

# How does the First Amendment Protect Freedom of Religion?

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# NJ Student Learning Standards for Social Studies (2020)

- 6.1.8.CivicsPI.3.b: Evaluate the effectiveness of the fundamental principles of the Constitution (i.e., consent of the governed, rule of law, federalism, limited government, separation of powers, checks and balances, and individual rights) in establishing a federal government that allows for growth and change over time.
- 6.1.8.CivicsPI.3.c: Distinguish the powers and responsibilities of citizens, political parties, interest groups, and the media in a variety of governmental and nongovernmental contexts.
- 6.3.8.CivicsDP.2: Make a claim based on evidence to determine the extent and the limitations of First Amendment rights (e.g., U.S. Supreme Court decisions).
- 6.3.8.CivicsPR.5: Engage in simulated democratic processes (e.g., legislative hearings, judicial proceedings, elections) to understand how conflicting points of view are addressed in a democratic society.

# First Amendment

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

# Why was religious freedom so important to the Founders?

- After the Reformation, there were religious wars and long controversies over religious toleration in the 16<sup>th</sup> and 17<sup>th</sup> centuries
- The Anglican church was the state religion in England and those dissenting or disagreeing with it were punished
- Many settlers (e.g., Quakers) came to the American colonies for religious freedom
- Yet, few early English colonists permitted religious freedom (See, e.g., first-generation Massachusetts Puritans, New Jersey's 1776 Constitution which protected only Protestants)
- By the time of the American Revolution, there was a great diversity of religions being practiced in the colonies and more acceptance of religious differences.
- Some religious extremists, such as William Rogers, wanted church and state separated to ensure purity of the church
- Others like James Madison and Thomas Jefferson were concerned about church influence on government and government interference with church.

# *The establishment clause*

- Congress may not institute an official religion (the basic idea of separation of church and state)
- Prohibits government actions that unduly favor one religion over another (forcing taxpayers to pay for a particular church)
- Also prohibits the government from unduly preferring religion over non-religion, or non-religion over religion

# *The establishment clause*

Recent cases have considered whether taxpayers' forced contribution (through state funding) to parochial schools violates the establishment clause.

The Supreme Court has permitted:

- public funds to be used for private religious school bussing, textbooks, and school vouchers
- university funds to be used to print and publish student religious groups' publications
- religious invocations to open legislative session

But has ruled as a violation of the establishment clause:

- for public schools to lead schoolchildren in prayer or Bible reading, even on an ostensibly voluntary basis
- state funding supplementing teacher salaries at religious schools

# *The establishment clause*

In an effort to determine whether government aid to religious institutions (usually parochial schools) is neutral or has the effect of advancing religion and thus would violate the establishment clause of the first amendment, the Supreme Court asks if the aid avoids the following:

- (1) results in governmental indoctrination,
- (2) defines its recipients by reference to religion, or
- (3) creates an excessive entanglement with government

The aid must meet all three criterion.

# *The establishment clause: What do you think?*

- A family sending their children to a private religious school where there is no public secondary school challenge a state tuition assistance program that prohibits the state from aiding students who attend secondary schools that are classified as sectarian.
- Does this violate the establishment clause of the First Amendment? Why or why not?

# *Free Exercise Clause*

- Government may not unfairly or unreasonably limit an individual's right to practice his or her religious beliefs.
- The Supreme Court cases ask:
  - whether the government action has a secular purpose
  - Whether a religious belief or practice is involved
  - Whether it imposes an undue burden on religious beliefs

# *Free Exercise Clause*

- Free exercise of religion under the First Amendment outweighed the State's interests in compelling school attendance beyond the eighth grade contrary to religious values of Quakers and Mennonites
- Held laws prohibiting religious practices, such as polygamy, peyote and animal sacrifice did not violate the free exercise clause because only conduct not beliefs were burdened.
- Protects the right of private parties to place religious displays on private property. However, the Court has ruled against overtly religious displays on public property, such as courthouses, schools.

# *The Free Exercise Clause: What do you think?*

- Two Catholic agencies hired by a city to provide foster care services to children in the city's care would not, based on their religious objection, accept same-sex couples as foster parents.
- Do you think that this violates the free exercise clause? Why or why not?

# *Free Exercise Clause*

- As with freedom of expression, 1<sup>st</sup> Am. not absolute about freedom of religion. The courts have held that state can interfere with religious practices if they are dangerous—polygamy, required vaccinations for children despite religious beliefs.
- Tax money for religious schools—books, services, etc. okay.
- Religion in public schools--equal use policy, prayer in school, prayer before or after school, prayer in locker room, etc.

# The need for religious tolerance

- The First Amendment recognizes the need for religious toleration or respect analogous to freedoms of press, assembly, and representative political institutions in a pluralistic society that includes many beliefs.
- Tolerance or respect for differing religious views is shown in the mandate against government establishment of religion. But what about individual tolerance?
- More current issues involve free exercise of religion, where one person's religious beliefs may interfere with the rights of others.
- The Supreme Court has made it clear that religious freedom is not absolute. How can we balance the individual rights of some that violate the religious beliefs of others?