

The Establishment Clause and *Lee v. Weisman*

Overview

This lesson will focus on the landmark Supreme Court case *Lee v. Weisman*, which addresses the presence of prayer at public school graduations in regard to the First Amendment of the Bill of Rights. In this lesson, students will begin with a warm-up discussion about religion in public life, view a documentary on the case, and finally engage in an analysis of the cases that the Supreme Court relied upon in making their decision in *Lee v. Weisman*.

Grades

9-12

North Carolina Standard Course of Study for Civics and Economics

- Objective 1.07: Evaluate the extent to which the Bill of Rights extended the Constitution.
- Objective 2.03: Explain how the United States Constitution grants and limits the authority of public officials and government agencies.
- Objective 2.05: Analyze court cases that illustrate that the United States Constitution is the supreme law of the land.
- Objective 2.06: Analyze court cases that demonstrate how the United States Constitution and the Bill of Rights protect the rights of individuals.

North Carolina Standard Course of Study for US History

- Objective 12.02: Evaluate the impact of recent constitutional amendments, court rulings, and federal legislation on United States' citizens.
- Objective 12.04: Identify and assess the impact of social, political, and cultural changes in the United States.

Essential Questions

- How does the Bill of Rights offer protection for citizens? (specifically, protection of religious freedom)
- How are the rights granted in the Bill of Rights limited by interpretation of the judicial branch?
- In what ways does the U.S. Constitution limit the power of public officials?
- How do laws impact people's lives?
- How can an individual's choices affect the liberty and happiness of others?

Materials

- Documentary of *Lee v. Weisman* (Voices of American Law DVD; available at www.voicesofamericanlaw.org)
- Television and DVD player
- *Lee v. Weisman* Viewer's Guide and Answer Key, attached
- *Lee v. Weisman* Role Playing Exercises, attached
- Edited Opinions of *Marsh v. Chambers* (pages 11-12), *County of Allegheny v. ACLU* (pages 13-14), *Engel v. Vitale* (pages 15-16), and *Abington v. Schempp* (pages 17-18)
- Case Chart Answers, attached
- Optional Essay, attached
- Time Magazine Cover – December 9, 1991, attached
- "Guidelines for Civic Occasions" handout (PDF document attached)
- Text of invocation and benediction given by Rabbi Gutterman (PDF document attached)

Duration

1-2 block periods

Procedure

Day 1

Warm-Up: Religion in Public Life

1. As a warm-up, ask students to brainstorm examples of when and where they see religion in public life. To get them thinking along these lines, project the attached visual of the back of the US Dollar, pointing out the statements "In God We Trust" and "Annuit Coeptis." Ask students to discuss the meaning of these two phrases. Encourage students to continue brainstorming additional examples of religion in public life. Answers may include (but are not limited to):

- A teacher in a public school, or other public official, leads a group in the Pledge of Allegiance which states “One Nation, Under God . . .”
- A public school graduation or sporting event which begins with a prayer
- The Ten Commandments are posted on government property such as schools, court houses, and city buildings
- Courts begin with a government employee stating: “God save this Court”
- Federal and state governments give tax exemptions to religious groups
- Federal, state, and local government legislative sessions are opened with a prayer given by a chaplain
- The federal government employs chaplains to give guidance to members of the armed forces
- Public high school bands, led by a teacher or other school official, play religious songs or songs in which religion is the central theme (such as Amazing Grace)
- Nativity scenes are placed on public school grounds or government property, or in public school plays
- Christmas trees are displayed on public schools grounds or other government property
- Witnesses in court are sworn in on the Bible
- Crosses are used as headstones in federally owned cemeteries

First Amendment

2. Introduce the First Amendment to the class by projecting or writing it’s text on the board. Ask a student volunteer to read the text out loud; as he or she does so, underline the **Establishment Clause** (“Congress shall make no law respecting an establishment of religion...”) Discuss:
 - These 10 words of the First Amendment are referred to as the Establishment Clause. What is your interpretation of this clause? What is this phrase saying?
 - Ensure students come to the understanding that this clause deems that Congress cannot establish an official church, such as the Church of the United States.
 - Explain to the class that through a series of Supreme Court decisions, the Establishment Clause has been extended to not only apply to Congress, but also state government through a process known as **incorporation**. While this concept does not need to be thoroughly explained to the class, ensure they understand that the Establishment Clause applies to both federal and state governments and all government officials.

