

## LESSON 1 The Establishment Clause: How Separate Are Church and State?

How would you if feel all your classmates, no matter what their faith, had to begin every school day with a New Testament reading? Once you graduated, can you imagine having to sign a statement saying that you believed in God in order to vote? Even though Americans now take "freedom of religion" for granted, it was not always that way.

### READING TIP:

As you read, try underlining the main idea of each paragraph.

### What Did the Founders Intend?

Many early colonists left England so they could practice their faith freely. But it wasn't long before religious discrimination began in many of the colonies. Some states only allowed Christians to hold public office. Other states required everyone to believe in God.

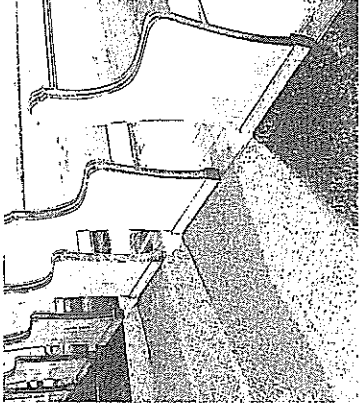
Most of the Founders practiced some form of Christianity or believed in God. They agreed, however, that the federal government and religion should be kept separate. The Founders wished to keep the federal government from interfering in state and individual religious freedom. On the other hand, states could establish official, state-sponsored and tax-supported religions. Pennsylvania, for example, established Quakerism as the state religion.

When discussing religion and government, Americans often think of a "separation of church and state." This powerful phrase is not found in the Bill of Rights. It comes from an 1802 letter by President Thomas Jefferson to the Danbury Baptist Association in Connecticut. His letter promised the group that the federal government did not have power over their parish. He described the First Amendment as building "a wall of separation between church and state."

### What Does the Establishment Clause Mean?

The beginning of the First Amendment reads: "Congress shall make no law respecting an establishment of religion..." This is referred to as the Establishment Clause. This clause served two purposes. It banned a national church and kept the federal government out of existing state churches.

The first important Supreme Court case involving the Establishment Clause did not come until 1947. The case was *Everson v. Board of Education*. A New Jersey school district was using public money to pay for Catholic school students' costs of getting to and from school. The Court voted 5-4 that the policy was constitutional. The Court noted that the New Jersey policy applied to both public and private schools. Since it did not benefit only one specific religion, the policy passed constitutional review.



### How Does the Court Find Violations?

The Court made a test to find Establishment Clause violations twenty-five years later. *Lemon v. Kurtzman* made its way to the Court in 1971. This case was about using public money to pay for religious schools' textbooks and teacher salaries. The "Lemon Test" held that a law does not violate the Establishment Clause if: (1) it has a non-religious purpose; (2) its principal effect neither aids nor hurts a religion; and (3) government and religion are not overly mixed. Paying religious schools back for education costs violated government neutrality.

Justice Sandra Day O'Connor added to the Lemon Test in *Lynch v. Donnelly* in 1984. The government cannot endorse, or even appear to endorse, any one religion. This check is called the endorsement test.

### Can There Be Religion in Student Life?

Since the government funds public schools, many Establishment Clause cases center on the question: can religion and schools mix? In most cases, the Court has answered, "Very little."

The Court ruled that all school-sponsored prayer is unlawful in *Engel v. Vitale* in 1962. A year later the Court struck down a Pennsylvania law that said each school day must begin with a Bible reading (*Abington School District v. Schempp*, 1963). In 1980, the Court turned over state laws that forced teachers to display the Ten Commandments in their classrooms (*SStone v. Graham*). Setting aside a minute for "voluntary prayer" was also struck down (*Wallace v. Jaffree*, 1985).

The Court also limited some religious actions at school events because students might feel forced to participate. The Court ruled against rabbi-led prayer at public school graduation ceremonies (*Lee v. Weisman*, 1992). This case led to another test for establishment clause violations: the coercion (or force) test. A law that forces a person to participate in a religious ceremony is unconstitutional. Because of this test, the Court struck down a Texas policy letting high school students vote on whether a prayer should be read at sporting events (*Santa Fe Independent School District v. Doe*, 2000).

The Court places fewer limits on voluntary student religious groups. Public high schools must give religious clubs the same right to use facilities as other groups (*Board of Education of Westside Community Schools v. Mergens*, 1990). In 2001, the Court held that an elementary school violated a religious club's free speech rights when it did not allow them to meet on school grounds after classes, but allowed all non-religious groups to do so (*Good News Club v. Milford Central School*).

