

Constitutional Law: Principles and Practice

Freedom of Religion

Chapter 12

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Religion and Religious Protections of the First Amendment

1. Establishment Clause

- “Congress shall make no law respecting an establishment of religion”
- Directed at the actions of governments

2. Free Exercise Clause

- “[P]rohibiting the free exercise thereof”
- Safeguards a person’s individual liberty

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The Establishment Clause

- “Congress shall make no law respecting an establishment of religion”
- Takes a very narrow definition of religion to limit the constraints on government
- Led to the doctrine of separation of church and state.

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Major Theories of Establishment Clause Interpretation

- Have played a large part in cases concerning religious items displayed on public property
- Theories
 - Strict separation theory
 - Neutrality theory
 - Accommodation theory

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Education and Religion

- A public school violates the First Amendment's freedom of religion by:
 - Endorsing recitation of prayer in school
 - Requiring reading the Bible in school
- The issue of evolution
 - *Scopes v. Tennessee*, 1925
 - *Epperson v. Arkansas*, 1968
 - *Edwards v. Aguillard*, 1987

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Financial Aid to Religious Institutions

- Threshold standing issues
- Tax exemptions for churches
- Aid to parochial schools and students
- Aid to religious colleges and universities

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The Free Exercise Clause

- “[P]rohibiting the free exercise thereof”
- Secure religious liberty for individuals
- Prohibits governmental restraints on the free exercise of religion

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Cases Involving the Free Exercise Clause

- Cases involving religious conduct
- Jehovah's Witnesses cases
- Denial of unemployment benefits
- Compulsory education: Amish children
- Sunday closing laws

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Religious Freedom Restoration Act

- Enacted in 1993
- Restored the standard of strict scrutiny for the analysis of the Free Exercise Clause
- Applied in all cases where free exercise of religion is substantially burdened
- Provided a defense to people whose religious exercise is substantially burdened by government

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Religious Land Use and Institutionalized Persons Act

- Enacted in 2000
- Created restrictions on a government imposing:
 - land use regulations that burdened a person's religious exercise
 - a substantial burden on the religious exercise of people confined to an institution