Documentary: *Lee v. Weisman*

3. Tell students that they are going to watch a documentary about an important Establishment Clause case that was decided by the Supreme Court in 1992. Teachers should determine which of the viewing options below they will use. While a synopsis of the case is provided for teacher reference, students need no further introduction to the film.

- **Teacher Reference - Synopsis of the Case**

A number of public middle and high schools in Providence, Rhode Island had a tradition of inviting clergymen to open graduation ceremonies with an invocation and close the ceremonies with a benediction. Daniel and Vivian Weisman had two daughters. At the older daughter’s graduation from middle school, an Evangelical Christian minister gave an extremely religious invocation that included asking everyone to stand up and thank Jesus Christ. After this ceremony, the Weismans wrote the school to express their concerns about this prayer. However, they learned that the school was planning to have another religious figure, a rabbi (who represented the Weismans’ religion), deliver an invocation and benediction at their younger daughter’s graduation. The Weismans were not happy with this decision and met with the school principal, Robert E. Lee. After meeting with Lee, and expressing their disapproval to no avail, they filed suit seeking an injunction preventing the school from offering the prayer. The suit could not be decided before the graduation ceremony that year, so the invocation and benediction were given by Rabbi Leslie Gutterman. After the ceremony, the Weismans amended their lawsuit to attempt to stop the school district from doing this in the future.

- **Viewing Options**

There are several ways you can choose to have the class view the documentary.

- You may choose to have the class watch the video with no pauses and have students work on the attached Viewers Guide while watching
- *Suggested Viewing:* You may choose to pause the video at the times outlined below and ask the class to discuss the questions provided. Students may complete the questions below in addition to or instead of the questions on the Viewer’s Guide.
 - **Discussion Point #1:** (*Pause at 5:57; right after Daniel Weisman says that the principal told him to do what he has to do*): Remind students that the Weismans felt uncomfortable with the religious prayer being given, and the principal informed them to “do what you have to do.” What would you have done in the Weismans situation?

- **Discussion Point #2:** (*Pause at 8:35 ; Rabbi Gutterman finishes speaking about the Guidelines*): Teachers should distribute the Guidelines that were given to Rabbi Gutterman, as well as the text of the invocation and benediction. Ask students if they think the school district was controlling the content of the prayer. You can also ask the students to write their own prayer for a civic occasion based on the guidelines distributed. Ask several students to read the prayer they wrote aloud to the class. Then ask the class to discuss how it made them feel and whether that feeling is something that should be prevented.
- **Discussion Point #3:** (*Pause at 13:03; after the Director of the ACLU concludes talking about whether graduation is attendance is voluntary*): Ask students if they think that attendance at graduation ceremonies is something that is voluntary. Would they have sided with the formalistic outlook adopted by the school that says you graduate whether you show up or not? Or is the explanation given by the ACLU (that the ceremony is, in a literal sense, voluntary but in reality is not voluntary at all) closer to the truth?

Role Plays

4. To review the points and opinions addressed in the documentary, divide the class into a number of small groups and assign one of the attached role play assignments, each dealing with some aspect of the controversy presented in *Lee v. Weisman*. Allow students around 8 minutes to plan and practice in their group and then perform their role play for the class. Student assignment sheets are attached for the following scenarios:
 - PTA Meeting (*6+ students*)
 - Newscast (*4+ students*)
 - The conversation between the Weismans and Principal Robert E. Lee (*3 students*)
 - The invocation delivered at Merith's graduation by an Evangelic Christian minister (*4+ students*)
 - The conversation between Principal Robert E. Lee and the administrators of the school district (*4+ students*)
 - A conversation between three sets of parents regarding the delivery of a prayer at the graduation ceremony (*4+ students*)