Can the Government Use Religious Symbols?

One more key question under the Establishment Clause is: When can the government use religious symbols? The Court has ruled that states can open lawmaking sessions with a prayer (Marsh v. Chambers, 1983).

In Lynch v. Donnelly (1984), the Court ruled that states have the right to celebrate the Christmas holiday with a "sufficiently secular" public nativity display. In contrast, the Court did not allow a nativity scene in a 1989 case. In that case, (County v. Greater Pittsburgh ACLU) only a display with a menorah and Christmas tree was permitted.

In 2004, the Supreme Court heard the case of Elk Grove Unified School District v. Newdow. The issue was whether a mandatory recitation in public schools of the Pledge of Allegiance, which contains the phrase "under God," was an unconstitutional endorsement of religion. The Court did not rule on this specific question. (They said the plaintiff, Mr. Newdow, did not have the right to bring the case to court on behalf of his daughter). It is likely a similar issue will again come to the Supreme Court.

While the Supreme Court continues to define the application of the Establishment Clause, the relationship between the government and religion continues to be a topic of great debate.

The Founders wished to keep the federal government from interfering in religious freedom.

Can Public Money Go to Private Schools?

Should tax money, which everyone pays, go to schools that are funded by religious and other private groups? This issue arose in the twenty-first century: public funds in private schools. In Mitchell v. Helms (2000), the Court allowed the government to pay for computer equipment for public, private, and religious schools.

Another complex issue in this area is voucher systems. Parents receive a fixed amount of public funds called a voucher to pay for a private or religious school of their choice. Public schools then have less money when parents spend their vouchers in private schools. In Zelman v. Simmons-Harris (2002) the Court upheld the voucher system in Cleveland, Ohio, in a 5-4 decision. The Court concluded that the system was designed for a non-religious purpose: the better education of children. Therefore it did not violate the establishment clause of the federal constitution. However, such voucher programs may violate parts of specific state constitutions.

LESSON 1 Religion at My School

Directions: Place a check mark before each example of religion in your school. Then, based on your responses, write a short paragraph explaining how religion does or does not affect the daily life of your school.

- A. The Pledge of Allegiance is said by students.
B. Prayers are said, especially before athletic events or assemblies.
C. There is a Bible and a Koran in the school library.
D. Students and teachers sometimes discuss religion.
E. Religious leaders sometimes visit the school and/or speak to classes.
F. Student religious groups sometimes meet on school property.
G. Students wear religious symbols such as crosses or headscarves while at school.
H. The Ten Commandments are posted in the school.
I. Other:
J. Other:

**LESSON 1** Establishment Scenarios

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

**Directions:** For each of the following scenarios, explain whether or not you think the Supreme Court would apply the Lemon, endorsement and coercion tests, and whether you believe each is constitutional or unconstitutional.

SCENARIO	LEMON TEST	ENDORSEMENT TEST	COERCION TEST	YOUR OPINION
1. Your public school district has a two-minute moment of silence at the beginning of each school day. At the beginning of the two-minute period, the teacher must read the following prepared statement: "We will now have our daily two minutes of silence. I encourage each of you to take advantage of this time to prepare yourself mentally for the day ahead. No noise or work is permitted."				
2. The teacher adds -- against the orders of the school district -- "Since I am a Christian, I will be using this time to pray."				
3. The teacher adds, "Since I am an atheist, I will not be using this time to pray."				
4. A state law gives each student a \$2,000 scholarship for tuition and books, payable to a school of their choice. Less than 10% choose to attend a religious school. Several religious schools require students to take a class in that school's religion, though they do not have to belong to that particular church or any church at all.				

**LESSON 1** Establishment Scenarios (continued)

SCENARIO	LEMON TEST	ENDORSEMENT TEST	COERCION TEST	YOUR OPINION
5. Your world literature teacher assigns the class a passage from Dante's <i>Inferno</i> , the story of a Journey through the author's version of Hell. During class discussion, the teacher asks, "Is the story more terrifying for those who believe in God and in the existence of punishment in the next life?"				
6. Your state government provides funding for a program run out of a local Jewish temple. The temple provides meals and job counseling to unemployed persons. In return, the temple expects that participants perform basic chores around the temple (watering flowers, mowing grass, raking leaves). They must also attend a short prayer at the end of each work day.				
7. Your public high school valedictorian speaks about her personal faith in Jesus Christ during her graduation speech. School officials have not approved this revision of her speech.				

