

## FIRST AMENDMENT FREEDOMS - FREEDOM OF RELIGION

### THE ESTABLISHMENT CLAUSE

The Establishment Clause of the First Amendment prohibits the government from establishing an official church. Surprisingly, the First Amendment does not refer specifically to the "separation of church and state" or a "wall of separation." Those phrases evolved later, probably from letters written by Thomas Jefferson, but the First Amendment does prohibit the establishment of a government sponsored religion, such as the Anglican Church in England.

- No government "establishment of religion"
  - A "wall of separation" - Separation of church and state (words of Jefferson; it is implied within 1<sup>st</sup> amendment, but not stated – kind of like "fair trial")
- Basic meaning of establishment clause: government may not establish an official religion.
- *Lemon v. Kurtzman*: Established a 3-part test to determine if a statute or practice violates the establishment clause:
  - Non-Secular (Religious) Purpose
  - Excessive Entanglement with government
  - Advances or Inhibits Religion
  - If any is present, the statute or practice is unconstitutional
- Key rulings
  - *Engle v. Vitale, 1962*: no state-sponsored, recited prayer in public school. No teacher-led prayer.
  - No devotional Bible-reading in public school.
  - Moment of silence in public school is constitutional (as long as the purpose is not stated as being for prayer).
  - State laws may not prohibit the teaching of evolution in public school.
  - State laws that require the posting of the 10 Commandments in public school are unconstitutional.
  - Released time for students is constitutional. Allowing students to meet on campus for religious groups (such as Christian Club) is constitutional.
  - Christmas displays in town squares are constitutional as long as they include some secular content.
  - Constitutional forms of state aid to private schools: textbooks, classrooms, lunches, bus transportation.
  - Unconstitutional forms of state aid to private schools: field trips, teacher salaries, counseling services, remedial instruction.

### THE FREE EXERCISE CLAUSE

The free exercise clause does not allow any laws prohibiting the free exercise of religion. The courts have interpreted the 14<sup>th</sup> Amendment to extend the freedom to protection from state governments as well. Religions sometimes require actions that violate the rights of others or forbid actions that society thinks are necessary. The Supreme Court has never allowed religious freedom to be an excuse for any type of behavior. It has consistently ruled that people have the absolute right to believe what they want, but not necessarily the right to religious practices that may harm society.

- Provides freedom of worship
- Religious practices that have been restricted:
  - Polygamy
  - Prohibiting medical treatment to children based on religious beliefs
  - Not paying Social Security taxes (Amish)
  - Wearing a Jewish skullcap (Yarmulke) in the military
- Religious practices that have been permitted:
  - Not saluting flag in public school (Jehovah's Witnesses)
  - Not sending children to school past the 8<sup>th</sup> Grade (Amish)
  - Animal Sacrifice (Santeria case)
- Article 6 bans religious tests/oaths as qualifications to hold public office

### ESTABLISHMENT CLAUSE CASES

- *Engel v. Vitale (1962)* - Prohibited state-sponsored recitation of prayer in public schools by virtue of First Amendment's establishment clause and the 14<sup>th</sup> Amendment's due process clause; Warren Court's judicial activism.
- *Abington v. Schempp (1963)* - Prohibited devotional Bible reading in public schools by virtue of establishment clause and due process clause; Warren Court's judicial activism.
- *Lemon v. Kurtzman (1971)* - Established 3-part test to determine if establishment clause is violated: nonsecular purpose, advances/inhibits religion, excessive entanglement with government.
- *Wallace v. Jaffree (1985)* - Banned Alabama's moment of silence law that provided for a one-minute period of silence for meditation or voluntary prayer.
- *Zelman v. Simmons-Harris (2002)* - Public money can be used to send disadvantaged children to religious schools in tuition voucher programs.

### FREE EXERCISE CLAUSE CASES

- *Reynolds v. U.S. (1879)* - Religious duty (practice of polygamy) was not a suitable defense to a criminal indictment.
- *Oregon Employment Division v. Smith (1990)* - State can deny unemployment benefits to a worker fired for using illegal drugs for religious purposes.