



The Establishment of Religion Clause

► Three theories of the Establishment clause:

1) **Strict Separation**

- The “wall” of separation
- The courts have rejected any such far-reaching approach that would prohibit any government assistance of religious organizations.

2) **Neutrality**

- Government can support religious organizations, but merely cannot support one religion over the other or religion over lack of religion.
- Symbolic endorsement test

3) **Accommodation**

- The most favorable to religion, this would mean that the Establishment Clause is only violated if the government establishes a church or coerces religious participation.

County of Allegheny v. ACLU

► Facts:

- The county allowed the erection of religious symbols in public places, including:
 - A nativity scene
 - A Christmas tree with a Menorah

► Issue:

- May the government constitutionally allow religious symbols to be put on public property?

► Holding:

- Only if it also has cultural significance.
 - The Christmas tree with a Menorah was allowed because it has cultural and pluralism significance.
 - The nativity scene was disallowed because it has no meaning other than an endorsement of Christianity.



Lemon v. Kurtzman

► Facts:

- State rules provided public funding for church run schools. These included:
 - Reimbursement for teacher salaries, textbooks and instructional materials.

► Issue:

- Can a state constitutionally provide funding for a religiously run school or institution?

► Answer: Only if it meets the following three-part test:

- The statute must have a **secular purpose**
- The **primary effect** must not be to advance or inhibit religion.
- The statute must not foster and “**excessive entanglement**” with religion or religious groups.



The *Lemon* Test - Application

► Secular Purpose

- Posting the 10 Commandments on school and court walls have been ruled to be unconstitutional.
- Moments of prayer and even of silent prayer are unconstitutional at public schools.
 - But moments of silence are okay.

► Secular Effect

- A Connecticut law that required employers to give employees their Sabbath off was unconstitutional.
- But certain exemptions from laws given to religions to avoid requiring them to violate the religions have been upheld.

► Excessive Entanglement

- Paying teacher's salaries for religious schools was struck down.
- But paying for secular textbooks and food programs and religious schools was upheld.



Santa Fe Independent School Dist. v. Doe

- ▶ Facts:

- ▶ Public high school allowed a student council chaplain to say a prayer over the public address system before each football game.

- ▶ Issue:

- ▶ Does allowing a student led prayer any public school's football game violate the Establishment Clause?

- ▶ Answer: Yes!

- ▶ A school allowing a prayer at a public event is an endorsement of religion.
- ▶ Even though the person delivering the prayer is not a school official, allowing it to take place is an implicit endorsement of the prayer and thus the religion.

McCreary County v. ACLU of Kentucky

► Facts:

- Copies of the Ten Commandments were posted on courthouse walls.
- Defendant claimed that they were there not for religious purposes but as an artifact to help trace the development of the law.

► Issue:

- Does the posting of the Ten Commandments have enough of a secular purpose to avoid violating the Establishment Clause?

► Answer: No!

- To an objective observer, it is clear that the posting of the Ten Commandments has a primarily religious purpose.
- The secular purpose has to be genuine and not merely secondary to the religious purpose.



Mitchell v. Helms

- ▶ Facts:

- ▶ Federal law delivers federal funds and other aid to parochial schools including various secular materials, textbooks, equipment and the like.

- ▶ Issue:

- ▶ Can the government indirectly help a religious entity's religious purpose by funding its secular expenses?

- ▶ Answer Yes!

- ▶ To determine whether the funding advances religion, the following factors should be taken into account:
 - ▶ Whether the statute results in government indoctrination
 - ▶ Whether the statute defines its recipients by reference to religion
 - ▶ Whether the statute creates excessive entanglement
- ▶ As long as these tests are surpassed, aid to a religious school does not violate the Establishment Clause.



Zelman v. Simmons-Harris

- ▶ Facts:

- ▶ State school voucher program allows parents to send their children to private schools of their choice with the state paying your tuition.
- ▶ Some parents naturally chose to send their children to religious schools.

- ▶ Issue:

- ▶ Does the fact that some parents are going to use state voucher dollars to pay tuition for religious schools constitute a violation of the Establishment Clause?

- ▶ Answer: No!

- ▶ This government program does not provide aid directly to religious schools and in no way did the government favor the religious schools over secular parochial schools.
- ▶ The voucher program was neutral with respect to religion.