

# A

## Free Exercise Anticipation Guide

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

**Directions:** Before reading **Handout B**, read each scenario in the middle of the chart below. Fill in whether you think what the scenario describes is constitutional or unconstitutional.

Then, read **Handout B**. Complete the third column of the chart by determining if your answer in the first column was supported by the Supreme Court, the explanation the Court made in the case, and whether or not you agree with the ruling.

BEFORE READING: CONSTITUTIONAL OR UNCONSTITUTIONAL?	SCENARIO	WAS YOUR CHOICE THE SAME AS THE COURT? HOW DID THE COURT EXPLAIN THEIR RULING? DO YOU AGREE WITH THE RULING?
	<p>Two people were arrested after they walked through a Roman Catholic neighborhood and asked two men they met on the street to listen to an anti-Catholic message.</p>	
	<p>A person was fired for using peyote, an illegal drug, as part of a Native American religious service. The state refused to pay welfare benefits to the person who lost his job.</p>	
	<p>Several cities banned a religious group from using animal sacrifice as a part of their prayer ritual.</p>	
	<p>The state fined members of the Amish religion who refused to send their teenage children to school.</p>	

# B

# What Is the Significance of the Free Exercise Clause?

## BACKGROUND ESSAY

Jesse Cantwell, his father, and his brother, all Jehovah's Witnesses, walked through a Catholic neighborhood in New Haven, Connecticut. Their sect of Christianity is known for preaching and evangelism, as well as their refusal to salute flags or celebrate holidays like birthdays or Christmas. As the Cantwells walked through the Catholic neighborhood, they carried religious pamphlets, books, and records [how music was played before CDs and mp3s]. They also had a small record player that played an anti-Catholic message called "Enemies." Jesse Cantwell stopped two men on the street, and the men agreed to listen to the record. The two men were Catholic and were angry when they heard the anti-Catholic record. The Cantwells were later arrested. This led to the landmark decision *Cantwell v. Connecticut* (1940).

### Why is *Cantwell* an Important Case?

In the *Cantwell* case, the Supreme Court looked at the First Amendment. The Supreme Court clearly recognized, as did the Founders, that the First Amendment protects both "the freedom to believe and the freedom to act." The government can never tell anyone which religion to believe in or

not believe in. Freedom of belief is a natural right.

The Court held that Cantwell could not be forbidden from giving out his materials just because they were religious in nature. General rules for solicitation were valid, but restrictions on religion were not. Since local laws allowed government officials to decide what causes should be called "religious," the law violated the First Amendment. *Cantwell* is an important case because the Court supported an absolute freedom of belief.

### What Are Most Free Exercise Cases About?

Many free exercise cases involve people who believe they have been treated unfairly for practicing their religion. For example, some religions do not permit work on the Sabbath day [a day of the week dedicated to rest or prayer]. The Supreme Court has ruled that states cannot deny unemployment benefits to citizens for turning down a job because it would require work on the Sabbath (*Sherbert v. Verner*, 1963). In 1985, however, the Court concluded that the First Amendment permitted private employers to fire employees who refused to work on their Sabbath day (*Thornton v. Calder, Inc.*, 1985).

In a famous case (*Employment Division v. Smith*, 1990), a person was fired for using peyote, an illegal drug. The drugs were used as part of a Native American religious service. The Court ruled that the state government did not have to pay unemployment benefits to the person who lost his job. The state could refuse to give benefits to people who lost their jobs because of illegal activity.

In 2004, a university student was denied a state scholarship because he planned to study theology. In *Locke v. Davey* (2004), the Supreme Court ruled 7-2 that he was treated fairly since the Free Exercise clause did not require the government to fund religious studies. The two dissenting justices argued that Davey had been targeted for his religious beliefs and therefore had been treated unfairly.

## **Are Laws About Religious Practices Unconstitutional?**

Laws that target one religion or person are always unconstitutional. Laws that apply to all religions are usually constitutional. In *Braunfeld v. Brown* (1961), the Court approved a Pennsylvania law that said stores must close on Sundays. Orthodox Jews, whose Sabbath is Saturday, claimed the law was unfair to them since their religion required them to also close their stores on Sundays. The Court said that because the law did not target Jews specifically as a group, the law was constitutional.

On the other hand, the Court struck

down a Tennessee law that did not allow clergy members to hold public office. In that case (*McDaniel v. Paty*, 1975), the law targeted people because of their religious line of work.

In 1993, the Court applied the “general law” test to laws passed by four Florida cities. The cities banned animal sacrifice (*Church of the Lukumi Babalu Aye v. City of Hialeah*). The Court said that these laws actually targeted the Santeria religion, which uses animal sacrifice in prayer. Since they targeted a specific religious group, the laws were unconstitutional.

## **What About Exceptions within General Laws?**

Sometimes, general laws affect religious beliefs and practices. The courts then ask whether or not a reasonable exception [a change to a rule for a person, group, or circumstance] can be made. A famous 1972 ruling (*Wisconsin v. Yoder*), concluded that Amish teens could be excused from mandatory school attendance laws since their religion says they must live apart from the world and worldly influence.

