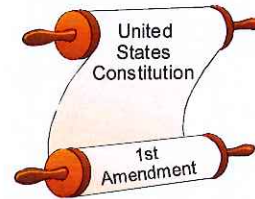


RELIGION AND SCHOOLS



THE CONSTITUTION



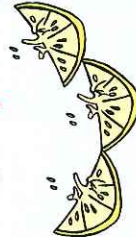
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Establishment Clause

Lemon v. Kurtzman

Does government action:

- have legitimate **secular purpose**
- have primary purpose that **neither advances nor inhibits religion**
- avoid excessive church/state **entanglement**



Establishment Clause

Lemon v. Kurtzman

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Free exercise

- Not absolute – government may prohibit or regulate
- Neutral law – government not required to show compelling interest for incidental effects
- *Employment Division v. Smith - Peyote*



Prayer in school



Mandatory school prayer is prohibited by the Establishment Clause.

Individual & group prayer

- Individual students and employees have right to *pray privately*
- Vocal student-initiated prayer permissible if not disruptive



Prayer at school-sponsored activities



School may not orchestrate prayer...

- at the beginning of the day
- during practices or athletic event
- in classes or within curriculum
- at graduation ceremonies

KOUNTZE INDEP. SCH. DIST. V. MATTHEWS, 2014
TEX. APP. LEXIS (2014)

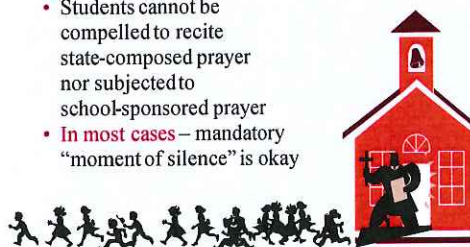
- Freedom From Religion Foundation complains
- School says no banners
- Cheerleaders sue

KOUNTZE INDEP. SCH. DIST. V. MATTHEWS, 2014
TEX. APP. LEXIS (2014)

- School changes policy (banners O.K. but reserving right to restrict case by case)
- School appeals
- Appeals Ct. case moot (because of policy change)
- Cheerleaders appeal and win (Texas Sup. Ct)

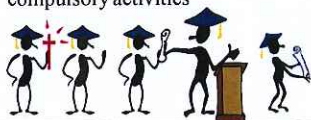
PRAYER IN THE CLASSROOM

- Students cannot be compelled to recite state-composed prayer nor subjected to school-sponsored prayer
- In most cases – mandatory “moment of silence” is okay



Prayer at graduation

- *Lee v. Weisman* – school-organized prayer violates Establishment Clause due to coercive effect
- Courts split regarding constitutionality of student-initiated prayer at non-compulsory activities



Prayer at football games

Santa Fe ISD v. Doe

School sponsored “invocations” before football games violate Establishment Clause if school sponsored, even if student led



PRAYER AT BOARD MEETINGS

is prayer more like:

- *Marsh v. Chambers* – opening prayer at legislative session does not violate the Establishment Clause
- *Lee v. Weisman* – graduation prayer violates the Establishment Clause

Courts are split

Student religious expression

- Religious speech permissible, if does not appear to be school endorsed or sponsored
- Student religious speech must conform to “forum” terms and limitations
- Student speech – disruptive, harmful, vulgar, drug promoting – can be restricted



Employee religious expression

- Religious speech permissible, if does not appear to be school endorsed or sponsored
- Generally teacher cannot express religious views to students on school grounds
- Private religious speech among employees must be treated same as other private speech



Distribution of religious literature

- Same rules apply to all outside literature
- Do not prohibit distribution based solely on religious content



RELIGIOUS ATTIRE

- Wearing religious messages or symbols regulated by same rules as other student apparel
- Teachers wearing religious garb usually not unconstitutional



Nebraska ends ban on religious garb in public schools

Associated Press

MARCH 27, 2017, 6:41 PM | LINCOLN, NEB.