Day 2

Case Analysis

5. Before class, plan two rounds of groups for a "Jigsaw" activity. In the first round, groups will be given a case for which the students are to become "experts." In the second round, plan new groups that include one member from each of the previous groups so that all four of the cases below are represented.
 - **Round 1:** For this round, divide the class into eight separate groups of 4 members each (if possible) and assign each of the groups a case to read from below (edited versions are attached). Printing the articles in different colors may assist in transitioning between the two groups. Half of the groups will be asked to use their case to make an argument that the graduation prayer should be constitutional. The other half will use their cases to make the argument that the graduation prayer should be considered unconstitutional.
 - Four groups will read cases that support the argument that the prayer *does not* violate the First Amendment:
 - *Marsh v. Chambers*
 - *County of Allegheny v. ACLU*
 - Four groups will read cases that support the argument that the prayer *does* violate the First Amendment:
 - *Engel v. Vitale*
 - *Abington v. Schempp*
 - Each group member should create a chart for the case they have been given. This should include the following:
 - Facts: What are the important facts?
 - Issue: What is the issue the Court is being asked to decide?
 - Decision: What did the Court decide?
 - Reasoning: What was their reasoning?
 - Implications for *Lee*: What argument from this can you make which says that this violates/does not violate the Establishment Clause?
 - ❖ HINT: Look at the Court's reasoning in your case and simply apply that to the *Lee* case; for example, if the Court says that something does not violate the First Amendment because it is a long standing tradition, then say that the prayer in *Lee* does not violate the First Amendment because invocations and benedictions are long standing traditions at graduation ceremonies
 - ❖ **Answers for each case chart are attached**

- **Round 2:** After each group has completed their case chart, the students will move to the second round of groups. (Teachers should plan accordingly, so that each second round group has at least one member from each first round group.) Each student will then teach the new group about the case from the first round using the information he/she collected on the chart and make the argument either for or against the constitutionality of a prayer at a public school function.

Court's Opinion: *Lee v. Weisman*

6. After the Jigsaw exercise, ask the class to consider the four cases they have heard about and determine how they think the Court should have decided *Lee v. Weisman*. This can be done as a class discussion, in small group discussions, or in writing using the attached essay assignment. The *Lee* decision was a 5-4 decision, so remind students that there are convincing arguments on both sides.
7. Explain the decision that the Court reached in *Lee v. Weisman*, as well as the Court's reasoning (make sure to emphasize that the decision was extremely close and a variety of explanations were given by a number of Justices for their decision):
 - **Supreme Court's Ruling:** The invocation and benediction violate the Establishment Clause of the First Amendment; "The Constitution forbids the State to exact religious conformity from a student as the price of attending her own high school graduation."
 - **Reasoning of the Majority:**
 - Two important facts controlled the decision:
 - State actors invited and directed a formal religious exercise at these middle and high school graduation ceremonies.
 - Even for those students that object to the prayer, attendance and participation in this State sponsored religious activity is essentially mandatory, despite the fact that the district does not require attendance to receive the diploma or proceed on to the next grade.
 - State in this case took three distinct actions to endorse or favor religion:
 - Decided to include prayer through the invocation and benediction
 - Selected a clergyman
 - Controlled the content of the invocation and benediction through the distribution of the "Guidelines for Civic Occasions"
 - The government involvement with religious activity in this case was pervasive; it was essentially state-sponsored (school pays for and hosts the event) and state-directed (the principal gave the rabbi a pamphlet that discussed prayer in civic setting) religious exercise in a public school. Conducting this formal religious observance conflicts with settled rules pertaining to prayer exercises for students.
 - The school essentially required participation in a religious ceremony. The fact that it was brief was not the issue before the Court.
 - The prayer exercises in this case are especially improper because the State has, in every practical sense, compelled attendance and participation in an explicitly religious exercise at an event of singular importance to every student. This was an exercise that the objecting student had no real alternative to avoid.
 - *Engel v. Vitale* and *Abington v. Schempp* are the controlling cases because they recognize the special situation that exists in public schools.
 - Differences between this case and the prayer at the beginning of a state legislature session at issue in *Marsh v. Chambers*:
 - Adults were at issue in *Marsh* and they are to come and go, and do just that, for countless reasons, some having nothing to do with religion.
 - Graduation is a major event in the lives of young people, while legislative session openings occur frequently and are not considered a major event in anyone's life.
 - At a graduation ceremony, State actors (the principal and administrators) have a huge amount of control over the entire proceeding, including everything from content to clothing.
8. As a culminating activity, tell students that Time Magazine has written a cover story on the case of *Lee v. Weisman*. Have each student design a cover for the magazine. You may choose to first project and discuss the actual magazine cover that Time ran on December 9, 1991 as an example. This can be given as a take home assignment if class time is not available.

