Later cases, however, established that religiously grounded conduct is not always outside the protection of the Free Exercise Clause.[262] Instead, the Court began to balance the secular interest asserted by the government against the claim of religious liberty asserted by the person affected. Only if a governmental interest was found to be "compelling" and if no alternative forms of regulation would serve that interest was the claimant required to yield.[263] Thus, although freedom to engage in religious practices was not absolute, legislation infringing on these practices were afford considerable protection under this "strict scrutiny" standard.

Then, the Court began a process of narrowing the application of the compelling interest test, with a corresponding constriction of the freedom to engage in religiously motivated conduct. First, the Court purporting to apply strict scrutiny, would upheld the governmental action anyhow.[264] Next, the Court held that the strict scrutiny test was inappropriate in the contexts of military and prison discipline.[265] Finally, the Court ruled in *Employment Division v. Smith* that "if prohibiting the exercise of religion . . . is not the object . . . but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended." [266]

In *Smith*, the Court concluded, the Free Exercise Clause did not prohibit a state from applying generally applicable criminal penalties to the use of peyote in a religious ceremony, or from denying

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[262] Sherbert v. Verner, 374 U.S. 398 (1963); Wisconsin v. Yoder, 406 U.S. 205 (1972); *cf.* Braunfeld v. Brown, 366 U.S. 599, 607 (1961): "[I]f the State regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the State's secular goals, the statute is valid despite its indirect burden on religious observance unless the State may accomplish its purpose by means which do not impose such a burden."

[263] Sherbert v. Verner, 374 U.S. 398, 403, 406–09 (1963). In Wisconsin v. Yoder, 406 U.S. 205 (1972), the Court recognized compelling state interests in provision of public education, but found insufficient evidence that those interests (preparing children for citizenship and for self-reliance) would be furthered by requiring Amish children to attend public schools beyond the eighth grade. Instead, the evidence showed that the Amish system of vocational education prepared their children for life in their self-sufficient communities.

[264] United States v. Lee, 455 U.S. 252 (1982) (holding mandatory participation in the Social Security system by an Amish employer religiously opposed to such social welfare benefits to be "indispensable" to the fiscal vitality of the system); Bob Jones Univ. v. United States, 461 U.S. 754 (1983) (holding government's interest in eradicating racial discrimination in education to outweigh the religious interest of a private college whose racial discrimination was founded on religious beliefs); and Hernandez v. Commissioner, 490 U.S. 680 (1989) (holding that government has a compelling interest in maintaining a uniform tax system "free of 'myriad exceptions flowing from a wide variety of religious beliefs'")

[265] Goldman v. Weinberger, 475 U.S. 503 (1986); O'Lone v. Estate of Shabazz, 482 U.S. 342 (1987).

[266] 494 U.S. 872, 878 (1990).