

The First Amendment and Religious Liberty

“Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof . . .”

- I. The framing and ratification of the First Amendment’s provision regarding religious liberty.
 - A. The colonial antecedents: the historical development of religious liberty in the colonies.
 - B. The Revolutionary and Formative Years: the Articles of Confederation, the Constitutional Convention, the ratification process, and the development of declarations of rights in the states.
 - C. The Framing and Ratifying of the First Amendment and the Bill of Rights: this section will examine the actual framing and ratifying of the First Amendment. While relying on the sources noted above, this section will focus more directly on the life and thought of James Madison, including a discussion of parallels between the thought of Madison and the 134th Section of the Doctrine and Covenants.

Primary Sources: John Witte, Jr., *The Essential Rights and Liberties of Religion in the American Constitutional Experience*, 71 Notre Dame L. Rev. 371 (1996); Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409 (1990); Rodney K. Smith, *Getting Off on the Wrong Foot and Back on Again: A Reexamination of the History of the Framing of the First Amendment and a Critique of the Reynolds and Everson Decisions*, 20 Wake For. L. Rev. 569 (1984); Rodney K. Smith, *James Madison, John Witherspoon, and Oliver Cowdery: The First Amendment and the 134th Section of the Doctrine and Covenants*, 2003 BYU L. Rev. 891; The Constitution of the United States as an Inspired Document (LDS Perspectives on Law, Lesson Plans); David N. Mayer, THE CONSTITUTIONAL THOUGHT OF THOMAS JEFFERSON (1994)

- II. The development of religious liberty in the United States.
 - A. Religious liberty in the early years of the republic: a brief discussion regarding the development of religious liberty in the early through mid-19th century (materials relied upon will include Story’s Commentaries and other treatises and cases from that period).
 - B. Religious liberty in the late 19th century (the Polygamy cases and their departure from the religious liberty principles): this section will examine the three polygamy cases – Reynolds v. U.S., 98 U.S. 143 (1879); Davis v. Beason, 133 U.S. 333 (1890); and The Late Corporation of Latter-Day Saints v. U.S., 136 U.S. 1 (1890) -- and their continuing doctrinal impact on religious liberty in the United States.
 - C. Religious liberty in the Courts in the 20th century.
 1. “Laws respecting an establishment of religion”: cases/doctrine.
 2. “Free exercise [of religion] . . .”: the rise and fall of the compelling interest test (Wisconsin v. Yoder, 406 U.S. 205 (1972); Employment Division v. Smith, 494 U.S. 872 (1990); Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993); Boerne, City of v. Flores, 521 U.S. 507 (1997); testimony of Elder Dallin H. Oaks, in support of the Religious Freedom Restoration Act.
 - D. Religious liberty in the 21st century – our responsibility.