Additional Activity

Moot Court: Conduct an in class moot court activity in which the students pose as members of the Court or counsel for the petitioner or respondent and argue the constitutionality of the fact pattern below involving the Pledge of Allegiance.

- Facts: A public school district adopts a policy that all classes are to begin each day with the teacher leading the class in a recitation of the Pledge of Allegiance, which includes the phrase “One Nation, Under God...” This policy has been challenged by a number of the students and their parents as violating the Establishment Clause of the First Amendment.
- Using the four precedent cases already studied and the Court’s decision in *Lee v. Weisman*, have the students conduct a moot court.
- Separate the class into groups of five students. One student should serve as counsel to the students and their parents, one student should serve as counsel to the school board, and the other three should act as judges hearing the case.
- Give students time to prepare for the moot court. During this time, the students acting as attorneys should prepare an oral argument to give to the judges based on the five cases they have studied. The judges should work together to formulate questions to ask both the attorney representing the school board and the attorney representing the students and parents.
- Allow the student representing the school board to present their argument first. During the presentation of the argument, the judges should be prepared to ask the attorneys the questions they have prepared and any other questions they may have about the argument being made. This argument should be limited to 5 minutes. This process should then be repeated by the attorney representing the students and parents.
- At the conclusion of both arguments, the judges should deliberate and make a judgment based upon the arguments they have heard. The judges should provide either a written or oral explanation of which arguments they found persuasive and why.

Differentiation

Students with Special Needs

- Ensure that students are placed in mixed ability groups.
- Students may have more difficulty with readings for the Jigsaw activities. Access brief descriptions of each case at www.oyez.org. Enter case name in the search bar in the top right hand.

AIG

- Allow students to create their own role play scenarios after watching the movie.
- Assign students the Optional essay requiring students to author a majority opinion for *Lee v. Weisman* based on the Jigsaw activity and class discussion.

Warm-Up Visual



Name: _____

Lee v. Weisman Viewers Guide

1. What organization were the Weismans long time members of before the events in question occurred?
2. What two reasons did Debbie Weisman give for not reciting the Pledge of Allegiance?
3. What was the major fact in the mind of the principal, Robert E. Lee, for deciding to include the prayer after the Weismans' objections?
4. What happened to the suit that was filed which attempted to prevent the prayer from being given at Debbie's graduation with a temporary injunction?
5. What two justifications did the school district give to support including the prayer in the ceremony?
6. What was the problem that was presented by giving Rabbi Gutterman the "Guidelines for Civic Occasions" which provided recommendations for creating the invocation and benediction?
7. Did all of the high schools in Providence school district engage in this practice?
8. How did the District Court and the First Circuit Court of Appeals rule on the case?
9. Why was Daniel Weisman worried when the Supreme Court granted certiorari?
10. Did the U.S Government support the School District or the Weismans and why?

