

Freedom of Religion – The Establishment Clause

First Amendment:

“Congress shall make no law respecting an establishment of religion, nor prohibiting the free exercise thereof”

A government cannot:

- set up a state church
- pass laws that favor a religion or religion generally
- levy taxes to support a religion or religious activities
- establish a law that prefers one religion over another

A law *may support religious institutions*; as long as it:

- 1) has a secular purpose;
- 2) does not have the primary effect of advancing or hindering religion
- 3) does not produce an “excessive entanglement” between the government and the religion

The “Excessive Entanglement” Rule

“Excessive entanglement” is a fluid concept that varies on a case by case basis.

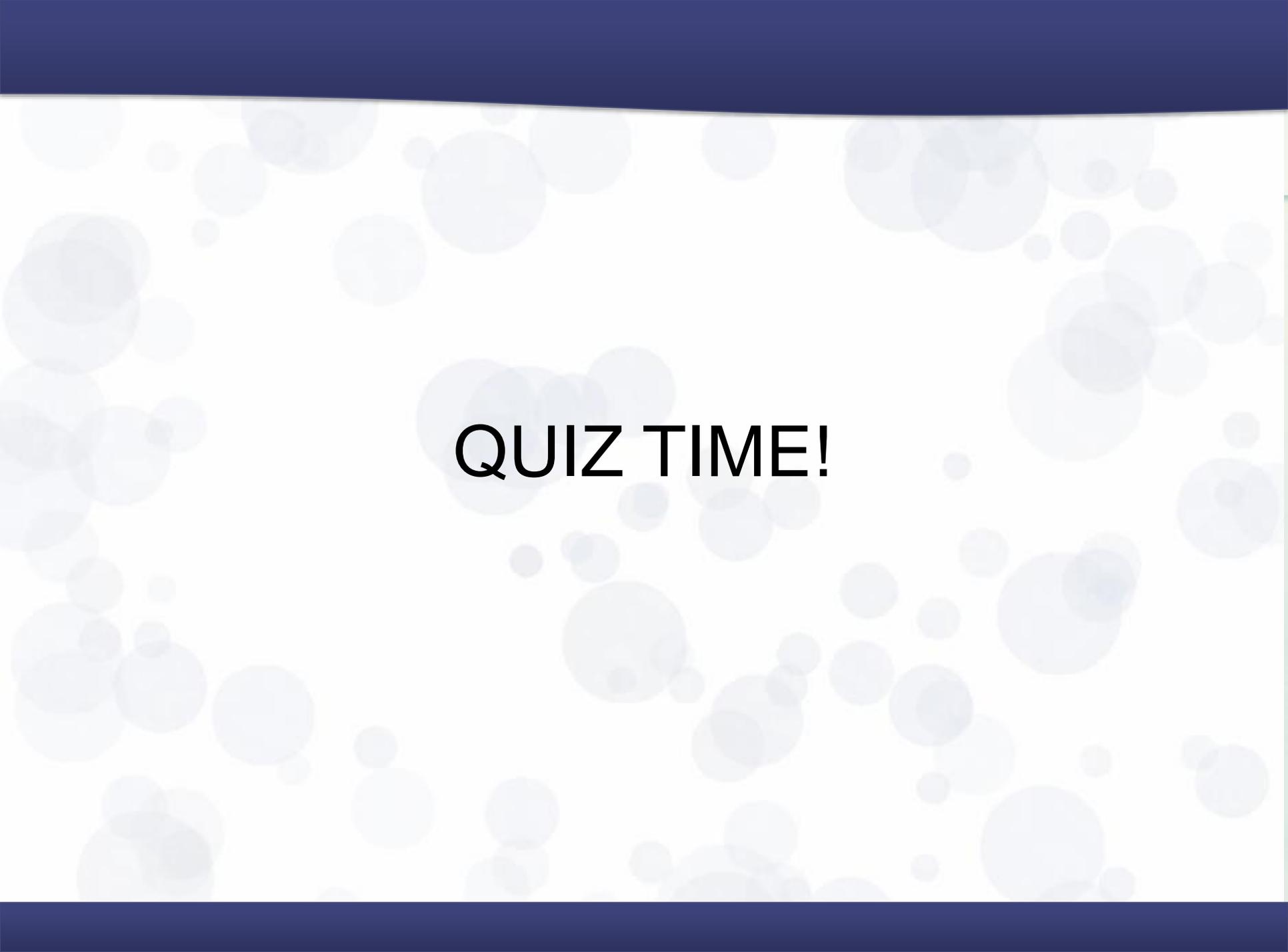
Examples of what is allowed:

- State legislatures, army units etc. can employ a religious chaplain
- Holiday displays are okay as long as they have some secular purpose and do not endorse a particular religion
- Aid to religious schools is okay as long as it goes to purchase secular books or for other secular purposes including transportation; but not for teacher’s salaries or field trips for religious purposes.
- School district set up to accommodate handicapped children from a religious community is unconstitutional
- Moment of prayer at a public school event- unconstitutional
- Moment of silence- okay
- “Faith based initiatives” that have a secular purpose are allowable even if they go through religious institutions as providers of services
- School vouchers that can be used at religious schools(?)

The “Free Exercise” Clause

A government cannot:

- punish people for believing or failing to believe in a religion
- require a religious oath for a public office
- exclude religious clerics from holding political office
- punish religious conduct because it is religious conduct
- prohibit the wearing of a religious symbol in a public forum (unlike the recently enacted French rule)

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QUIZ TIME!

The “Free Exercise” Clause

- States can regulate general conduct with criminal laws even if it has the effect of limiting religious conduct, as long as, the intent of the law was not to limit the religious conduct; no exemption is required for religious conduct.

However:

- Government cannot deny unemployment benefits to someone who quit rather than work on a religious holy day
- Exemption to school requirement was required by the Supreme Court to Amish families because a fundamental tenet of their religion forbade secondary education (it outweighed the state interest in enforcing the school requirement)