

# 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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## Overview

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*The First Amendment and State Bans on Teachers' Religious Garb* examines the 125-year history of regulating public schoolteachers' religious garb in the United States. The research gives special attention to Pennsylvania's current anti-religious-garb statute—the first and last of its kind in the United States. The ban was enacted by the state's General Assembly in reaction to the 1894 Pennsylvania Supreme Court ruling that permitted Catholic nuns to wear religious garb (habits) while teaching in public schools; an entirely new bench of the supreme court justices in Pennsylvania affirmed the legislature's authority and upheld the anti-religious garb ban in 1910. Twenty-two states, by the end of World War II, prohibited public schoolteachers from wearing religious garb in the classroom either through state statutes, a public ballot initiative, or administrative regulations. For instance, Nebraska's anti-religious-garb statute, a replica of Pennsylvania's statutory ban, was first enacted in 1919 and repealed in 2017. The dissertation uses Pennsylvania's anti-religious-garb statute, the last remaining law of its kind, to legally define religious garb as "any dress, mark, emblem or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect or denomination."

This research project analyzes these historic origins and subsequent developments in relation to contemporary legal challenges to state anti-religious-garb laws in the United States that have recently been used to deny employment to Catholic, Muslim, and Sikh public schoolteachers. In doing so, the dissertation demonstrates that the current dilemma over whether teachers can wear religious garb in the public classroom in Pennsylvania is neither an isolated problem nor unique to one time and place. It is a historical quandary with contemporary significance—domestically and globally. The dissertation situates this conflict in the United States within the current discussion in the European Union and the United Nations about government bans on religious garb in public schools. The dissertation examines how the question of government regulation of religious garb worn by both teachers and students in public schools has recently erupted in six countries and in the European Court of Human Rights. These cases illustrate how the historic conflicts in the United States mirror the current legal disputes around the globe today. By design, this research project is interdisciplinary.

This study makes ten substantive research contributions, as summarized here:

### 1. *Advances Education Research*

First, this study tells an important story about what religious-garb-wearing public schoolteachers have faced over the last 125-years and foreshadows the conflicts to come. The findings contributes to the question of public officials' religious liberty rights and the constitutional limits of the states' power to regulate religion. The study contributes to educational questions about students and their exposure to religious differences and reveals new insights about the purpose of public education in a multi-religious society. Future education researchers may find helpful the legal research methods developed and introduced in this study. The five-step process methodology includes: (1) synthesizing judicial tests, in order to narrow the analysis to distinct legal causes of action; (2) collecting primary and secondary documents to determine the historical fact patterns in the case law; (3) articulating narrow legal research questions; (4) setting factual parameters; and (5) conducting a legal analysis using legal methods such as deductive analysis, rule-based reasoning techniques, analogical reasoning strategies, and identifying logic fallacies. Given the literature's alarming absence of a clear research methodology for non-lawyers looking to conduct research on education law, this five-step research process, as introduced and applied in this study, substantially contributes to the field.

### 2. *Advances Religious Studies*

The research also contributes to the academic study of religion by illustrating how state legislatures have defined and how courts have interpreted the legal definitions of "religious garb." These definitions revealed inconsistencies and biases about the nature of religion and people's "free exercise thereof." The study sheds light on false assumptions that lawmakers and courts have about students' "impressionability"—how they perceive religion in public places and understand how people form their religious or non-religious identities, including their own. In this context, this study serves as a case study for psychological research on religious identity formation, the cultural-studies research on lived religion, and the education research that illustrates how the civic competency of religious literacy is a compelling pedagogical objective.

### 3. *Illustrates the Importance of Reporting on Religion*

The examination of this 125-year-old history contributes to the field of journalism, in that the study illustrated how news media reported on law and religion in the wake of these controversies. Some of the reports were descriptive in nature—historically documenting the results of legislative initiatives—whereas others were investigative. These articles, spanning thirteen decades, further affirmed this subject's importance by archiving various political and legal conflicts. The consistency with which the media reported on these developments suggests that this is a *perennial and unsettled* issue that captures the public's attention, generation after generation. This provides the field of journalism education with a case study in how reporting on religion may have contributed to the public's understanding of both law and religion.

### 4. *Fills the Gap & Corrected the Record*

The study also fills a series of gaps in the literature. It verifies the accuracy of previous studies and corrects the record on how many states regulated public schoolteachers' religious garb. It classifies them into state statutory bans and administrative regulatory actions. It illustrates how these laws were enacted by members of state

legislatures, introduced as administrative bans by superintendents and school boards, and, in one case, enacted through a statewide public referendum. These findings demonstrated how pervasive the attempts were to prohibit public schoolteachers from wearing religious garb, specifically those perceived to be “suspect religious minorities of the day.”

