

3.2 First Amendment: Freedom of Religion



ESSENTIALS

1. The First Amendment contains two (2) religion clauses: the establishment clause and the free exercise clause. Establishment protects us from a government advocating for one religion over another; and Free Exercise protects our own worship from government interference.
2. The Court in Engel v. Vitale (1962) made clear that “the wall of separation” between church and state applied to school activities, including mandatory school prayer.
3. Wisconsin v. Yoder (1972) bolstered the application of the Free Exercise clause when citizens religious rights conflict with state educational mandates.

1. What is the underlying idea of this cartoon?
2. INVESTIGATE: If one of our basic legal principles is a separation of church and state, a “wall of separation,” than how can we still have “God” in our pledge and on our money? What have the Courts said?

In the first significant Establishment clause case, the Court in Everson v. Board of Education (1947) argued:

The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between Church and State...

1. Summarize in your own words the court’s message.
2. Yet in the Everson case, the court allowed for a tax-funded public-school district to provide reimbursement to parents of both public and private school for transportation costs. How did this not violate “the wall of separation”? Do you agree?

The Court has had a number of noteworthy cases dealing with the religion clauses of the First Amendment. As much as we have given a “preferred position” to free speech, the religion clause cases always grab a lot of our attention. **Summarize the context and holdings in these critical religion clause cases – identify them as either ESTABLISHMENT or FREE EXERCISE cases:**

Employment Division v. Smith (1990)

Church of Lukumi Babalu Aye v. City of Hialeah (1993)

Zelman v. Simmons-Harris (2002)

Pleasant Grove City v. Summum (2009)

Christian Legal Society v. Martinez (2010)

Town of Greece v. Galloway (2014)

Burwell v. Hobby Lobby (2014)

Do you notice any trends? Do you think justice is blind when it comes to religion?

CONCEPT APPLICATION

Thomas Jefferson once described America’s new constitutional guarantees of disestablishment and free exercise of religion as a “fair” and “novel experiment” in religious freedom. These guarantees, set out in the new state and federal constitutions of 1776–1791, defied the millennium-old assumptions inherited from Western Europe—that one form of Christianity must be established in a community, and that the state must protect and support it against all other forms of faith. America would no longer suffer such governmental prescriptions and proscriptions of religion, Jefferson declared. All forms of Christianity had to stand on their own feet and on an equal footing with all other religions. Their survival and growth had to turn on the cogency of their word, not the coercion of the sword—on the faith of their members, not the force of the law.

America’s new experiment in granting religious freedom to all and religious establishments to none was designed to end what James Madison called the Western “career of intolerance.” “In most of the governments of the old world,” Madison declared, “the legal establishment of a particular religion and without or with very little toleration of others, makes a pact of the political & civil organization.” “[I]t was taken for granted that an exclusive & intolerant establishment was essential,” and “that Religion could not be preserved with-out the support of Government, nor Government be supported without an established Religion.”³ The main European powers that had colonized the Americas all had religious establishments—with Anglican establishments in England; Lutheran establishments in Germany and Scandinavia; Calvinist establishments in Scotland, the Netherlands, Switzerland, and Germany; and Catholic establishments in France, Spain, Portugal, and Italy.

Source: Witte, John, and T. Jeremy Gunn. *No Establishment of Religion: America’s Original Contribution to Religious Liberty*. Oxford University Press, 2012.

- A. Identify the central reason the Founding Fathers included the religion clauses in our First Amendment as discussed in this scenario.
- B. In the context of the scenario, explain other constitutional language that might mitigate or abate the intention described in part A.
- C. Despite the language of the First Amendment, explain how religious discrimination has continued throughout our history.