RELIGION IN THE PUBLIC SCHOOLS

BACKGROUND – RELIGIOUS LIBERTY IN AMERICA & OUR PUBLIC SCHOOLS

Since its founding in 1913, the Anti-Defamation League (ADL) has been guided by its mandate of combating bigotry, bias and discrimination, and securing the rights and liberties of all citizens of the United States. ADL deeply believes deeply in the importance of preserving and safeguarding freedom of religion in our increasingly pluralistic nation. Consequently, we believe that government should neither promote nor be hostile to religion.: Therefore, state sponsored or organized religious activity must be kept out of the public schools. Although this belief may be distasteful to some, this position is not one of hostility towards religion; rather, it reflects a profound respect for religious freedom and recognition of the extraordinary diversity of religions represented by the students in our public schools.

"Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary. The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure. … In no activity of the State is it more vital to keep out divisive forces than in its schools." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

AMERICA'S FOUNDING PRINCIPLE: RELIGIOUS FREEDOM THROUGH SEPARATION OF CHURCH AND STATE

The right to freedom of religion is so central to American democracy that it was enshrined in the First Amendment to the U.S. Constitution.

Recognizing the unique and intimate nature of religion, the Founding Fathers wisely put religion on a different footing from other forms of speech and observance – mandating strict separation of church and state to ensure religious freedom for all individuals and faiths. Largely because of the First Amendment's prohibition against government regulation or endorsement of religion, diverse faiths have flourished and thrived in America since the founding of the republic.

The Founding Fathers in drafting the First Amendment wisely treated religion and religious

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beliefs differently from other forms of expression to ensure protection of religious freedom. To do so, they placed special restrictions on religion, but importantly, they also provided religion with special constitutional protections.

These special restrictions and protections are expressed in the first sixteen words of the First Amendment, and they are called the Establishment Clause and the Free Exercise Clause:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof … ." (First Amendment, U.S. Constitution – December 15, 1791).

Taken together, these clauses are often referred to as the Constitution's Religion Clauses. Each of these clauses separates religion and government in ways that protect individual religious freedom, and ensure the integrity of both religion and government.

Establishment Clause - "Congress shall make no law respecting an establishment of religion. . . ."

This clause prohibits a joining between government and religion. As such, there can be no official state religion, no preference by government of one faith over another or religion generally, no taxes to support religion, and no government support for religious worship or practice.

Free Exercise Clause - "Congress shall make no law . . . prohibiting the free exercise thereof … ."

This clause provides each individual with the right to freely practice the religion of his or her choosing. It ensures the autonomy houses of worship and other religious institutions from government in matters of internal governance and religious law. It prohibits government from enacting laws that specifically target religion. Importantly, it empowers the government to provide houses of worship with special accommodations and exemptions from civil law that might otherwise interfere with religious worship or practice.

The Establishment and Free Exercise Clauses complement each other to guard against "[a] union of government and religion," which, in the words of distinguished U.S. Supreme Court Justice Hugo Black, "tends to destroy government and to degrade religion." *Engel v. Vitale*, 370 U. S. 421, 431 (1962).

Not merely burdensome legal technicalities, these two clauses enshrine the belief that all Americans should be free to practice their religion without state interference.

Compliance with the separation of church and state must be vigorously enforced in the nation's public schools. Not endorsing or not appearing to endorse religion is especially important in the

public school setting. This is due to a number of considerations unique to the public schools: the specific sensitivities of school-age children; the fact that public schools are public institutions; and the profound influence of school officials and teachers over students. This last point bears special examination. Most children view their teachers and other school officials as important authority figures. Moreover, children are highly susceptible to coercion, and particularly cogent is the pressure to conform both from adults and from their peers. These factors create a significant danger when religion is introduced into the public schools in circumstances evincing the apparent endorsement of teachers.

Furthermore, the student body in America's public schools is growing increasingly diverse. Schools must give special consideration to the fact that many school children belong to minority religions or are raised in non-religious environments. The nation's public schools must be hospitable to students from a variety of backgrounds -- students of all faiths as well as no faith. Public schools should inculcate students with understanding and respect for diversity, as well as a spirit of tolerance, acceptance and inclusion. Moreover, all of this can be achieved without a religious message.

