Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF BOERNE *v.* FLORES, ARCHBISHOP OF SAN ANTONIO, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 95–2074. Argued February 19, 1997– Decided June 25, 1997.

Respondent, the Catholic Archbishop of San Antonio, applied for a building permit to enlarge a church in Boerne, Texas. When local zoning authorities denied the permit, relying on an ordinance governing historic preservation in a district which, they argued, included the church, the Archbishop brought this suit challenging the permit denial under, *inter alia,* the Religious Freedom Restoration Act of 1993 (RFRA). The District Court concluded that by enacting RFRA Congress exceeded the scope of its enforcement power under §5 of the Fourteenth Amendment. The court certified its order for interlocutory appeal, and the Fifth Circuit reversed, finding RFRA to be constitutional.

Held: RFRA exceeds Congress' power. Pp. 2–27.

(a) Congress enacted RFRA in direct response to *Employment Div., Dept. of Human Resources of Ore.* v. *Smith,* 494 U. S. 872, in which the Court upheld against a free exercise challenge a state law of general applicability criminalizing peyote use, as applied to deny unemployment benefits to Native American Church members who lost their jobs because of such use. In so ruling, the Court declined to apply the balancing test of *Sherbert* v. *Verner,* 374 U. S. 398, which asks whether the law at issue substantially burdens a religious practice and, if so, whether the burden is justified by a compelling government interest. RFRA prohibits "[g]overnment" from "substantially burden[ing]" a person's exercise of religion even if the burden results from a rule of general applicability unless the government can demonstrate the burden "(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that . . . interest." 42 U. S. C. §2000bb–1. RFRA's mandate applies to any

branch of Federal or State Government, to all officials, and to other persons acting under color of law. §2000bb-2(1). Its universal coverage includes "all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after [RFRA's enactment]." §2000bb-3(a). Pp. 2–6.

(b) In imposing RFRA's requirements on the States, Congress relied on the Fourteenth Amendment, which, *inter alia,* guarantees that no State shall make or enforce any law depriving any person of "life, liberty, or property, without due process of law," or denying any person the "equal protection of the laws," §1, and empowers Congress "to enforce" those guarantees by "appropriate legislation," §5. Respondent and the United States as *amicus* contend that RFRA is permissible enforcement legislation under §5. Although Congress certainly can enact legislation enforcing the constitutional right to the free exercise of religion, see, *e.g., Cantwell* v. *Connecticut,* 310 U. S. 296, 303, its §5 power "to enforce" is only preventive or "remedial," *South Carolina* v. *Katzenbach,* 383 U. S. 301, 326. The Amendment's design and §5's text are inconsistent with any suggestion that Congress has the power to decree the substance of the Amendment's restrictions on the States. Legislation which alters the Free Exercise Clause's meaning cannot be said to be enforcing the Clause. Congress does not enforce a constitutional right by changing what the right is. While the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies, the distinction exists and must be observed. There must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end. Lacking such a connection, legislation may become substantive in operation and effect. The need to distinguish between remedy and substance is supported by the Fourteenth Amendment's history and this Court's case law, see, *e.g., Civil Rights Cases,* 109 U. S. 3, 13–14, 15; *Oregon* v. *Mitchell,* 400 U. S. 112, 209, 296. The Amendment's design has proved significant also in maintaining the traditional separation of powers between Congress and the Judiciary, depriving Congress of any power to interpret and elaborate on its meaning by conferring self-executing substantive rights against the States, cf. *id.,* at 325, and thereby leaving the interpretive power with the Judiciary. Pp. 6–19.

(c) RFRA is not a proper exercise of Congress' §5 enforcement power because it contradicts vital principles necessary to maintain separation of powers and the federal-state balance. An instructive comparison may be drawn between RFRA and the Voting Rights Act of 1965, provisions of which were upheld in *Katzenbach, supra,* and

subsequent voting rights cases. In contrast to the record of widespread and persisting racial discrimination which confronted Congress and the Judiciary in those cases, RFRA's legislative record lacks examples of any instances of generally applicable laws passed because of religious bigotry in the past 40 years. Rather, the emphasis of the RFRA hearings was on laws like the one at issue that place incidental burdens on religion. It is difficult to maintain that such laws are based on animus or hostility to the burdened religious practices or that they indicate some widespread pattern of religious discrimination in this country. RFRA's most serious shortcoming, however, lies in the fact that it is so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior. It appears, instead, to attempt a substantive change in constitutional protections, proscribing state conduct that the Fourteenth Amendment itself does not prohibit. Its sweeping coverage ensures its intrusion at every level of government, displacing laws and prohibiting official actions of almost every description and regardless of subject matter. Its restrictions apply to every government agency and official, §2000bb–2(1), and to all statutory or other law, whether adopted before or after its enactment, §2000bb–3(a). It has no termination date or termination mechanism. Any law is subject to challenge at any time by any individual who claims a substantial burden on his or her free exercise of religion. Such a claim will often be difficult to contest. See *Smith, supra,* at 887. Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law. 494 U. S., at 888. Furthermore, the least restrictive means requirement was not used in the pre-*Smith* jurisprudence RFRA purported to codify. All told, RFRA is a considerable congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of their citizens, and is not designed to identify and counteract state laws likely to be unconstitutional because of their treatment of religion. Pp. 19–27.

73 F. 3d 1352, reversed.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, THOMAS, and GINSBURG, JJ., joined, and in all but Part III–A–1 of which SCALIA, J., joined. STEVENS, J., filed a concurring opinion. SCALIA, J., filed an opinion concurring in part, in which STEVENS, J., joined. O'CONNOR, J., filed a dissenting opinion, in which BREYER, J., joined except as to a portion of Part I. SOUTER, J., and BREYER, J., filed dissenting opinions.