Lee v. Weisman Viewers Guide- ANSWER KEY

1. What organization were the Weismans long time members of before the events in question occurred?
- *ACLU (American Civil Liberties Union)*
2. What two reasons did Debbie Weisman give for not reciting the Pledge of Allegiance?
- *Debbie did not believe there was “justice for all” and she did not like the inclusion of the language “Under God.”*
3. What was the major fact in the mind of the principal, Robert E. Lee, for deciding to include the prayer after the Weismans’ objections?
- *Tradition*
4. What happened to the suit that was filed which attempted to prevent the prayer from being given at Debbie’s graduation with a temporary injunction?
- *The judge ruled that there was insufficient time to decide the suit and dismissed the case.*
5. What two justifications did the school district give to justify including the prayer in the service?
- *They claimed that attendance of the graduation was completely voluntary and that this practice was a longstanding tradition.*
6. What was the problem that was presented when the Rabbi Gutterman was given the Guidelines which provided recommendations for creating the invocation and benediction?
- *ACLU and the Weismans argued that this was the state dictating the content of the prayer that was to be given.*
7. Did all of the high schools in Providence school district engage in this practice?
- *No*
8. How did the District Court and the First Circuit rule on the case?
- *Both courts ruled in favor of the Weismans, stating that the practice violated the Establishment Clause.*
9. Why was Daniel Weisman worried when the Supreme Court granted certiorari?
- *He thought they would only hear the case if they were going to overturn it and he worried that his name would be on the case that allowed prayer back into public schools.*
10. What side of the case did the Government enter on and what did they say?
- *Entered on the side of the school district. Government argued that so long as students were not coerced into participating in the religious exercise, the prayer should be considered constitutional*

Lee v. Weisman Role Playing Exercises



PTA Meeting

Develop the following scene into a theatrical depiction that you will present to the class:

Act out a PTA meeting in which the Weisman's bring their concerns about the delivery of an invocation and benediction by a clergyman.

Possible roles:

- Members of the PTA board
- The Weismans
- Parent who support the Weismans' objection to prayer
- Parent who support the decision to include the prayer



Newscast

Develop the following scene into a theatrical depiction that you will present to the class.

Prepare and deliver a newscast which reports upon the Nathan Bishop Middle School graduation. This should include an outline of the controversy, a discussion of the invocation and benediction that were given by Rabbi Gutterman, and a description of what events are going to follow.

Possible roles:

- Two newscast anchors at the station
- An on-site reporter
- Someone interviewed that is connected with the middle school (student, parents, teacher, etc.)



The conversation between the Weismans and Principal Robert E. Lee

Develop the following scene into a theatrical depiction that you will present to the class.

Reenact the conversation that took place between the Weismans and Principal Lee. (Remember that the week before Debbie's graduation, Principal Lee met with the Weismans and offered to have Rabbi Gutterman cancel the prayer during graduation practice, but not in the future. Lee concluded the conversation by telling the Weismans to do whatever they thought they had to do. Act out your interpretation of this meeting; focus on the tone of the conversation and what possible compromises might have been offered.

Possible Roles:

- Daniel and Vivian Weisman
- Principal Robert E. Lee



The invocation delivered at Merith's graduation by an Evangelic Christian minister

Develop the following scene into a theatrical depiction that you will present to the class.

Prepare and deliver the invocation which you imagine took place at Merith's graduation, which included asking everyone to stand up and thank Jesus Christ.

Possible roles:

- The minister
- Members of the audience representing different reactions audience members might have had.





The conversation between Principal Robert E. Lee and the administrators of the school district

Develop the following scene into a theatrical depiction that you will present to the class.

Act out the conversation Principal Lee had with school district administrators. You'll remember Lee called the administrators for the Providence school district and asked how to proceed after the Weismans raised their complaints. As the documentary outlines, he was informed to make the decision he thought best and he would be supported by the school district.

Possible Roles:

- Lee
- School district administrators
- School district attorney



A conversation between three sets of parents regarding the delivery of a prayer at the graduation ceremony

Develop the following scene into a theatrical depiction that you will present to the class.

Undoubtedly, there were countless conversations that took place between other parents who had children in the Providence school system. Create a scene that represents some of the conversations you think would have taken place.

Possible Roles:

- Parents that support the Weismans
- Parents that support the prayer
- Parents with other or neutral opinions



Marsh (Petitioner) v. Chambers (Respondent)

Facts of the Case

Ernest Chambers, a member of the Nebraska legislature, challenged the legislature's chaplaincy practice in federal court. This practice involves the offering of a prayer at the beginning of each legislative session by a chaplain chosen by the state and paid out of public funds. The district court supported Chambers on the use of public funds. The appeals court supported Chambers on the prayer practice. Both parties appealed to the U.S. Supreme Court.

Chief Justice Burger delivered the opinion of the Court.

