—Payment of Tuition Outside of Own School District—Powers of Boards of Education Discussed—Abuse of Discretion—Transportation Discussed." Office of the Attorney General, State of Ohio, February 15, 1928.

325. Fletcher, John, Attorney General of Iowa. Letter to County Attorney, Clinton, Iowa. "Schools and School Districts: A school teacher cannot wear the distinctive garb of a religious denomination while teaching in the public schools." Office of the Attorney General, State of Iowa, August 25, 1930 (1930 WL 63790 Iowa A.G.).

326. Sorensen, C. A., Attorney General of Nebraska and George W. Ayres, Assistant Attorney General of Nebraska. Letter to Mr. P. F. O'Gara, Attorney at Law, Harington, Nebraska. "Schools—Sectarian Schools Not Entitled to Share in State School Funds." Office of the Attorney General, State of Nebraska, March 15, 1930. ("I am... of the opinion that the law forbidding the wearing of a sectarian garb in the school room by a teacher in the public schools of this state is a valid enactment... The fact that the State Superintendent did not revoke [teachers'] certificates [who]... knowingly violated a state law and committed an act which was a crime against the state... and that neither they nor the members of the district school board were prosecuted by the local authorities as they might have been, for a gross violation of a state law, does not in my opinion absolutely bar the State Superintendent from asserting that the school over which they presided was not entitled to a share of the state school funds.")

327. O'Connor, Edward L., Attorney General of Iowa. Memo, "Schools: Catholic Nuns Teaching in Public Schools." Office of the Attorney General, State of Iowa, October 10, 1936 (1936 WL 68743 Iowa A.G.). ("True Christianity asks no aid from the sword of civil authority. It began without the sword, and wherever it has taken the sword, it has perished by the sword. To depend on civil authority for its enforcement is to acknowledge its own weakness, which it can never afford to do. Christianity is able to fight its own battles. Its weapons are moral and spiritual, and not carnal. True Christianity never shields itself behind majorities. When Christianity asks the aid of

government beyond mere impartial protection, it denies itself... Where a Catholic nun would teach school in the public school and receive a salary therefore, she would be required under the vows that she took when she became a member of her order to turn this money over to the ecclesiastical order to which she belonged. Therefore, public money would be used for the purpose of supporting ecclesiastical sectarian institutions, which, under the laws of this state, is prohibited. If a Catholic nun applied for a position in the public schools and agreed that she would not accept any salary for her services, she would still be prohibited from teaching in the public schools, in accordance with the views of the courts as set forth above, because of the wearing of her particular religious garb. It is further the opinion of this department that a Catholic nun dressed in the garb of her order, or a representative of any other creed wearing a particular distinctive religious garb, cannot teach in the public schools of the State of Iowa while wearing such distinctive ecclesiastical garb, and that no public moneys can be paid to any teacher where the money is transferred by such teacher under her own particular vows to any sectarian institution, school, association or order.)

328. Report of the Attorney General of South Dakota. Letter to Mr. J. F. Hines, Superintendent of Public Instruction. "Catholic Sisters may teach in public schools." Office of the Attorney General, State of South Dakota, August 13, 1936. Citing *Gerhardt v. Heid*, 66 N.D. 44, (N.D. Sup. Ct. April 2, 1936).

329. Hamilton, G. W., Attorney General of the State of Washington and Browder Brown, Assistant Attorney General. Letter to Hon. Stanley F. Atwood, Superintendent of Public Instruction. "Schools—Catholic Sisters Teaching in Public Schools in Church Garb." Office of the Attorney General, State of Washington, June 5, 1939. ("We are inclined to agree with the conclusions reached by the New York court [in *O'Connor v. Hendrick*, 1909] .... To permit a Catholic teacher to wear her religious garb would indicate an intention to exert a secular influence which might result from the garb and not because of the teacher using any influence... In our opinion it is legal to employ a Catholic teacher if not sectarian influence results therefrom, but not if such teacher is to wear a sectarian garb when in charge of the school. In our opinion, it is legal to employ a Catholic teacher in the public schools but unlawful for such teacher to wear a sectarian garb.")

330. Report of the Attorney General of North Dakota. "Schools—Teachers—Wearing Religious Garb." Office of the Attorney General, State of North Dakota, August 25, 1945.

331. New Mexico State Board of Education, Resolution, March 6, 1951. ("It Is Hereby Resolved and Adopted as the policy of this board that all nuns, brothers, or priests of the Catholic Church, or members of any other sectarian religious group, wearing clothing of religious significance, should be removed from the public schools throughout the state as expeditiously as circumstances (of) each locality allows; and, it is further adopted as the policy of this board that insofar as possible no property owned by religious groups shall be leased or rented by the state from such religious or sectarian organization unless exceptional circumstances require such action."

