

Primer on the First Amendment & Religious Freedom

How Does the U.S. Constitution Protect Religious Freedom?

Isaac Backus, a leading Baptist preacher during the American Revolutionary era observed that "[r]eligious matters are to be separated from the jurisdiction of the state, not because they are beneath the interests of the state but, quite to the contrary, because they are too high and holy and thus are beyond the competence of the state." (Isaac Backus, Colonial Baptist from New England, *An Appeal to the Public for Religious Liberty* 1773).

Based on the unique nature of religion, the Founding Fathers in drafting the First Amendment wisely treated religion and religious beliefs differently from other forms of expression to ensure protection of religious freedom. To do so, they placed special restrictions on religion, but importantly, they also provided religion with special constitutional protections. These special restrictions and protections are expressed in the first sixteen words of the First Amendment (underlined below), and they are called the Establishment Clause and the Free Exercise Clause:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
(First Amendment, U.S. Constitution – December 15, 1791).

Taken together these clauses are often referred to as the Constitution's Religion Clauses. Each of these clauses separates religion and government in ways that protect individual religious freedom, and ensure the integrity of both religion and government.

Establishment Clause - This clause prohibits a joining between government and religion, such as no official state religion, no preference by government of one faith over another or religion generally, no taxes to support religion, and no government support for religious worship or practice.

Free Exercise Clause – This clause provides each individual with the right to freely practice the religion of his or her choosing. It ensures the autonomy houses of worship and other religious institutions from government in matters of internal governance and religious law. It prohibits government from enacting laws that specifically target religion. Importantly, it empowers the government to provide houses of worship with special

accommodations and exemptions from civil law that might otherwise interfere with religious worship or practice.

The United States Constitution also contains a provision called the "Religious Test Clause." It prohibits any kind of religious test for citizens to hold elected public office, or to be a public official or employee. Found in Article VI of the Constitution, the Clause states: "**[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.**" So for example, the government cannot require a citizen to be Christian, Muslim or Jewish, or subscribe to particular religious beliefs in order to hold public office. It also cannot disqualify a citizen from holding public office because he or she is an adherent to a specific faith (e.g. Christian, Jewish, or Muslim) or holds particular religious beliefs.

The Establishment, Free Exercise and Religious Test Clauses all complement one other to guard against "[a] union of government and religion," which in the words of distinguished U.S. Supreme Court Justice Hugo Black, "tends to destroy government and to degrade religion." *Engel v. Vitale*, 370 U. S. 421, 431 (1962).

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