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The Establishment Clause and Public Schools

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Recommended Citation
Sills, Stephen, "The Establishment Clause and Public Schools" (2012). *College of Law Library Student-Authored Works.* Paper 106.
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Research Guides

The Establishment Clause and Public Schools

Guide Information

Last Updated:	Nov 15, 2012
Guide URL:	http://libguides.law.gsu.edu/content.php?pid=323019
Description:	This Lib Guide discusses several key Supreme Court cases related to the establishment clause's applicability to religious activities at American public schools.
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Overview

This Lib Guide discusses several key Supreme Court cases related to First Amendment's establishment clause as applied to American public schools.

The establishment clause requires Congress to "make no law respecting an establishment of religion." Though the establishment clause, by its terms, applies only to Congress, the Supreme Court incorporated the clause against the states via the 14th Amendment in Everson v. Board of Education. Thorny issues consequently emerged respecting the extent to which religious activities can occur in public schools.

Lemon v. Krutzman (403 U.S. 602 (1971)) provides the standard three part establishment clause test, although courts tend to apply the test erratically and inconsistently. According to Lemon, to avoid establishment clause issues, statutes must (1) "have a secular legislative purpose," (2) not have the "principal or primary effect" of advancing or inhibiting "religion," and (3) not cause "an excessive government entanglement with religion."

When dealing with school-and-religion issues, however, the Supreme Court seems most worried with avoiding any appearances of schools themselves endorsing a particular religious point of view. The Court is also deeply concerned with whether students are coerced into engaging in a religious activity.

This Lib Guide also provides links to various secondary sources that should be useful for deeper research into this topic, as well as links to secular and religious advocacy organizations that provide contrasting points of view on our society's various intersections of church and state.

About the Author

Stephen Sills is a third year law student at Georgia State University. As of this writing, he works as a law clerk at the firm Webb, Klase & Lemond and is a student extern at the Georgia Attorney General's office. He previously externed at the Atlanta Legal Aid Society.

In his free time, Stephen enjoys reading, fencing, movies, and puzzling over the meaning of life. He would also write fiction, if only he could find the time and motivation. He can be reached at sills.stephen@yahoo.com.

Disclaimer

This Lib Guide should be treated as a starting point for research and is not intended as a complete handling of any legal issue. This guide is for educational purposes only and does not constitute legal advice. You should consult an attorney if you need assistance with this or any other legal matter.

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Primary Sources

Constitutional Authority

U.S. Const. Amend. I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Incorporation

Cantwell v. Connecticut, 310 U.S. 296 (1940) - Makes the "free exercise" clause of the First Amendment applicable to the States through the Fourteenth Amendment. Thus, states and not just the Federal Government are prohibited from infringing on a person's exercise of religious liberty.

Everson v. Board of Ed., 330 U.S. 1 (1947) - Renders the "establishment" clause of the First Amendment applicable to the States via the Fourteenth Amendment. States, as well as the Federal Government, cannot create an establishment of religion.

School Prayer

Engel v. Vitale, 370 U.S. 421 (1962) - Held that teacher-led school prayer in public schools violated the establishment clause. Even though children were not forced to recite the prayer, " [t]he Establishment Clause... does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not." According to the Court, "it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government."

Wallace v. Jaffree, 472 U.S. 38, (1985) - Held that that an Alabama statute authorizing "a period of silence 'for meditation or voluntary prayer'" violated the establishment clause since the prayer reference in the statute was "intended to characterize prayer as a favored practice" by state. The Court considered this language inconsistent "with the established principle that the government must pursue a course of neutrality toward religion."

Lee v. Weisman, 505 U.S. 577 (1985) - Held that a prayer before a high school commencement ceremony, where the principle selected a rabbi and requested that he give a nonsectarian prayer, violated the establishment clause since the choice of speaker and direction of "the prayers' content" were attributable to the state. The Court found the prayer's occurrence at a high school commencement particularly problematic since attendance at this event was, practically speaking, involuntary for the students, so adding a religious component in this context amounted to state coerced participation in a religious exercise.

Santa Fe Independent School Dist. v. Doe, 530 U.S. 290 (2000) – Held that a school policy allowing one student, elected by his or her classmates, to give invocations before football games “for [an] entire season” unconstitutional since the “invocations [were] authorized by a government policy and [took] place on government property at government-sponsored school-related events.” The Court noted that majoritarian student election process ensured that “minority candidates [would] never prevail and that their views [would] effectively [be] silenced,” and the semi-compulsory nature of the event for some students, such as cheerleaders and football players, made the practice unacceptably coercive.