332. Saxbe, William, Attorney General of Ohio. Letter to Hon. Randall Metcalf, Prosecuting Attorney, Merietta, Ohio. "Education—Teachers, Employment of in Public Schools—Religious Garb, Wearing; Does Not Constitute Sectarian Teaching with is Prohibited—Proper Certification." Office of the Attorney General, State of Ohio, October 31, 1958 (OAG No. 2991). ("Public schools must be so conducted that the pupils attending them are not subjected to sectarian teaching but the employment as teachers in such schools of members of a religious order who wear a distinctive religious garb in such schools does not amount to such a teaching of religious doctrine which the law forbids... I find no express holding that the wearing of a religious garb by a public school teacher amounts to... pupils in public schools... 'subjected to sectarian influence.'")

333. Edgar, J. W., Education Commissioner. Administrative Ruling, January 25, 1961. In "'Public' Parochial Schools," *American Jewish Year Book*, Vol. 32 (1962), 188. For background see *American Jewish Year Book*, Vol. 61 (1960), 34–35. (In Schempp 1963, the U.S. Supreme Court cites this administrative ruling to urge readers to contrast its own citation of Zellers (1951) and Berghron (1953). The American Jewish Year Book reports that the Texas Supreme Court "upheld two lower-court decisions rejecting the suit on the ground that plaintiffs had not exhausted their administrative remedies." In response, J. W. Edgar, Education Commissioner of Texas, described himself as "powerless to stop nuns from teaching in public schools in religious garb or a local school board from leasing church-owned property for public-school use." He said doing so would require "the force of court action or of statute." In affirmation, "the state board upheld Commissioner Edgar's decision by a vote of 14–1" on January 25, 1961.)

334. Hultman, Evan, Attorney General of Iowa. Letter to Mr. Robert S. Bruner, Carroll County Attorney. Office of the Attorney General, State of Iowa, August 23, 1963. (Citing and emphasizing 1936 decision by Iowa Attorney General: "It is further the opinion of this department that a Catholic nun dressed in the garb of her order, or a representative of any other creed wearing a particular distinctive religious garb, cannot teach in the public schools of the State of Iowa while wearing such distinctive ecclesiastical garb, and that no public moneys can be paid to any teacher where the money is transferred by such teacher under her own particular vows to any sectarian institution, school, association or order." [Emphasis added by Hultman]).

335. Report of the Attorney General of Massachusetts, 1967. ("... a school committee need not hire specially garbed members of religious orders if it feels that 'the effect of [their attire] worn... at all times in the presence of their pupils would be to inspire... sympathy for the religious denomination to which they ... belong." Citing O'Connor (1906); Zellers (1951); Berghorn (1953); and concurring opinion of Justice Brennan in Shempp (1963).

336. Report of the Attorney General of New Mexico, 1967 (With references to Zellers 1951.)

337. Report of the Attorney General of South Dakota. Letter to L. R. Navin, State's Attorney, Davison County. "Schools & School Districts: Payment of Tuition from Public School District Funds to Attend Elementary School Operated as a Parochial or

Private Institution." Office of the Attorney General, State of South Dakota, April 7, 1967. ("You are also advised that the fact that a member of a Catholic religious order is hired as a school teacher, and teaches in the garb or habit of her order while employed as a public school teacher neither disqualifies her as such teacher, if she holds a teaching certificate, nor does such transfer a public school into a parochial school, if she teaches the standard courses of instruction prescribed for the particular grade being taught, and such teacher does not teach religious or sectarian courses.")

338. Report of the Attorney General of Vermont, No. 369, January 29, 1970. ("Members of religious order may teach in public school; no constitutional prohibition against wearing religious garb subject to reasonable regulation.")

339. Report of the Attorney General of Louisiana, No. 82-733, September 2, 1982. ("The wearing of religious garb by university faculty members does not constitute an establishment of religion.")

340. North Dakota Legislative Council. Minutes of the Education Services Committee, October 23, 1988. ("Chairman Holmberg said Section 15-47-29 which provides that a public schoolteacher may not wear in school or while engaged in teaching any dress or garb indicating the fact that such teacher is a member of or an adherent of any religious order, sect, or denomination, was removed because the committee determined that the section contained the potential for significant First Amendment challenges. Chairman Holmberg said Section 15-47-30, which requires the suspension and revocation of a teaching certificate for wearing religious garb, was omitted because the committee determined that the section contained the potential for significant First Amendment challenges.)

