

SUPREME COURT DECISIONS IN RELIGION AND POLITICS CASES

- I. **No-establishment clause:** “Congress shall make no law respecting an establishment of religion”
- A. Two competing **judicial interpretations** have been used by various justices on the Supreme Court (a third and more radical interpretation, Christian nationalism, is supported by some members of the Christian Right, but not by any member of the current or previous Courts).
1. Strict construction (**separationists**)
 - a. Goal: erect a *wall of separation* between church & state – no government establishment or preference for one religion over another (6 of the 13 states in 1789 had state-established churches)
 - b. Rationale: because of diversity of faiths, state-established religions can cause harm – intolerance, prejudice, hate, discrimination, persecution
 2. Loose construction (**accommodationists**)
 - a. Goal: *accommodate religious diversity* – government *should* provide *nondiscriminatory* aid to religions in general
 - b. Rationale: mixing religion & politics can improve politics & government – e.g., public morality, virtue, and charity
- B. Two **judicial tests** are used to resolve no-establishment cases
1. **“Lemon” rule** (all three components must be met to uphold a law, only one need fail to strike down a law)
 - a. Laws aiding religion must have a primarily secular *purpose*
 - b. Laws aiding religion must have a primarily secular *result*
 - c. Laws aiding religion must not *excessively entangle*
 - (1) Government in religion
 - (2) Religion in politics
 2. **“Children v. adults” rule:**
 - a. Higher wall of separation between church and state for public-school children;
 - b. More accommodation of government aid to religion when only adults are involved
- C. **First general trend in Court decisions: *separation of church and state where public-school children are involved***
1. *McCullum v. Board of Education* (1948): struck down a Champaign, IL policy allowing voluntary and privately funded religious instruction in public schools during regular class times
 2. *Engel v. Vitale* (1962): struck down a NY law requiring public-school teachers to read a state-composed prayer
 3. *Abington Township School District v. Schempp* (1963): struck down a PA law requiring the reading of Bible verse and the recitation of the Lord’s Prayer in public schools
 4. *Eperson v. AK* (1968): struck down a state law prohibiting the teaching of evolution in public schools
 5. *Lemon v. Kurtzman* (1971): struck down a state law contributing to parochial school teachers’ salaries (even for secular instruction)
 6. *Committee for Public Education v. Nyquist* (1973): struck down a state law financing parochial school maintenance and reimbursing parents for tuition
 7. *Levitt v. Committee for Public Education* (1973): struck down a state law reimbursing parochial schools for the cost of educational testing required by the state
 8. *Meek v. Pittenger* (1975): struck down a state law lending instructional materials other than textbooks to parochial school students
 9. *Wolman v. Walter* (1977): struck down an Ohio law paying parochial schools for field trips, some instructional materials and equipment
 10. *Stone v. Graham* (1980): struck down KY law requiring posting of Ten Commandments on public-school classroom walls

11. *Bradshaw v. Hall* (1981): held unconstitutional printing a “motorists’ prayer” on state maps
12. *Treen v. Karen B.* (1982): struck down a law that allowed voluntary organized prayer in public schools
13. *Larkin v. Grendel’s Den* (1982): held unconstitutional a municipal ordinance that gave churches veto power over liquor license applications for sites near the church
14. *Wallace v. Jaffree* (1985): struck down an AL law requiring silent meditation in public schools
15. *Grand Rapids v. Ball* and *Aguilar v. Fenton* (1985): struck down public funding of even part-time or remedial teaching in parochial schools
16. *Edwards v. Aguillard* (1987): struck down a LA law that required the teaching of creation science alongside evolution in public schools
17. *Allegheny v. ACLU* (1989): struck down a Pittsburgh, PA Christmas creche displayed alone at a courthouse
18. *Swaggart Ministries v. Board of Equalization* (1990): upheld a CA sales tax imposed on religious materials
19. *Lee v. Weisman* (1992): struck down a RI middle-school policy of organizing a “non-denominational” prayer at public-school graduation exercises
20. *Santa Fe Independent School District v. Doe* (2000): struck down a TX public high school’s policy of sponsoring student-led, student-initiated prayer at football games (on school property, at a school-sponsored event, over the school’s public-address system, by a speaker representing the student body, under the supervision of school faculty, operating according to school policy)

D. Second general trend in Court decisions: *accommodation of and aid to religion in settings other than public schools*

1. *Everson v. Board of Education* (1947): upheld a NJ law compensating parents of all children, including those attending religious schools, for bus transportation
2. *Zorach v. Clausen* (1952): upheld a NY City law releasing students from public-school classes to attend religious classes somewhere else
3. *McGowan v. MD* (1961): upheld a MY blue law imposing Sunday-closing restrictions
4. *Board of Education v. Allen* (1968): upheld a NY law providing the same free textbooks to both public and parochial school students
5. *Waltz v. NY* (1971): upheld a state law exempting religious property from property taxes
6. *Wolman v. Walter* (1977): upheld an Ohio law reimbursing parochial schools for diagnostic and therapeutic services and some standardized test materials
7. *Mueller v. Allen* (1983): upheld a Minnesota law providing income tax deductions for the cost of tuition, textbooks, and transportation for elementary and secondary students in public or private (including parochial) schools
8. *Lynch v. Donnelly* (1984): upheld a Pawtucket, RI Christmas nativity display placed among other holiday symbols
9. *Allegheny v. ACLU* (1989): upheld a Pittsburgh, PA Chanukah menorah placed among other holiday symbols
10. *Rosenberger v. VA* (1995): struck down a UVA regulation that denied funds to public-university student organizations that promoted a religious perspective. The majority ruled that UVA’s regulation too narrowly interpreted the *no-establishment* clause and that “religion-neutral” state funding was ok.
11. *Capitol Square Review and Advisory Board v. Pintette* (1995): struck down an Ohio board’s ruling that prohibited the KKK from placing a cross on the state’s capitol square at Christmas time with other religious symbols.

