

行政院國家科學委員會專題研究計畫成果報告

美國恢復宗教自由法與宗教自由行使條款司法解釋的爭議

Controversies Surrounding the Judicial Interpretation of the Religious Freedom Restoration Act and the Free Exercise Clause

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一、中文摘要

本研究以最高法院在 *Boerne v. Flores* 一案所作的判決為基礎，研究美國國會於一九九三年所制定通過的「恢復宗教自由法」(Religious Freedom Restoration Act, 簡稱 RFRA) 為何與美國憲法牴觸，並探討美國憲法第一條修正案中保障宗教自由的「自由行使條款」(free exercise clause) 之各項爭議。

關鍵詞：自由行使條款、恢復宗教自由法、重大而迫切的國家利益、約束最少的方式

Abstract:

This research, based on the decision made by the U.S. Supreme Court in *Boerne v. Flores*, attempts to analyze why the Religious Freedom Restoration Act enacted by Congress in 1993 is unconstitutional. It also aims to clarify some of the controversies surrounding the “free exercise clause” of the First Amendment of the American Constitution.

Keywords: Free Exercise Clause, Religious Freedom Restoration Act, compelling state interests, least restrictive means

二、緣由與目的

美國最高法院在一九九九年的 *Employment Division of Oregon v. Smith* 一案中，裁定個人不得因宗教信仰的緣故，免於遵守州方所訂定的法律。這樣一個放棄由一九六三年在 *Sherbert v. Verner* 案所建立以「重大而迫切的國家利益」(compelling state interests) 做為「宗教自由行使」檢驗標準的判決，引起美國宗教界及支持宗教自由的憲法學者和相關人士的強烈不滿，美國國會遂於同年制定「恢復宗教自由法」，企圖迴避最高法院的裁決，以確保個人「宗教自由行使」的權利不受破壞。

雖然此案受到宗教、法律、及政治界相當程度的支持，但許多州政府卻反對這個保護宗教自由的法律，認為它造成政府在執行法律上的障礙與困擾。此外，不少憲法學者也懷疑國會這種想要迴避最高法院判決及司法至上的做法，將會與憲法牴觸。

誠如這些學者所逆料先者，最高法院在一九九七年的 *Boerne v. Flores* 一案中，宣布 RFRA 違憲。這項判決除了對「自由行使條款」造成衝擊外，也會對聯邦法律納入州的層次有深遠的影響，更重要的是當國會不滿意最高法院對憲法的解釋時，除了起

草憲法修正案，將其通過成為增修條文之外，是否尚有別的途徑，可以迴避最高法院的裁定？

本計畫追溯最高法院為何捨棄「重大而迫切的國家利益」檢驗標準中的「約束最少的方式」(least restrictive means)，使信奉非主流宗教(minority religion)教徒之宗教自由行使權利，受到嚴重的威脅。基於此，本研究所探討將由「恢復宗教自由法」的背景、制定經過、及其法理基礎與合憲程度著手。此外，我們也對最高法院宣布 RFRA 與憲法牴觸的法理，以及它對非主流宗教所造成的衝擊，有所分析。最後，我們所深入探討的是最高法院此項決定對憲法中的聯邦與州權限之規範、聯邦人權法案納入州的層次、及所謂的雙重主權問題，所帶來的影響與新的解釋。

三、結果與討論

RFRA 是一個受到廣大民意及宗教與人民權利團體支持、並獲得許多憲法學者專家及包括柯林頓總統在內的行政部門的背書、由國會已壓倒性比數通過的保障宗教自由法，但是最高法院卻沒有受到影響，宣布這個在憲政運作的分權方面引起爭議的法律與憲法牴觸。

基本上，最高法院對此案最重要的判決有三個部份：(一)增修條文第十四條第五項「國會有制定適當法律，以執行本條之權」的意涵，乃是國會有權制定彌補美國公民權的法律，但是卻沒有決定這些公民權的權力；(二)解釋憲法的權力不在立法部門，而是在司法部門；及(三)聯邦政府不應任意通過法律，並要求州政府配合執行，這是違反聯邦主義中的中央與地方分權的原則。

在第一部份有關美國國會該如何「執行」增修條文第十四條所賦與人民的公民權，就是聯邦憲法所保障、並經此條文納入州層次的公民權，最高法院強調的是國會有「彌補」(remedial)，而不是決定這些公民權「實質」意涵(substantive)的權力。由於增修條文第十四條的目的原是要要求「任何州不得制定或執行任何剝奪美國公民特權或豁免權的法律」，因此最高法院對國會這種擴大公民權的做法，不表同意。但是美國憲法第一條增修條文的兩個宗教自由條款本身就是比較抽象的定義，極容易產生不同的解釋，因此國會的認知或許會和最高法院的認知有所差距。至於 RFRA 是否不具彌補作用，也未必能遽下結論，因為引起通過此法的正是長期受到歧視的美國原住民印第安人之宗教信仰。

美國國會在制定 RFRA 時，嚴厲譴責最高法院在 *Smith* 一案中的判決，並且將最高法院的功能由原本解釋憲法降格到釐清曖昧的語言，當然是讓司法諸公大為不悅，因此在此案中最高法院特別強調「司法至上」的原則，說明國會無權解釋憲法，並斥責其迫壞三權分立的行為。

由於此案是以六對三票的多數通過，支持此案的除了傳統上比較屬於保守陣營的幾位大法官外，尚有被視為是自由陣營的兩位大法官，因此即使有心人士想要翻案，在短期內將很難有機會成功。

四、計畫成果自評

美國最高法院的「違憲審查權」(judicial review) 一直是美國憲政三權分立及制衡的特色，它每年對憲法解釋的案例，多達數十個，甚至上百。基於此，任何一個憲法上的爭議，或

是案例本身、或是與其法理相關的類似案例，最終都會上達最高法院。近二、三十年來，許多引起爭議的美國憲法案例都是關乎人民的基本權利及自由。

由於 *City of Boerne v. Flores* 是個相當重要的案例，因此本人在一九九八年初提出此研究計畫時，就預知有關的文獻將會相當豐富。果然，在一年後，威廉·瑪利學院所發行的法學期刊 *William and Mary Law Review* 就為此案出了專輯，其中所涵蓋的相關議題，如聯邦主義、司法至上、國會擴權等，均有憲法學者專家的寶貴意見及討論，可以說是相當值得參考的文獻資料。

此外，國會在此案的判決確立後，又開始著手一個新的「宗教自由法」，只不過至今尚未獲得足夠的支持，還無法投票通過。但是如果因為最高法院作此判決後，造成了許多人民宗教「自由行使」權利受到剝損引起民怨時，或許此案能重新得到動力與支持而成為新的法律。屆時，最高法院又得對它是否違憲作出新的解釋，使國會與最高法院繼續在此議題上較力。

本計畫之進度與預期的結果相當接近，讓個人對這方面研究方向的掌握深具信心，也激發個人未來在類似議題上繼續作研究。

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