

CASEBRIEFS

The Understanding Video Lecture Series™

Freedom of Religion

Establishment Clause

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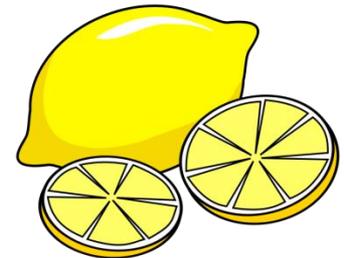
Establishment Clause: “Congress shall make no law respecting an establishment of religion...”

Establishment Clause: *Lemon*

Lemon test (traditional) requires all 3 of these:

1. A secular purpose;
2. Primary secular effect (increasingly important);
3. Lack of entanglement.

But Court may be shifting to a test of whether the gov't is “endorsing” religion.



“Put your \$ where your commandments are”

State B accepts a donation by a civic group of a large Ten Commandments monument to be placed on state property near state Education Dept. building. The grounds outside the building contain a few other statues and monuments, all showing famous educators in state and national history. Does the placement of the Ten Commandments monument run afoul of the Establishment Clause?

***Lemon* test applied**

Maybe, maybe not. (1) at least one secular purpose (to celebrate great educators); (2) secular effect (not so clear; could go either way); and (3) no seeming entanglement.

- Most important: Know the test (even if can't say how case comes out). Be sure to analyze every step.

“we don’t like weird sounds coming from church...”

An ordinance prohibits sounds above 10 decibels, but creates an exception for “sounds indicating the start of a religious service.”

When a mosque opens, it plays a song (at 11 decibels) sung by a person as a call to prayer. After people complain that the mosque sounds are weird, the ordinance is changed to give the exception only for “the sound of traditional church bells at less than 15 decibels.” Problematic?

Establishment Clause Ban on Favoritism

Yes. If government intentionally disfavors one religion or sect over others, that's a violation of the Establishment Clause. Here, denying an exemption for the mosque's call to worship while allowing church bell sounds of equal volume, done after complaints about the mosque, shows intentional disfavoring.

“Here’s your voucher, Mom.”

State C wishes to give parents vouchers for school, which can be used at any public or private school that satisfies the state curriculum standards. Most users end up being parent/children using parochial schools. Can the vouchers be constitutionally used at religious schools?

Decision-making by Private Persons

Yes. Since decisions about where to spend vouchers are made by parents, not the State, there is no endorsement of religion, even though most of program's users are parochial-school students and their parents. All 3 parts of *Lemon* test are satisfied (the Court says).