- II. **Free-exercise clause**: “Congress shall make no laws . . . prohibiting the free exercise . . . [of religion]”
- A. Two competing **judicial interpretations** have been used by various justices on the Supreme Court:
1. Strict construction - (**libertarians**): government should not abridge or deny any religious practice, unless it threatens the life or property of another individual.
 2. Loose construction - (**communitarians**): protection of community values sometimes gives government a compelling interest to abridge or deny religious practices that threaten those community values.
- B. **Judicial tests**:
1. Government may compel or restrict *behavior* but not affirmation or rejection of religious *beliefs*.
 2. The burden of proof is on the government. Since the 1997 **City of Boerne v. Flores** ruling,
 - a. The stricter **Sherbert standards of proof** apply only to the federal government:
 - (1) A *compelling interest of the highest order* is required to justify a federal restriction of the free exercise of religion, and
 - (2) the *least-restrictive means* must be used to achieve the compelling interest, and
 - (3) that restriction does not expressly target a particular religion for hardship but is *generally applicable* to all citizens.
 - b. The weaker **Smith standards of proof** apply to the state governments:
 - (1) Instead of a compelling interest of the highest order required of the federal government, an easier-to-demonstrate *reasonable-grounds* test can be met by the states,
 - (2) the *least-restrictive-means* test does not have to be met by the states, however,
 - (3) the *generally-applicable* test must still be met.
- C. **The general trend supports the libertarian view: an individual’s practice of religious belief is usually protected from government abridgement or denial**
1. *Cantwell v. CT* (1940): overturned a New Haven ordinance requiring prior governmental approval to solicit funds for religious purposes
 2. *Murdock v. PA* (1943): struck down state laws levying license taxes on peddlers of religious tracts
 3. *Martin v. Struthers* (1943): struck down laws prohibiting door-to-door distribution of religious handbills
 4. *WV v. Barnette* (1943): struck down WV flag-salute law — overturned the *Gobitis* (1940) decision
 5. *Girouard v. US* (1946): overturned the denial of US citizenship to a Seventh Day Adventist immigrant from Canada with a conscientious objection to bearing arms but willing to provide alternative service as a noncombatant in the military
 6. *Niemotka v. MY* (1951): struck down laws requiring official approval to hold public worship meetings in public parks
 7. *Sicurella v. US* (1955): ordered a draft board to grant conscientious-objector status to a Jehovah’s Witness (upholding a Congressional statute)
 8. *US v. Seeger* (1965): ordered local draft boards to treat equally C.O. applicants with nontraditional forms of religious belief
 9. *WI v. Yoder* (1972): upheld the right of Amish parents to keep their children out of public school after the age of fourteen
 10. *Wooley v. Maynard* (1977): struck down the requirement to display a statement on an automobile license plate that violates one’s religious beliefs
 11. *Thomas v. IN* (1981): upheld the claim to unemployment benefits of Seventh Day Adventists fired for refusing to work on her sabbath (Saturdays) or refusing to work with weapons
 12. *Board of Education v. Philbrook* (1986): an employer must make reasonable accommodations to an employee’s religious practices
 13. *Hobbie v. FL* (1987): struck down the denial of unemployment benefits to a person discharged for refusal to work on the Sabbath
 14. *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993): struck down a city ordinance prohibiting animal sacrifices
- D. **Exceptions to the general trend: if the government can demonstrate reasonable grounds, an individual’s practice of religious belief is sometimes not protected from government abridgement or denial**
1. *Reynolds v. US* (1879): upheld a federal law prohibiting polygamy [in order to protect public

morality]

2. *Hamilton v. CA* (1934): upheld a state law requiring military training for able-bodied male students enrolled at state universities [in order to meet national-defense needs]
3. *Minersville School District v. Gobitis* (1940): upheld a PA school board that expelled two young members of Jehovah's Witness for refusing to salute the American flag in a public-school ceremony [reversed two years later]
4. *Cox v. NH* (1941): upheld the requirement of prior approval of parades on public streets and roads [in order to maintain public access and to protect public order]
5. *Chaplinsky v. NH* (1942): upheld enforcement of a statute prohibiting the breach of peace in the course of a public meeting [in order to maintain public order]
6. *Prince v. MA* (1944): upheld restrictions on children selling magazines on a street corner late at night [in order to protect children's welfare]
7. *Bob Jones Univ. v. US* (1983): upheld the denial of tax-exempt status to racially discriminatory schools that base those policies on religious belief [in order to enforce the equal-protection clause]
8. *OR v. Smith* (1990): upheld the denial of unemployment benefits to native Americans who used an illegal drug, peyote, for sacramental purposes [in order to maintain public order]