Court Rules for Deciding Religion Cases

Establishment Test:
(1971) Lemon Test:
1. The statute must have a secular legislative purpose
2. It must neither advance nor inhibit religion
3. It must not foster an excessive government entanglement with religion

Free Exercise Test:
(1972) Yoder:
1. Has the state or government action created a burden on the free exercise of religion?
2. Is there a sufficiently compelling state interest to justify this infringement of liberty?
3. Has the state used the least intrusive means possible to achieve the legitimate goal of the state?

Related principles for Free Exercise
Cantwell v. Connecticut (1940): "The [freedom to believe] is absolute but, . . . the [freedom to act] cannot be [absolute]. Conduct remains subject to regulation for the protection of society."

Smith (1990): A law that burdens religious practice need not be justified by a compelling governmental interest if it is neutral and of general applicability.

Church of the Lukumi Babalu Aye v. City of Hialeah (1993): Laws burdening religious practice that are not neutrally applied to all citizens must undergo the most rigorous scrutiny test:
- Must advance compelling state interests of the highest order
- Must be least intrusive means possible to enforce public interest

Objectives:

1. Students will evaluate the merits of each side in a series of pivotal religious liberty court cases
2. Students will synthesize the court rulings in the various cases to form the general principles used by the court in deciding religious liberty cases.

Lesson Sequence

Day 1

Overview:

Students will play the role of Supreme Court justices in deciding two pivotal cases that raise questions about the religious liberty granted to citizens under the First Amendment. In each case the major issue before the court is whose desires should have priority: the the citizens in the majority or a minority group whose beliefs differ from the majority.

Procedures:

Divide students into discussion groups of 3-4. Students will discuss each case and answer its focus questions. One student will be selected by the group to speak for it after each question with the speaker role alternating for each question.

Following small group deliberations, the teacher will lead the whole class in a discussion:

1. Speakers report their group's decision
2. The teacher asks groups to support their decision and encourages dialogue between groups about the best decision
3. The teacher reveals and explains the Court's decision and reasoning

Closure

Summarize the key conclusions to be drawn from the discussion

1. The Murray case addressed the question of Establishment of religion. Court decisions like Murray's led to the Lemon Test for determining if the government was overly involved in matters of religion. The key was that the government remain neutral and neither favor nor penalize any faith.
2. The Yoder case addressed the question of Free Exercise of religion. In Yoder the court established a test for Free Exercise that has been used since.

Inform students that on the next day they will look at 3 other cases as judges. They should apply the tests learned from these cases in trying to determine how the Court should decide the new cases.

Day 2

Procedures:

Same Response Group procedures as Day 1. As teacher questions students' reasoning, she refers students back to the Court Tests to encourage their inclusion in their thinking.

Closure:

Examine the five cases as a whole and summarize what limits the Court has placed on religious liberty for the majority and what limits it has placed on religious liberty for the minority. Review the key standards that the Court uses in determining First Amendment religious protections.