
**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)

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THE FREE EXERCISE CLAUSE:
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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)

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