

## **The First Amendment**

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.

The First Amendment was passed by Congress on September 25, 1789, and ratified by the states on December 15, 1791. The Fourteenth Amendment applies the First Amendment rights to the states. These rights, however, are not absolute.

# First Amendment Freedoms

## I. Freedom of Religion

**A. Establishment Clause**--prohibits laws respecting the establishment of religion. If a law includes a preference for some religious sects over others, the law is invalid unless it is narrowly tailored to promote a compelling interest. Where there is no "sect preference," the compelling interest test is not used; instead, the law is valid if it:

- has a secular purpose;
- has a primary effect that neither advances nor inhibits religion; and
- does not produce excessive government entanglement with religion.

**1. Holiday Displays.** If the government maintains a holiday display that does not appear to endorse religion, the display does not violate the Establishment Clause. If the display includes religious symbols (e.g., a nativity scene or a menorah) as well as other holiday decorations (e.g., a Christmas tree or a Santa Claus figure), the display does not violate the Establishment Clause. But if the display includes only the religious symbols (e.g., only a nativity scene) it violates the Establishment Clause because it endorses a religion.

**2. Financial Aid to Religious Institutions.** Government financial aid to the secular activity of a religiously affiliated hospital or school is constitutional as long as the aid is used for nonreligious purposes (i.e., to provide state-approved textbooks to all students, provide transportation to and from all schools, reimburse private schools for the expenses of compiling state-required data, such as student attendance records or achievement tests).

**3. Religious Activities in Public Schools.** Prayer and Bible reading in public school are unconstitutional establishments of religion as is the posting of the Ten Commandments. It does not matter whether participation is voluntary or involuntary, and neither does it matter that the prayer is designated as a period of silent prayer or meditation. This rule extends to prohibit public school officials from having clerics give invocation and benediction prayers at graduation ceremonies, or students from leading prayers at football games.

**a. Religious Meetings on College Campuses.** A state college may not deny use of classroom facilities (at times when classes are not in session) to a religious student group if the college allows other student groups to use classrooms. Such a denial of access violates the Free Speech Clause because it is content-based discrimination against the religious group's speech. The religious group's meetings do not violate the Establishment Clause because no government endorsement of religion is involved.

**b. Religious Meetings on High School Campuses.** The Supreme

Court has not determined whether the Free Speech Clause would require accommodation of religious student group meetings in public high schools, but such accommodation is required under the Federal Equal Access Act, which prohibits public high schools that receive federal funds from discriminating against non-curriculum student groups on the basis of the religious or philosophical content of speech. The Court has held that the act does not violate the Establishment Clause because the Act's purpose (to accommodate all students) is not equivalent to promotion of religion, and the Act's primary effect neither advances nor prohibits religion, since under the terms of the Act:

- (i) no school official can actively participate in the meetings;
- (ii) non-school persons (including, but not limited to, clerics) cannot attend the meetings; and
- (iii) student participation is purely voluntary.

**B. Free Exercise Clause---**Prohibits the government from punishing (denying benefits to, or imposing burdens on) someone because of the person's religious beliefs.

1. What constitutes a religious belief? The Supreme Court has not defined what constitutes a religious belief. However, it has made clear that a religious belief does not require recognition of a supreme being, and need not arise from a traditional or even an organized religion.
2. The government cannot punish conduct solely because the conduct is religious but it can regulate general conduct (i.e., criminal laws and other regulations) that happen to interfere with a person's religious practices (i.e., marijuana use, animal slaughter, etc.).

## Discussion Questions

1. Suppose every child in a public school classroom voted to begin each class with a prayer and Bible reading. Would this lift any constitutional infirmity? Is there a difference if a local school board or state statute authorizes such practices?
2. Why is school prayer prohibited when legislatures begin sessions with prayers, the term God is in the Pledge of Allegiance and on legal tender, and witnesses in legal proceedings take an oath on the Bible?
3. Does the Establishment Clause pertain to Halloween celebrations in public schools?
4. Are the following activities constitutional? (a) a Jewish student wearing a yarmulke in class; (b) a Muslim student bringing a prayer rug to be used several times during the school day; (c) a Sikh student wearing a Kirpan, a curved dull-edged dagger worn in a sheath, which hangs around the neck and under clothing, when a school has a no-weapons policy?

## **Background: The Church, the State, and the Public Schools**

The First Amendment contained in the Bill of Rights says two things about religion. It prohibits Congress from passing any laws that would establish an officially approved religion; and it guarantees that individuals may exercise their own religious beliefs. (The two clauses are known as the Establishment Clause and Free-Exercise Clause.) Due to the Fourteenth Amendment, state and local governments, including agencies like the public schools, are also bound by these First Amendment clauses.

The creators of the First Amendment knew from first-hand experience that establishing an official religion was dangerous, because government could use its power to force people to worship in a certain way. During colonial times, religious groups like the Baptists and Quakers were often persecuted in communities where they were in the minority.

Religion, especially as practiced by the Christian majority, has always had an important influence in American society. Official state-supported Christian churches were eventually "disestablished" after the adoption of the Bill of Rights. But Christian religious practices remained a part of public life in many states. For example, mandatory daily prayers, Bible readings, and similar devotional exercises were common in public schools.