341. "Religious and Cultural Needs." Transportation Security Administration, Washington, DC, 2007.

342. Morse, Jane. "U.S. Laws Protect Right to Wear Religious Garb at Work: Somali woman wins her case to wear a hijab on the job." U.S. State Department Documents. Federal Information & News Dispatch, Inc., August 6, 2007.

343. Evans, Malcolm D. *Manual on the Wearing of Religious Symbols in Public Areas*, Council of Europe Publishing, May 2009.

344. Lee, Jesse, Director of Media and Online Response. "Nashala's Story." White House Blog, June 4, 2009. ("The court-ordered agreement reached by the Justice Department permits Nashala [Hearn]" to receive an accommodation to wear "a hijab—a Muslim headscarf—to school" in Muskogee, Oklahoma.)

345. Castillo, Susan and Brad Avakian. "Model Policy Regarding Religious Clothing of Public School Employees." Bureau of Labor and Industries for Oregon, December 8, 2010. (Superintendent Susan Castillo, Oregon Department of Education and Commissioner Brad Avakian introduce a new legal definition of garb: "'Religious clothing' means religious dress worn in accordance with the employee's sincerely held

religious beliefs, including, but not limited to head coverings, jewelry, emblems, and other types of religious dress.")

346. Oregon House Bill 3686, February 22, 2010. "(Clarifies circumstances in which employer imposes occupational requirement that restricts ability of employee to wear religious clothing. Includes difficulty or expense to maintain religiously neutral work environment among factors to be considered when determining if requested accommodation creates undue hardship for employer that is school district, education service district or public charter school. Provides that reasonable accommodation imposes undue hardship on employer that is school district, education service district or public charter school when accommodation constrains legal obligation to maintain religious neutrality in school environment and to refrain from endorsing religion. Repeals provisions prohibiting teacher in public school from wearing religious dress while engaged in duties as teacher and sanctioning teacher for doing so. Takes effect July 1, 2011.")

347. "Governor Signs Repeal of Ban on Religious Dress: Speaker, Labor Commissioner applaud victory for workplace religious freedom." Press Statement, Governor's Office, April 1, 2010.

348. "Fulfilling the Promise." Civil Rights Division of the United States Department of Justice, May 20, 2010. (Celebrating Governor Kulongoski signing HB 3686, which repealed Oregon's anti-religious-garb law: "When the Civil Rights Division sent a letter to the Oregon Attorney General late last year—arguing that a portion of Oregon's Workplace Religious Freedom act may violate Title VII of the Civil Rights Act of 1964—it was affirming a principle enshrined in our founding documents: That no American should have to choose between his or her professional career and personal faith. Until the Civil Rights Division intervened and initiated an investigation led by its Employment Litigation Section, however, that was exactly the case in the Beaver State, where Muslim and Sikh women could not teach in public schools while wearing their religious head garb. The story began long ago. In 1923—at the height of the Ku Klux Klan's once-powerful influence in Oregon—the state's legislature passed laws that closed parochial schools and prohibited public school teachers from wearing religious garb inside the classroom. The law was initially designed to keep Catholic priests and nuns from teaching in Oregon's public schools, but as more Muslim and Sikh women and men moved to Oregon, it affected them, too. In July 2009, Oregon re-affirmed the ban under the guise of religious freedom. The state passed the Workplace Religious Freedom Act, which provided greater religious liberty protection for some, but also reasserted the 1923 ban, providing that "No teacher in any public school shall wear any religious dress while engaged in the performance of duties as a teacher." But Title VII of the Civil Rights Act, a federal law passed in 1964, said otherwise. That law, as the Department of Justice argued in its letter to the Oregon Attorney General, guarantees that no educator may be denied the right to wear items mandated by their religious beliefs, observance or practice. That's why when Governor Kulongoski signed HB 3686 this past April 1 in Salem—surrounded by citizens of all religious faiths—he was not only repealing his state's 87-year-old ban on teachers wearing religious garb, he was fulfilling the promise of the First Amendment and honoring the

simple but powerful idea carved into the façade of our nation's highest court: "equal justice under law.")

349. 2010 Report on the Application of the European Union Charter of Fundamental Rights, Brussels, 30.3.2011 SEC (2011) 396 final: 1–55. (European Commission Staff Working Document accompanying document to the report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.)

350. "Factsheet: [Twelve] Cases before the European Court of Human Rights concerning the right to wear religious dress and display religious symbols." European Court of Human Rights, November 2012.

