3.2 First Amendment: Freedom of Religion
Explain the extent to which the Supreme Court's interpretation of the First and Second Amendments reflects a commitment to individual liberty.

The First Amendment contains our most cherished rights. Often our courts give them a preferred position. Governments did not give these rights to us. Rather we empower governments to protect these natural rights. The fundamental rights contained in the First Amendment are: freedom of speech; freedom of press; freedom of religion, freedom of assembly; and freedom of petition. Majority rule cannot interfere with these rights, nor can government abridge these rights. The federal judiciary often is called upon to serve as the guardian of these rights.

Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. No better example than the emotional issue of our religious freedom as found in the First Amendment. Religious freedom has been central to the American way of life. "Our Constitution was made for a religious people," said Founding Father John Adams. So, it should not come as any surprise to learn that when the United States Supreme Court got involved with religious life in America it would ignite a passionate response.

Though the First Amendment guaranteed, "Congress shall make no law respecting an establishment of religion," a Protestant hegemony assured certain customs and traditions would be commonplace here, even in the public square. Individual state practices, as well, were not burdened by the religion clauses of the First Amendment until 1947 with the incorporation of the establishment clause in the case Everson v. Board of Education. With the Supreme Court now empowered to police neutral religious practices in every local village and hamlet a bevy of plaintiffs emerged to challenge certain long held traditions. One such tradition was the offering of Christian prayers in public schools. Following the "wall of separation" precedent in Everson, the high Court ruled against any and all public school led prayers in the landmark case Engel v. Vitale (1962). In this case the court ruled a government-directed prayer in school as unconstitutional. Few cases have solicited such emotionally charged reactions. Hundreds of constitutional amendments were proposed to overturn the decision and calls for impeaching Supreme Court justices became commonplace. In the end, the customs and traditions dutifully found in our public square would have to change. Governments could no longer sanction religious activity. "No law respecting an establishment of religion" would be tolerated. And no prayer could change that.

The Lemon Test, from the case Lemon v. Kurtzman (1971), prescribes the rules regarding any apparent cooperation between church and state:

> (1) The government's action must have a secular purpose; (2) The government's action must not have the primary effect of either advancing or inhibiting religion; (3) The government's action must not result in an "excessive entanglement" with religion.

The United States motto is simple, E Pluribus Unum, out of many one. Our Founders envisioned "a plural society," one that welcomed diversity but encouraged harmony when

solving compelling state interests. But what if certain groups want to be exempt from the state's compelling interests? What if the pluribus loses its Unum? This was the issue in Wisconsin v. Yoder (1972). A group of rural Amish, a traditional religious sect that eschews modern comforts, chose not to cooperate with Wisconsin's compulsory high school education laws. The Amish claimed it violated their First Amendment right to their "free exercise of religion." Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. Compelling Amish students to attend school past the eighth grade violated the free exercise clause, the court argued. The court emphasized our tradition of religious tolerance and the accommodation of religious differences. Some have called the Yoder precedent the "high water mark of free exercise." The allowance of religious exemptions to other state laws, however, has not met a similar conclusion. For instance, in the case Employment Division v. Smith (1990) the court rejected the argument of two drug counselors who wanted to be exempt from Oregon's prohibition to use peyote based upon their own religious practices. Congress attempted to ameliorate likeminded disputes with the passage of the Religious Freedom Restoration Act (1993). Disputes continue to vex our courts. Our pluribus continues to test our Unum.

Few issues spark our enthusiasms one way or another like religion. Our Founders understood that by avoiding a state religion and allowing for religious toleration our young republic would be inviting to all groups of people, talents and experiences. Yet like the rest of the Bill of Rights, these religion clauses are often challenged in court. We rely upon our court system to interpret what these clauses mean today. **Provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.**