In *Santa Fe Independent School Dist. v. Doe*, the U.S. Supreme Court concisely summed up the difficulty with school sponsored religion:

> "School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community."[1]

Some have said that this viewpoint "bristles with hostility to religion."[2] ADL does not agree. To the contrary, this statement brilliantly expresses the difficulties that arise when government makes religion its aim.

RELIGION IN THE PUBLIC SCHOOLS – GENERAL LEGAL PRINCIPLES

A. The Establishment Clause

As a legal matter, any school practice or policy must not violate the Establishment Clause. For more than three decades, compliance with the Establishment Clause has been examined under the test the U. S. Supreme Court enunciated in *Lemon v. Kurtzman*, 403 U. S. 602 (1971). When a court looks at whether a program involving religion is permissible, it first asks: does it meet the criteria set forth in *Lemon?* Indeed, the "Lemon test" has proven largely successful in protecting the religious rights and liberties of all Americans, including religious minorities. Thus, in order for a state practice or policy, including a public school practice or policy, to pass constitutional muster

[1] *Santa Fe Independent School Dist. v. Doe*, 530 U. S. 290, 390 (2000) (internal marks omitted).
[2] Id. at 318 (C. J. Rehnquist, dissenting).

under the *Lemon* test, a school official must answer "yes" to the following three questions:

- Does the policy in question have a secular purpose?
- Will the policy in question have a primary effect which neither advances nor inhibits religion?
- Does the policy in question avoid entangling government and religion?

If a school official cannot answer an unequivocal yes to all three of these questions, then the policy must be abandoned. This is necessary as a matter of constitutional law and is good policy. It respects the rights and sensitivities of all students, some of whom may have religious practices that differ from the one being advanced by the policy in question.

In practice, this means that the public schools must never endorse -- or appear to endorse -- any religion or religious practice. Indeed, not only may they not appear to endorse religion, but they may never appear to disapprove of religion either. Moreover, schools may not give the impression that they endorse religious belief over non-belief or any particular belief over others.

The principle that public schools must never endorse or disapprove of religion has been established in a long line of U. S. Supreme Court decisions. Students must never be given the impression that their school officially prefers or sanctions a particular religion or religion generally. Further, students must never feel coerced by pressure from their peers or from the public to adhere to any religion.

The U. S. Supreme Court reemphasized the importance of church-state separation in the public schools in *Lee v. Weisman*, 112 S. Ct. 2649 (1992) and more recently in *Santa Fe Independent School Dist. v. Doe*, 530 U. S. 290 (2000). In both cases, the Court was particularly concerned with the danger of student religious coercion in public schools resulting from peer and public pressure. The decisions are a ringing reaffirmation of the importance of government not endorsing one religion over another or religion over non-religion, particularly when public schools are involved. Notably, the Supreme Court has held that the state (school) is constitutionally obligated to see that state-supported activity is not used for religious indoctrination.[3]

B. The Free Exercise Clause

The second question a school must ask about a proposed policy or practice is whether it violates the "free exercise clause" of the First Amendment. "The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all governmental regulation of religious *beliefs* as such. The government may not compel affirmation of religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or

[3] See *Levitt v. Committee for Public Education & Religious Liberty*, 413 U. S. 472 (1973).

religious status, or lend its power to one or the other side in controversies over religious authority or dogma."[4]

While this protection seems very broad, the Court has held that the right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)."[5] That is, if a law or policy is passed that applies to everyone but happens to impinge on your ability to practice your religion, you may not be able to challenge the law or policy on free exercise grounds. These challenges are difficult because the government must only show a minimal justification for such laws. So, for example, criminal drug laws preventing the use of peyote are applicable even to those whose worship requires the use of peyote because the laws were not passed with religion in mind and are applicable to everyone.[6] It should be noted, however, that in certain states there are laws requiring stronger justification for neutral laws or policies of general applicability that impinge on religious practice.

The relationship between the Establishment Clause and the Free Exercise Clause can be a bit hard to tease out. At the end of the day, however, so long as the school district is neither endorsing nor disapproving of religion, it should not run afoul of the Constitution.

PROVIDED BY: Civil Rights Division

[4] *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U. S. 872, 877 (1990) (internal marks and citations omitted).
[5] Id. at 879.
[6] Id. 872.