



THE FIRST AMENDMENT: STANDARDS OF INTERPRETATION

THE ESTABLISHMENT CLAUSE: STANDARDS OF INTERPRETATION

If a law or regulation is said to violate the establishment clause,
The Supreme Court will generally ask the following questions:

Does that law or regulation:

1. **Have a secular purpose.**
2. **Have a primary effect that neither advances nor inhibits religion.**
3. **Foster no excessive entanglement between church and state.**

If the Court is able to answer “YES” to these questions,
It will usually find that the law is constitutional.

Summarized from: *Lemon v. Kurtzman* (1971)

THE FREE EXERCISE CLAUSE: STANDARDS OF INTERPRETATION

When a law or regulation is said to abridge or restrict the free exercise of religion,
the Supreme Court used two substantially different standards at different times.

In *Sherbert v. Verner* (1963) the Court said government regulation of religious practice was
constitutional only if it:

1. **Served a compelling state interest.**
2. **Was narrowly tailored to achieve that interest
with the least possible intrusion on free-exercise rights.**

But in *Employment Division v. Smith* (1990) the Court adopted a much less strict standard. A
law or regulation was constitutional if it was:

1. **neutral**
2. **generally applicable**

Since then, the Congress (for the federal government)
and several state legislatures have required the stricter *Sherbert* standard.

Sources: *Sherbert v. Verner* (1963), *Employment Division v. Smith* (1990)