Religious Activities at School

McCollum v. Board of Education, 333 U.S. 203 (1948) - Held that a “release time” program involving voluntary religious programs held by religious leaders on school premises during the school day, with time set aside during the school day for students to attend these programs, violated the establishment clause. According to the Court, this practice amounted to an improper integration“of the state's compulsory education system… with the program of religious instruction carried on by separate religious sects.”

Zorach v. Clauson, 343 U.S. 306 (1952) – Held that a “release time” program in which students of various faiths were allowed, during the school with parental consent, to leave school in order to attend religious classes did not violate the establishment clause. The Court distinguished McCollum by nothing that “program involve[d] neither religious instruction in public school classrooms nor the expenditure of public funds.” The Court noted "that the school authorities [appeared] neutral" regarding whether children participated in the program. "If in fact... it were established that any one or more teachers were using their office to persuade or force students to take the religious instruction," however, "a wholly different case would be presented."

Lamb's Chapel v. Center Moriches Union Free School District, 508 U.S. 384 (1993) - Held that a school renting its premises to a church group to show a “film series” would not violate the establishment clause where the screening “would not have been during school hours, would not have been sponsored by the school, and would have been open to the public, not just to church members.” The Court found “no realistic danger that,” under these circumstances, “the community would think that the District was endorsing religion or any particular creed.”

Creation and Evolution

Edwards v. Aguillard, 482 U.S. 578 (1987) - Held that "Louisiana's "'Creationism Act,'" which disallowed " the "teaching of the theory of evolution in... public... schools unless accompanied by instruction in the theory of 'creation science,'" violated the establishment clause. According to the Court, the Act improperly "advance[d] a religious doctrine by requiring either the banishment of the theory of evolution from public school classrooms or the presentation of a religious viewpoint that rejects evolution in its entirety." The State, consequently, improperly sought "to employ the symbolic and financial support of government to achieve a religious purpose."

Department of Education Guidelines

Guidance on Constitutjionally Protected Prayer in Public Elementary and Secondary Schools, 68 F.R. 9645-01 (2003) - Guidelines issued by the Department of Education discussing the parameters of when religious activities are and are not appropriate in public schools.

School Prayer, 20 U.S.C. 7904 (2002) - Provision of the Elementary and Secondary Education Act requiring the Department of Education to promulgate the above guidelines regarding the parameters for religious activities in public schools.

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Secondary Sources

The First Amendment: Cases - Comments - Questions (Fifth Edition)

This is a casebook by Steven Shiffrin and Jesse H. Choper that discusses the establishment clause in considerable depth.

- More information at West's online store
  http://store.westlaw.com/shiffrin-chopers-first-amendment-cases-comments-questions-5th/153993/18239045/productdetail

First Amendment Law Review

Journal from the University of North Carolina School of Law dealing with First Amendment issues.

- Official Website
  http://studentorgs.law.unc.edu/falr/about/default.aspx

Corpus Juris Secundum

Corpus Juris Secundum contains a detailed section discussing religious issues and public schools.

The appropriate section can be found at CJS CONSTLAW § 759, et seq.

American Center for Law & Justice

Linked below is a legal memo prepared by the above organization, a Christian advocacy group, regarding prayer in public schools. While the source is obviously biased, this document contains a good outline of the relevant law.

- Prayer at Graduation Information Letter
  http://c0391070.cdn2.cloudfiles.rackspacecloud.com/pdf/prayer-at-graduation-letter_20110421.pdf

Religion Clause Blawg

This law-related blog, or Blawg, is dedicated to religion-and-the-law issues. The Blawg is written by University of Toledo Professor Howard Friedman and appears to be updated quite regularly.

- Religion Clause Blawg
  http://religionclause.blogspot.com/

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Popular Advocacy

Secular Organizations

These organizations generally push for a very wide reading of the establishment clause, advocating for as much church-state separation as possible.

- American Civil Liberties Union (ACLU)
  http://www.aclu.org/
- Americans United for Separation of Church and State
  http://www.au.org/
- American Atheists
  http://www.atheists.org/
- Secular Coalition of America
  http://secular.org/

Religious Organizations

These groups tend for push for as much church-state integration as possible.

- American Center for Law & Justice
  http://aclj.org/our-mission
- American Family Association
  http://www.afa.net/
- Faith 2 Action
  http://www.f2a.org/
- Liberty Counsel Action
  http://libertycounselaction.org

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