During the 1980’s, however, the Court ruled that the Amish must pay Social Security taxes (*United States v. Lee*, 1982). The Air Force could ban Jewish head coverings called yarmulkes (*Goldman v. Weinberger*, 1986). However, the government must stay out of hiring and firing decisions within a religious organization (*Hosanna-Tabor v. EEOC*, 2012).

The Affordable Care Act of 2010 [health care legislation] raises many questions about religious exceptions. The Act requires all “non-religious employers” to pay for employee insurance policies. These policies must provide coverage for birth control as well as abortion-inducing drugs even though certain religions forbid some forms of birth control and abortion. Soon after the law was passed, 40 organizations challenged the Act. These organizations say that the government cannot define what is—or is not—a religious employer. These groups also claim that paying for these services would violate their religious beliefs.

People of many different religions live side by side in our free society. Free Exercise cases raise important questions about how the government can treat everyone fairly, yet respect everyone’s right to freely exercise their religion. Can churches make their own decisions about the kinds of weddings they conduct? Can military chaplains preach about their concept of sin? Can organizations at universities receiving public funds limit membership to those who share their belief system? The Supreme Court answered this last question in *Christian Legal Society v. Martinez* (2010)—and the Court said no. These and similar questions continue to cause debate.



### Critical Thinking Questions

1. Can the government restrict freedom of belief? Why or why not?
2. What are most free exercise controversies about? Give 2-3 specific examples.
3. How does the Court determine whether or not exceptions can be made to general laws that affect the free exercise of religion?
4. Applying what you have learned about the Free Exercise clause, how should Americans answer the questions raised in the last paragraph of **Handout B**?
5. Are there any situations in which the rights of individuals to freely practice their religion might be in conflict? If so, what constitutional or legal guidelines might help resolve the conflict?



# Ten Commandments on Public Property Scenario

STONE V. GRAHAM (1980)

**Directions:** Read the scenario below and respond to the prompt on the next page.

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

## Background:

In 1980, the Kentucky legislature required that all elementary school classrooms display a plaque with the Ten Commandments. The plaques would be paid for by private donors and include the message: “the secular [non-religious] application of the Ten Commandments is clearly seen in its adoption as the fundamental [basic] legal code of Western Civilization and the Common Law of the United States.” Sydell Stone and a group of parents challenged the law, arguing that making schools show the Ten Commandments in public school classrooms violated the Establishment Clause of the First Amendment.

## Question:

Did the Kentucky Law violate the First Amendment’s Establishment Clause?

## Supreme Court Majority Opinion:

The Supreme Court ruled that this policy violated the Establishment Clause of the First Amendment. The opinion stated that the Ten Commandments had “no secular legislative purpose... The pre-eminent [main] purpose for posting the Ten Commandments... is plainly religious in nature.” The opinion argued that it would be lawful if the Ten Commandments were taught as part of a school’s history lessons.

## Supreme Court Dissent:

The dissenting opinion by Justice Rehnquist said that states should be able to decide what they considered secular (non-religious). Rehnquist argued that if the state legislature and the state courts both found the Ten Commandments plaque to be secular then it should be respected by higher courts. Rehnquist stated that the Ten Commandments have had a large role in the development of current laws in the Western world, and, therefore, posting them in a public building did not violate the Establishment Clause.



# D

## Restrictions on the Free Exercise of Religion

**Directions:** For each statement, decide whether you think each hypothetical example is very restrictive, somewhat restrictive, maybe restrictive, or not restrictive. Think about the reasons for your decisions and use the cases in **Handout A** to help you decide.

- A. Public employees may not display religious symbols (crosses, menorahs, etc.) in their personal workspace.

Very restrictive      Somewhat restrictive      Maybe restrictive      Not restrictive

- B. Christian Scientist parents are required to seek medical treatment for their children, even though they believe that prayer—not medicine—will heal people.

Very restrictive      Somewhat restrictive      Maybe restrictive      Not restrictive

- C. A member of the Old Order of Amish, who does not accept Social Security benefits for religious reasons, must still pay social security taxes.

Very restrictive      Somewhat restrictive      Maybe restrictive      Not restrictive

- D. Members of the Navy are prohibited from wearing any head covering indoors, even though some branches of Judaism require men to wear a yarmulke at all times.

Very restrictive      Somewhat restrictive      Maybe restrictive      Not restrictive

- E. All witnesses in court, regardless of their religious affiliation, must swear an oath on either the Bible or the Constitution before testifying at trial.

Very restrictive      Somewhat restrictive      Maybe restrictive      Not restrictive

F. New members of Congress may use any sacred book such as the Bible, Koran, Bhagavad, Gita, etc. or no book at all when being sworn into office.

Very restrictive      Somewhat restrictive      Maybe restrictive      Not restrictive

G. Members of a club promoting atheism at a public university must open membership to students who believe in God and attend church.

Very restrictive      Somewhat restrictive      Maybe restrictive      Not restrictive

H. All persons applying for a drivers' license must remove any head-covering or scarf for their photo.

Very restrictive      Somewhat restrictive      Maybe restrictive      Not restrictive

I. All private organizations (including religious organizations) must pay for employee insurance programs providing birth control services and abortions.

Very restrictive      Somewhat restrictive      Maybe restrictive      Not restrictive

J. All priests and ministers must perform a marriage ceremony for anyone who asks them to do so.

Very restrictive      Somewhat restrictive      Maybe restrictive      Not restrictive