Gov. Pete Ricketts signed a measure Monday that ends the state's **98-year-old ban**. The ban was enacted under pressure from the Ku Klux Klan during a time of intense anti-Catholic sentiment.

Use of religious materials in instruction

Public school curricula may include teaching about religion, but cannot endorse or inculcate



Teaching about the origins of life

Can creationism be taught?
No: if no secular purpose
Yes: if part of science program teaching a variety of theories

Religious instruction

Religious instruction may not take place on public school property during school hours



OBJECTIONS TO CURRICULAR MATERIALS

- Usually fail because it is difficult for a student to show materials or activities:
 - Establish a particular religion
 - Directly violate a student's religion
- Access to school library books should be based on educational suitability

Student use of religious materials

- Religious beliefs may be expressed in assignments—work assessed under established criteria
- ✓ **However**, cannot proselytize during oral presentations

RELIGIOUS DISPLAYS

- Displays must have a secular purpose and may not promote or endorse religion
- Display of Ten Commandments in classrooms unconstitutional
- Art with religious theme may be displayed temporarily with other art



BRICKS, TILES, AND MURALS

May bricks, tiles, and murals contain religious speech?

- Some courts say no – religious speech may cause a disruption
- Other courts say yes – disallowing religious speech is viewpoint discrimination

Holiday displays

Displays may include religious symbols, but *should*



- be temporary
- require no active participation in religious activity
- include diverse religious/cultural/ethnic symbols
- support valid educational goals

OBSERVING RELIGIOUS HOLIDAYS



- Can recognize holidays, but must not be “overly religious”
- Secular instruction on religious traditions allowed but cannot promote belief
- December festivities may include religious music and themes, but they cannot dominate
- Teach about the holiday without inculcating

ACCOMMODATING OBSERVANCE OF RELIGIOUS HOLIDAYS

- Cannot penalize students for religious absence
- Must accommodate employees religious absences
- School breaks may coincide with holiday if justified by secular purpose
- Students may be excused from holiday programs or discussions
- ✓ but school cannot sponsor celebrations for remaining students

Release time



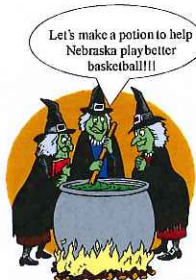
- Schools may excuse students for religious instruction away from school
- Schools cannot discourage or encourage participation

Access to school facilities by religious groups



Treat requests by religious groups the same as other outside groups

Viewpoint discrimination



- **Lamb's Chapel** - once school facilities open to others, cannot exclude based on religious viewpoint
- **Good New Club** - religious club permissible because other groups allowed to teach moral values

Equal Access Act

- Applicable to federally funded secondary schools allowing non-curricular student groups to meet during non-instructional time
- Unlawful to deny equal access or discriminate based on content of speech



Other uses


- Churches may hold baccalaureate services, but school must disclaim sponsorship
- Regular worship services generally must be allowed

ELMBROOK SCH. DIST. V. DOE, 134 S. CT. 2283 (U.S. 2014)

- Holding graduation in church
- 7th Circuit says **NO**
- Supreme Ct refused to hear appeal (denies certiorari)



ELMBROOK SCH. DIST. V. DOE, 134 S. CT. 2283
(U.S. 2014)

- 7th Cir. Says violates *Establishment Clause* 
- Conveys an "impermissible message of endorsement"

BALANCING ACT



- *Town of Greece v. Galloway*, (U.S. 2014) prayer at town hall meeting (**5-4** decision)
- *Morse v. Frederick* (U.S. 2007) bong hits for Jesus sign (**5-4** decision)
- *Santa Fe Indep. Sch. Dist. v. Doe*, (U.S. 2000) prayer at FB games (**6-3** decision)
- *Lee v. Weisman*, (U.S. 1992) prayer at graduation (**5-4** decision)

RELIGION AND SCHOOLS

