

Unit 2: The Bill of Rights and Religion

LESSON 1: THE ESTABLISHMENT CLAUSE - HOW SEPARATE ARE CHURCH AND STATE?

Handout A: Background Essay – The Establishment Clause: How Separate Are Church and State?

1. The Founders believed that the Establishment Clause would prevent the involvement of the national government in religion, as well as the establishment of a national church. They believed that the clause allowed the existence of state-supported religions.
2. The tests include the Lemon Test, the Endorsement Test, and the Coercion Test.
3. Accept all reasoned responses.
4. Accept all reasoned responses.
5. The Founders would be more inclined to support the “picket fence” image since they all believed that religious belief and practice would strengthen and support republican government and civil society. The “wall” metaphor implies no interaction between church and state while the “picket fence” metaphor implies that, while there are barriers between religion and government, there are also appropriate opportunities for one to influence the other.

Handout B: Religion at My School

Answers will vary.

Handout C: Interpreting the Establishment Clause

Accept reasoned answers. Students should give significant thought to the Founders’ purpose for the Establishment and Free

Exercise Clauses and should determine the interpretations of both by the Supreme Court over time.

LESSON 2: WHAT IS THE SIGNIFICANCE OF THE FREE EXERCISE CLAUSE?

Handout A: Free Exercise Anticipation Guide

1. The Court held that Cantwell could not be barred 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.
2. The Court ruled that the state government did not have to pay unemployment benefits to the individual who lost his job. The state could turn down benefits to anyone who lost their job because of illegal activity.
3. 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.
4. 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.

ANSWER KEY

Handout B: Background Essay – What Is the Significance of the Free Exercise Clause?

1. The government can never restrict freedom of belief because it is a natural right.
2. Most free-exercise cases are about people who feel they've been treated unfairly because of their religion. Examples include denying unemployment benefits because an individual cannot work on Saturdays; denying similar benefits to someone who lost their job because they smoked illegal drugs in a religious service; denying a scholarship to a student because he planned to study theology.
3. The Court asks whether or not a "reasonable exception" can be made to the general laws.
4. Accept all reasoned responses while encouraging students to focus on the fundamental right to religious liberty.
5. Accept all reasoned responses. Guidelines which might help resolve the conflict include the general exception principle and must articulate constitutional principles.

Handout C: Ten Commandments on Public Property Scenario

Accept reasoned answers.

Handout D: Restrictions on the Free Exercise of Religion

A. Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits employers, except religious organizations, from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. Title VII also requires employers to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would

create an undue hardship upon the employer. Therefore, public employees may display religious symbols in their personal workspace, unless the supervisor bans all symbols/photos/etc. from personal workplaces. Public employees may not be singled out for their religious displays.

B. Some Christian Science parents have been tried and convicted for failure to provide their children with medical care. Results vary by state, but here are some basic principles to bear in mind in such questions. 1. In *Reynolds v. U.S.*, 1878, the U.S. Supreme Court distinguished between an adult's right to free exercise of religion and a religious practice that is considered detrimental to public health or welfare: "laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practice". 2. According to the doctrine of *parens patriae* [Latin for "parent of his or her country"] the courts have jurisdiction to take over decision making for children if necessary to protect them from their parents' abuse or neglect. 3. In *Prince v. Massachusetts*, 1944, Justice Rutledge wrote for a 5 – 4 majority, Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves. C. Legislation passed in 1965 exempts Old Order Amish from paying Social Security taxes.

D. In *Goldman v. Weinberger* (1986), the court ruled that the various military services could ban non-uniform head coverings. However, Congress in 1987 reversed the Court's ruling with a law that members of the armed forces in uniform may wear religious apparel that is "neat and conservative."

ANSWER KEY

E. Most witnesses today are required to “affirm” that they will tell the truth, and do not need to swear an oath upon a book of any kind.

F. Each of these books was used by at least one new member of Congress during 2013 swearing-in ceremonies. “Neither the House nor the Senate keeps record of which holy books, if any, are used in the unofficial ceremonies. In fact, House members are sworn in together on the House floor in a ceremony without any book, holy or otherwise. But in an unofficial ceremony, individual members reenact an oath so it can be photographed. *Washington Post*, Dec. 9, 2006

G. In *Christian Legal Society v. Martinez* (2010), the Court ruled that a Christian society must open membership to individuals who do not espouse its religious beliefs.

H. This issue has not been reviewed by the Supreme Court. Individual local jurisdictions have passed different regulations about this issue.

I. This is an on-going debate between advocates of the Affordable Care Act and members of various religious institutions.

J. Several states have legalized gay marriage as a secular ceremony. As of early 2014, no state requires members of the clergy to perform religious services for gay couples.

LESSON 1: THE BILL OF RIGHTS AND FREEDOM OF SPEECH: WHY IS FREE SPEECH ESSENTIAL TO SELF-GOVERNMENT?

Handout A: Background Essay – Why is Free Speech Essential to Self-Government?

1. Madison felt that man “owned,” as a natural right, both his opinions and the ability to express them freely. These natural rights are protected in the Bill of Rights because the British had repeatedly censored political speech, key to the concepts of liberty and self-government.
2. Free speech acts as a “safety valve,” giving citizens a way to share and debate their thoughts, lessening the chance that people turn to violence as a way of having their opinions heard.
3. Free speech allows citizens to challenge their government and leaders, share ideas, and take part in the political

process. The free exchange of ideas and criticism lessens the chance for corruption in government, and can act to force government to serve the best interests of the people.

4. The First Amendment does not protect all speech. Examples of unprotected speech include speech that encourages people to commit “imminent lawless action” [immediate illegal behavior], false speech that destroys a person’s reputation or misrepresents a product that is for sale, or speech that maliciously puts other people in harm’s way or threatens public safety. It also does not necessarily protect things such as certain types of obscenity and pornography, particularly when broadcast on radio or T.V. Government may also place reasonable time/place/manner restrictions on speech.
5. Answers will vary. Accept all reasoned answers.