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## **Comparing California's Constitutional Provisions on Religion to the U.S. Constitution**

### **California History-Social Science Standards:**

- 4.5.1 Discuss what the U.S. Constitution is and why it is important (i.e., a written document that defines the structure and purpose of the U.S. government and describes the shared powers of federal, state, and local governments).
- 4.5.3 Describe the similarities (e.g., written documents, rule of law, consent of the governed, three separate branches) and differences (e.g., scope of jurisdiction, limits on government powers, use of the military) among federal, state, and local governments.

### **Introduction:**

In a constitutional democracy, like the United States, the Constitution sets a limit on the power of government. Lawmakers at all levels of government, national, state and local, are limited by what the U.S. Constitution says are the basic rights of the people. When the U.S. Constitution was first passed, there was confusion about whether the states had to obey the rights listed in the Bill of Rights as well. When the Fourteenth Amendment became law after the Civil War it was only applied to protect the rights of fair trial for freed slaves. Gradually the Supreme court applied to it to protecting all the rights of people against the power of state governments as well as the national government.

### Amendment I

*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.*

There are two aspects of freedom of religion in the First Amendment. They are called the Establishment Clause and the Free Exercise Clause.

### Establishment Clause:

*Congress shall make no law respecting an establishment of religion*

This part of the First Amendment has been interpreted by the Supreme Court to mean that the government cannot establish a particular religion or religion in general. The government is prohibited from advancing or supporting religion. It cannot be hostile to religion but must remain neutral on issues related to the exercise of religion but in no way offer sponsorship.

### Free Exercise Clause:

*[Congress shall make no law] ... prohibiting the free exercise [of religion]*

This part of the First Amendment means that every person is free to hold any beliefs according to his/her own conscience. The Court has interpreted “free exercise” to mean that any individual may believe anything he/she wants, but the government may be able to limit the practice of those beliefs if there is a very important state reason. Such reasons would be to protect the life and health of someone.

The Fourteenth Amendment is directed at the states.

### Amendment XIV

*Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

The Supreme Court first applied the Bill of Rights to the states in 1925 in the Gitlow case. Benjamin Gitlow was a Socialist Party member who had been convicted of writing several revolutionary pamphlets in violation of New York's Criminal Anarchy Act. His attorneys argued that the New York law violated Gitlow's First Amendment freedom of speech. They contended that the due process clause of the 14th Amendment protected a citizen's freedom of speech from state laws as well as national law. While upholding Gitlow's conviction, the Supreme Court ruled for the first time that the First Amendment freedoms of speech and press "are among the fundamental personal rights and liberties protected by the due process clause of the Fourteenth Amendment from impairment by the States." After 1925, the 14<sup>th</sup> Amendment was applied more and more frequently to protect the other rights in the Bill of Rights, including the 1<sup>st</sup> Amendment.

### **Materials:**

First and Fourteenth Amendments – Handout #1

Notes of Decision on the California State Constitution – Handout #2

Is It Constitutional? – Handout #3

### **Hook:**

As partners or triads, students discuss these statements that are written on the board. They decide if these are the right things for schools to do and why.

*At XYZ School, the teacher begins each day with a prayer that students recite.*

*At ABC School, students are not allowed by the principal to say grace before their lunch.*

**Step 1: Build background knowledge**

Students report out their ideas on the answers to the two statements.

Then the teacher tells the students the information about the First and Fourteenth Amendments provided above. The students take notes.

Then the teachers guides the students to look back at how they responded to the two statements. Were they right? Why?

**Step 2: Checking for Understanding**

Distribute copies of the First and Fourteenth Amendments (Handout #1) and of the three sections of the California Constitution (Handout #2).

Working as partners or triads, students examine and analyze the three provisions from the California constitution. Underline the parts of the California laws that relate to the First Amendment.

- Underline in red those parts related to the Free Exercise Clause
- Underline in blue those parts related to the Establishment Clause

**Step 3: Applying the Information**

Distribute Handout #3. Working in teams of three, students review the list of actions on the handout and compare them to California law in Handout #2. Together they decide if the actions are legal or illegal and explain why. They complete the worksheet individually after discussing the situations.

**Step 4: Evaluation**

Each student writes a paragraph taking a position on the following statement:

The law in California is following the Fourteenth Amendment related to religion.

Use this format:

State your position or thesis

Give two or three reasons why you think as you do

Reason 1 – facts to back it up

Reason 2 – facts to back it up

Reason 3 – facts to back it up (optional)

Conclusion or summarizing sentence

**United States Constitution**  
**Bill of Rights**

*Amendment I*

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.

*Amendment XIV*

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **Three Articles of the California Constitution Related to Religious Liberty**

### **Article 1: Section 4**

Free exercise and enjoyment of religion without discrimination of preference [choice of belief] are guaranteed. This liberty of conscience does not excuse acts that are licentious [unchecked by morality] or inconsistent with the peace and safety of the State. The Legislature shall make no law respecting an establishment of religion.

### **Article 9: Section 8**

No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

### **Article 16: Section 4**

Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay for any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the estate, or any city, city and county, town, or other municipal corporation for any religious creed, church or sectarian purpose whatever; ...

### Is This Constitutional?

1. Worried about the low performance of students in public schools in the state, the legislature authorizes the use of state tax money to start a new charter public school at St. Joseph's Catholic Church.

Legal                      Illegal

Why?

2. Students at XYZ Middle School attend youth basketball on Saturdays at their LDS Church. Other students form a community team that plays at the school courts. The schools want to compete at the school courts.

Legal                      Illegal

Why?

3. After the hurricanes in New Orleans left so many people homeless, the state legislature established the first week in June as a day when all churches in the state would donate money to help those people rebuild.

Legal                      Illegal

Why?

4. The communities in the high desert are growing rapidly but have no university to serve their students after high school. The cities pool their money to build buildings for a new Baptist College that has promised to open its doors to students of all faiths.

Legal                      Illegal

Why?

5. Moslem girls at your school want to wear head scarves to school as part of their religious practice.

Legal                      Illegal

Why?