#### 5. *Enumerates the Legal Causes of Action*

The study documents the complex lineage of case law regarding the regulation of teachers' religious garb. It demonstrates that there is no uniformity in legal reasoning among state or federal courts because of the *thirty-two different causes of action* used by plaintiffs to challenge anti-religious-garb laws and regulations. The only consistent pattern is the fact that public schoolteachers won their cases in states that did not have an anti-religious-garb statute at the time, whereas this study affirms that they consistently failed when challenging states whose legislatures had enacted statutory bans. The research also distinguishes two types of cases that were otherwise conflated in the literature—cases that challenged schools and cases brought by teachers. Those in the first set were often filed by taxpayers who questioned the church/state relationship after a public school-district acquired a private school or authorized the use of public funds for private religious schools. In these cases, the evidence of teachers wearing religious garb was presented with a plethora of other facts used to test an Establishment Clause claim. The study explains why these cases were distinct from the narrow set of legal challenges involving actual public schools that happened to employ religious-garb-wearing teachers.

#### 6. *Connects Historical & Contemporary Conflicts*

The study demonstrates that scholars considered the legal question of anti-religious-garb laws worth studying not only because of its historical significance but also because of the continuation of these conflicts today. In making these connections, the study reveals systematic patterns of religious discrimination in the judicial system over a 125-year period. The research also proved that it is possible to resolve the longstanding legal questions as to the legality of Pennsylvania's current garb statutes under the First Amendment to the U.S. Constitution.

#### 7. *Documents Anti-Catholicism in the Law*

The study also provided additional historical evidence of local and state governments using the rule of law to regulate Catholics. This meaningfully contributes to the body of literature on the conflicts between Protestants and Catholics in the United States.

#### 8. *Introduces New Data about the Smith Effect*

The study brings a new understanding to the effect that the *Smith* decision has had on the judicial system.<sup>1</sup> It reveals that several contemporary cases involving African Hebrew Israelite, Muslim, and Sikh teachers were absorbed in the widespread confusion about how to apply *Smith*. The research shows the influence that federal and state *religious freedom restoration acts* had on later Free Exercise cases. These findings further explain why, to date,

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<sup>1</sup> The *Smith* standard, also referred to as the *general applicability* test, requires that government regulations must be “neutral and generally applicable” and cannot “target religious conduct for distinctive treatment.” This refers to the highly disputed case, *Employment Division v. Smith* (1990), in which the U.S. Supreme Court held that Native Americans who used peyote for sacramental purposes could not receive an exemption from general laws banning the use of narcotics. The *Smith* court limited the previously uncontroversial *strict scrutiny* standard to laws that are not neutral and generally applicable.

no court has used *strict scrutiny*<sup>2</sup> to test the constitutionality of a state ban on public schoolteachers' religious garb.

#### 9. *Demonstrates the Interlocking Nature of the Religion Clauses*

This study also illustrates the interlocking nature of the religion clauses of the First Amendment. When the court turns to the state to ask about purposes and effects of the statute, the teachers reply with Free Exercise claims; when the court asks teachers whether their religion is substantially burdened, the state replies with Establishment claims to articulate their compelling state interests. The inquiry into the constitutionality of the anti-religious-garb statute provides an illustrative example of how the First Amendment makes inseparable two principles for the one right to religious freedom—the principles of *no establishment* and *free exercise* of religion. The *free exercise* principle serves as a constitutional platform to uplift the fundamental and inalienable right to *liberty of conscience* for individuals and for groups, while the principle of *no establishment* shields this liberty from state interference. This study gives equal treatment to both the principle of *free exercise* of religion and the guarantee to *no establishment* of religion. In doing so, this study illustrates how both of these constitutional principles contribute to America's bold new experiment of governing a nation of religious minorities.

#### 10. *Connects Domestic and International Conflicts*

Finally, the study connects the domestic legal conflicts overregulating religious garb to comparable conflicts around the world. It situated the historical and contemporary conflicts about legal bans on religious garb in public schools in the United States, within current discussions in the United Nations, the European Union, and Canada. The study reviews how the question of government regulation of religious garb worn by both teachers and students in public schools has recently erupted in six countries and in the European Court of Human Rights. The analysis draws upon research that showed that at least thirty-two countries throughout the world currently prohibit some forms of private acts of devotion in public places. The study pulls from research that illustrates that countries with high restrictions on religion are more likely to experience greater increases in social hostility and violence. This study connects these global trends to historic conflict over public schoolteacher's religious garb in the United States.

Taken together, the study's ten findings significantly contribute to the interdisciplinary study of law, education, and religion. Most importantly, it provides a legal blueprint for public schools to build democratic laboratories where fundamental constitutional rights are equally advanced for people of all religions and none.

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<sup>2</sup> *Strict scrutiny* is a three-part judicial standard used to evaluate Free Exercise cases. Judges first turn to the plaintiffs to determine whether (1) their constitutional right to free exercise of religion was *substantially burdened*, regardless of whether that burden is incidental or fundamental, indirect or direct. If so, the court turns to the state to examine whether lawmakers had a (2) *compelling government interest* to justify the burden, and then examines whether the legislature (3) *narrowly tailored* the law to achieve that interest through the *least restrictive* means possible. This study refers to this three-part test as the *Sherbert* standard because of the U.S. Supreme Court's application of these steps in the landmark case *Sherbert v. Verner* (1963).