351. "Beyond the Pledge of Allegiance: Hostility to Religious Expression in the Public Square." Hearing before the Subcommittee on the Constitution, Civil Rights and Property of the Committee on the Judiciary, United States Senate, June 8, 2014, S. Hrg. 108–707, Serial No. J–108–80, Washington, DC.

352. U.S. House of Representatives, 113th Cong. (2015). Rules of the House of Representatives, Rule XVII §5, House Doc. No. 113-181, p. 771–72. The footnote clarifies that "Originally Members wore their hats during sessions, as in [British] Parliament, and the custom was not abolished until 1837 (II, 1136). The prohibition against Members wearing hats in the Chamber while the House is in session includes doffing a hat in tribute to a group (Speaker Foley, June 22, 1993, p. 13569; June 10, 1996, p. 13560) and the donning of a hood (Mar. 28, 2012, p. l)." Approved by a mostly party-line vote of 234–197, the text of H. Res. 6 reads, "(x) RELIGIOUS HEADDRESS.—In clause 5 of rule 11 XVII, insert ''non-religious headdress or'' before ''a hat.'' The new rule reads as follows, "During the session of the House, a Member, Delegate, or Resident Commissioner may not wear nonreligious headdress or a hat or remain by the Clerk's desk during the call of the roll or the counting of ballots. A person on the floor of the House may not smoke or use a mobile electronic device that impairs decorum." (H. Res. 6 - Adopting the Rules of the House of Representatives for the One Hundred Sixteenth Congress, and for other purposes, 116th Congress, 1st Session, p. 14 line 11).

353. The U.S. Department of Education's Stop Bullying curriculum explicitly classifies religious minorities who wear garb as targets for bullying. "For example, Muslim girls who wear hijabs (head scarves), Sikh boys who wear patka or dastaar (turbans), and Jewish boys who wear yarmulkes report being targeted because of these visible symbols of their religions. These items are sometimes used as tools to bully Muslim, Sikh, and Jewish youth when they are forcefully removed by others. Several reports also indicate a rise in anti-Muslim and anti-Sikh bullying over the past decade that may have roots in a perceived association of their religious heritage and terrorism. When bullying based on religion is severe, pervasive, or persistent, the Department of Justice's Civil Rights Division may be able to intervene under Title IV of the Civil Rights Act. Often religious harassment is not based on the religion itself but on shared ethnic characteristics. When harassment is based on shared ethnic characteristics, the Department of Education's Office for Civil Rights may be able to intervene under

Title VI of the Civil Rights Act." Accessed on January 1, 2017 at www.stopbullying.gov.

354. Senator Jim Scheer, Speaker of the Legislature, presiding. Transcript of the Floor Debate on LB62 – Eliminate Prohibition on Teachers Wearing Religious Garb. Transcriber's Office of the Nebraska Legislature, January 30, 2017.

355. History, Art & Archives, U.S. House of Representatives, "The Ban on Hats on the House Floor," December 26, 2018.

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436. "Catholic Nuns May Be Employed." *The Washington Times*, August 21, 1894.

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441. "To Preclude Nuns as Teachers: Mr. Smith, of Philadelphia, introduced a bill in the house last night to make it a misdemeanor for any public school teacher to wear a religious garb. Penalties are provided in heavy fines and finally disqualifications as teachers." Periodical unknown, January 10, 1895.

442. "Religious Garb in Public Schools: Discussion in the Pennsylvania House of Bill to Regulate the Attire of All the Teachers of the State." *The New York Times*, March 6, 1895.

443. "Teachers Can't Wear Religious Garb: The house passed finally, by a vote of 151 to 26 the bill prohibiting the wearing of any religious insignia or garb by teachers in the public schools. The big guns of the patriotic orders were conspicuously on the floor, while the galleries were filled with interested spectators." Periodical unknown. Harrisburg, PA, March 12, 1895.

444. "'Religious Garb Bill': Bishop McGovern of Harrisburg on the Religious Garb Bill Passed by Representatives, 'Vicious legislation aimed at Catholics,' by a prejudice that has the force of organize law, Catholics are discriminated against." Periodical unknown, March 14, 1895.

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448. "School and Church: The Pennsylvania house of representatives recently, by a vote of 151 yeas to 26 nays, passed the bill making it a misdemeanor for a public school teacher to wear any religious garb." *Maine Farmer*, May 9, 1895.

449. "Game of See-Saw at Harrisburg: Religious Garb Bill Passed After a Long Debate in the Senate." Periodical unknown. Harrisburg, PA, May 28, 1895.

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455. "No Religious Garb for Teacher." *Owosso Times*, Owosso, Michigan, June 5, 1895.

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