CLAUSES IN THE CONSTITUTION

First Amendment:

1. The **Establishment Clause** is the first of several pronouncements in the First Amendment to the United States Constitution, stating,

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

The Establishment Clause is immediately followed by the Free Exercise Clause, which states, "or prohibiting the free exercise thereof". These two clauses make up what are called the "Religion Clauses" of the First Amendment.[1]

The Establishment Clause has generally been interpreted to prohibit 1) the establishment of a national religion by Congress, or 2) the preference by the U.S. government of one religion over another. The first approach is called the "separation" or "no aid" interpretation, while the second approach is called the "non-preferential" or "accommodation" interpretation. The accommodation interpretation prohibits Congress from preferring one religion over another, but does not prohibit the government's entry into religious domain to make accommodations in order to achieve the purposes of the Free Exercise Clause.

2. The **Free Exercise Clause** is the accompanying clause with the Establishment Clause of the First Amendment to the United States Constitution. The Establishment Clause and the Free Exercise Clause together read:

“ Congress shall make no law respecting an establishment of religion, or exercise thereof...

In 1878, the Supreme Court was first called to interpret the extent of the Free Exercise Clause in *Reynolds v. United States*, as related to the prosecution of polygamy under federal law. The Supreme Court upheld Reynolds' conviction for bigamy, deciding that to do otherwise would provide constitutional protection for a gamut of religious beliefs, including those as extreme as human sacrifice. The

Court said (at page 162): "Congress cannot pass a law for the government of the Territory which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation." Of federal territorial laws, the Court said: "Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices."

Jehovah's Witnesses were often the target of such restriction. Several cases involving the Witnesses gave the Court the opportunity to rule on the application of the Free Exercise Clause. Subsequently, the Warren Court adopted an expansive view of the clause, the "compelling interest" doctrine (whereby a state must show a compelling interest in restricting religion-related activities), but later decisions have reduced the scope of this interpretation.

3. The **Free Press Clause** protects publication of information and opinions, and applies to a wide variety of media. In *Near v. Minnesota* (1931) and *New York Times v. United States* (1971), the Supreme Court ruled that the First Amendment protected against prior restraint—pre-publication censorship—in almost all cases.

4. The **Petition Clause** protects the right to petition all branches and agencies of government for action. In addition to the right of assembly guaranteed by this clause, the Court has also ruled that the Amendment implicitly protects freedom of association.

5. The Supreme Court declined to rule on the constitutionality of any federal law regarding the **Free Speech Clause** until the 20th century. For example, the Supreme Court never ruled on the Alien and Sedition Acts of 1798, legislation by President John Adams' Federalist Party to ban seditious libel; three of the Supreme Court's justices presided over resulting sedition trials without indicating any reservations.[38] The leading critics of the law, Vice President Thomas Jefferson and James Madison, argued for the Acts' unconstitutionality based on the First Amendment and other Constitutional provisions.[39] Jefferson succeeded Adams as president, in part due to the

unpopularity of the latter's sedition prosecutions; he and his party quickly overturned the Acts and pardoned those imprisoned by them.[40] In the majority opinion in *New York Times Co. v. Sullivan* (1964),[41] Justice William J. Brennan, Jr. noted the importance of this public debate as a precedent in First Amendment law and ruled that the Acts had been unconstitutional: "Although the Sedition Act was never tested in this Court, the attack upon its validity has carried the day in the court of history.

6. **Right to Assemble Clause**

7. The **Commerce Clause** describes an enumerated power listed in the United States Constitution (Article I, Section 8, Clause 3). The clause states that the United States Congress shall have power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Courts and commentators have tended to discuss each of these three areas of commerce as a separate power granted to Congress.

   The Commerce Clause emerged as the Framers' response to the central problem, giving rise to the Constitution itself: the absence of any federal commerce power under the Articles of Confederation. The Commerce Clause represents one of the most fundamental powers delegated to the Congress by the founders. The outer limits of the Interstate Commerce Clause power has been the subject of long, intense political controversy. Interpretation of the sixteen words of the Commerce Clause has helped define the balance of power between the federal government and the states and the balance of power between the two elected branches of the Federal government and the Judiciary. As such, it has a direct impact on the lives of American citizens.

8. Article IV, Section 1 of the United States Constitution, known as the "**Full Faith and Credit Clause**", addresses the duties that states within the United States have to respect the "public

acts, records, and judicial proceedings of every other state." According to the Supreme Court, there is a difference between the credit owed to laws (i.e. legislative measures and common law) as compared to the credit owed to judgments.[1] Judgments are generally entitled to greater respect than laws, in other states.[2] At present, it is widely agreed that this Clause of the Constitution has little impact on a court's choice of law decision,[3] although this Clause of the Constitution was once interpreted differently.

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof

9. The **Necessary and Proper Clause**, also known as the **Elastic Clause**, the **Basket Clause**, the **Coefficient Clause**, and the **Sweeping Clause**, is a provision in Article One of the United States Constitution, located at section 8, clause 18.

   The Congress shall have Power ... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

10. The **Supremacy Clause** is the provision in Article Six, Clause 2 of the U.S. Constitution that establishes the U.S. Constitution as "the supreme law of the land". It provides that these are the highest form of law in the U.S. legal system, and mandates that all state judges must follow federal law when a conflict arises between federal law and either the state constitution or state law of any state. The supremacy of federal law over state law only applies if Congress is acting in pursuance of its constitutionally authorized powers.

** Nullification is the legal theory that states have the right to nullify, or invalidate, federal laws which they view as being unconstitutional; or federal laws that they view as having exceeded Congresses' constitutionally authorized powers. The Supreme Court has rejected nullification, finding that under Article III of the Constitution, the power to declare federal laws unconstitutional has been delegated to the federal courts and that states do not have the authority to nullify federal law.

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