But starting in the 1960s, the U.S. Supreme Court began to abolish adult-led prayers in the public schools. The Supreme Court ruled that such practices established a government-approved religion, in most cases Christianity, which violated the Establishment Clause of the First Amendment. To avoid this situation, public schools had to appear strictly neutral and neither endorse nor oppose religion.

Some argued that prayers should continue in schools, and those students who did not want to participate in them could remain silent or be excused. But the Supreme Court pointed out that this would brand the non-participating students as outsiders and subject them to ridicule and harassment by their peers.

Over the next few decades, the Supreme Court generally continued to restrict the role of religion in the public schools. An exception was a decision in 1990 involving a high school that refused to permit a Christian club to form. The high court ruled that students could voluntarily meet outside of instructional time to exercise their right of religious speech. See *Westside Community Schools v. Mergen* (1990).

Two years later, though, the Supreme Court held that a public school inviting a clergyman to give an invocation and benediction at a graduation ceremony violated the Establishment Clause. The court found that because school graduations are such important events in the lives of young people, students are really compelled to attend them. In such a setting, the court concluded, students should not be forced to participate in a religious exercise that might violate their beliefs. See *Lee v. Weisman* (1992).

## **Should Students Have the Right to Lead Prayers at Public School**

## **Events?**

The U.S. Supreme Court has ruled that adults who lead religious exercises in the classroom or at school events violate the Establishment Clause of the First Amendment. But what if a student leads a prayer at a graduation or even a football game?

Religion and high school football are strong traditions in Santa Fe, Texas. Both traditions combined in the fall of 1999 when Santa Fe High School senior Marian Lynn Ward used the press box microphone at the school's football stadium to say a brief pre-game prayer. After asking God to watch over those present and to inspire good sportsmanship, Marian ended by saying, "In Jesus's name I pray. Amen." The 4,000 students and adults in the stands enthusiastically cheered the 17-year-old Santa Fe student.

The previous spring, the student body at Santa Fe High had elected Marian to deliver an "invocation and/or message" of her choice at each of the football home games. This was in line with a school board policy. That policy was challenged in a case that eventually reached the U.S. Supreme Court. The court had never before decided a case of a student-led prayer at a school event.

## **Background of the Case**

Santa Fe is a heavily Baptist community of about 8,000 people on the Gulf Coast of Texas. In April 1995, a Catholic and a Mormon family both sued the Santa Fe public school district for failing to stop persistent religious practices in the schools. The federal district court allowed the two plaintiff families to file their lawsuit under the assumed name "Jane Doe" because of allegations of intimidation by school authorities.

The plaintiffs objected to teachers promoting their religious views in the classroom, school administrators permitting Bibles to be distributed on the campuses, and a long history of Christian prayers at graduations and athletic events. The federal district court found incidents in which students and even some teachers harassed those who did not accept the Bibles and did not participate in prayers at school events.

By fall 1995, the school board had developed a policy covering pre-game ceremonies at home varsity football games:

The board has chosen to permit students to deliver a brief "invocation and/or message to be delivered during the pre-game ceremonies of home varsity football games to solemnize the event, to promote good sportsmanship and student safety, and to establish the appropriate environment for the competition."

## **Arguments Presented by the Santa Fe Independent School District**

The attorneys for the Santa Fe Independent School District (appellants) made these main points in their written brief to the Supreme Court:

1. The school board policy does not violate the Establishment Clause because the decisions whether to have a pre-game "invocation and/or message," who will deliver it, and what the student will say is entirely in the hands of students exercising their First Amendment rights.
2. The school board policy is neutral and does not endorse any religion.
3. The student-led "invocation and/or message" could be a prayer, if the student chooses, or, it could be a non-religious statement that conforms to the stated purposes of the school board policy.
4. The school board policy has non-religious purposes such as promoting student free speech and good sportsmanship.
5. The "invocation and/or message" is delivered by a student at a sports event outside of school hours before a mix of students and adults who are attending voluntarily.



## **Arguments Presented by Catholic and Mormon Families**

The attorneys for the anonymous Catholic and Mormon families (respondents) made these main points in their written brief to the Supreme Court:

1. The school board policy does violate the Establishment Clause because using the word "invocation" plus the long tradition of pre-game Christian prayers at Santa Fe High football games clearly show a school endorsement of the community's dominant religion.
2. The two-part election procedure in the school board policy leaves little doubt that the views of the religious majority (mainly Baptists) will be imposed on those who hold different beliefs.
3. The school is not neutral and uninvolved since the student-led prayer can only be delivered during the school's pre-game ceremony, over the school stadium's public address system, before a crowd assembled on school property for a school-sponsored event.
4. Football team members, band members, and cheerleaders must attend the school's football games. If any of them chose not participate in the pre-game student-led prayer, they could be harassed by others both at the game and later on at school.
5. The school board policy is a sham designed to make sure that the longstanding practice of Christian prayers remains an official Santa Fe High School tradition.