The question presented is whether the Nebraska Legislature's practice of opening each legislative day with a prayer by a chaplain paid by the State violates the Establishment Clause of the First Amendment. [Court of Appeals held that it did violate the First Amendment; Supreme Court reverses and says the practice does not violate the First Amendment]

I The Nebraska Legislature begins each of its sessions with a prayer offered by a chaplain who is chosen biennially by the Executive Board of the Legislative Council and paid out of public funds. Robert E. Palmer, a Presbyterian minister, has served as chaplain since 1965 at a salary of \$319.75 per month for each month the legislature is in session.

Ernest Chambers is a member of the Nebraska Legislature and a taxpayer of Nebraska, claiming that the Nebraska Legislature's chaplaincy practice violates the Establishment Clause of the First Amendment. . .

II The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom. In the very courtrooms in which the United States District Judge and later three Circuit Judges heard and decided this case, the proceedings opened with an announcement that concluded, "God save the United States and this Honorable Court." The same invocation occurs at all sessions of this Court. . .

The tradition in many of the colonies was, of course, linked to an established church, but the Continental Congress, beginning in 1774, adopted the traditional procedure of opening its sessions with a prayer offered by a paid chaplain. Although prayers were not offered during the Constitutional Convention, the First Congress, as one of its early items of business, adopted the policy of selecting a chaplain to open each session with prayer. . . A statute providing for the payment of these chaplains was enacted into law on Sept. 22, 1789. . .

On Sept. 25, 1789, three days after Congress authorized the appointment of paid chaplains, final agreement was reached on the language of the Bill of Rights, J. of the Sen. 88; J. of the H.R. 121. Clearly the men who wrote the First Amendment Religion Clause did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress. It has also been followed consistently in most of the states, including Nebraska, where the institution of opening legislative sessions with prayer was adopted even before the State attained statehood. . .

Standing alone, historical patterns cannot justify contemporary violations of constitutional guarantees, but there is far more here than simply historical patterns. In this context, historical evidence sheds light not only

on what the draftsmen intended the Establishment Clause to mean, but also on how they thought that Clause applied to the practice authorized by the First Congress-their actions reveal their intent. An act “passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, ... is contemporaneous and weighty evidence of its true meaning” . . .

In light of the unambiguous and unbroken history of more than 200 years, there can be no doubt that the practice of opening legislative sessions with prayer has become part of the fabric of our society. To invoke Divine guidance on a public body entrusted with making the laws is not, in these circumstances, an “establishment” of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country. As Justice Douglas observed, “[w]e are a religious people whose institutions presuppose a Supreme Being.” . . .

III We turn then to the question of whether any features of the Nebraska practice violate the Establishment Clause. Beyond the bare fact that a prayer is offered, three points have been made: first, that a clergyman of only one denomination-Presbyterian-has been selected for 16 years; second, that the chaplain is paid at public expense; and third, that the prayers are in the Judeo-Christian tradition. Weighed against the historical background, these factors do not serve to invalidate Nebraska's practice [Court concludes that this practice does not violate the Establishment Clause]. . .

We, no more than Members of the Congresses of this century, can perceive any suggestion that choosing a clergyman of one denomination advances the beliefs of a particular church. To the contrary, the evidence indicates that Palmer was reappointed because his performance and personal qualities were acceptable to the body appointing him. Palmer was not the only clergyman heard by the Legislature; guest chaplains have officiated at the request of various legislators and as substitutes during Palmer's absences. . .

Nor is the compensation of the chaplain from public funds a reason to invalidate the Nebraska Legislature's chaplaincy; remuneration is grounded in historic practice initiated, as we noted earlier, ante, at 3333-3334, by the same Congress that adopted the Establishment Clause of the First Amendment. . .

The content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief. That being so, it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer.

[This opinion has been edited for pedagogical purposes and internal citations, footnotes, and page numbers have been omitted.]

County of Allegheny v. ACLU (focusing on the joined case, City of Pittsburgh (Petitioner)

v.

ACLU of Greater Pittsburgh (Respondent)

Facts of the Case

Two public-sponsored holiday displays in Pittsburgh, Pennsylvania, were challenged by the American Civil Liberties Union. The first display involved a Christian nativity scene inside the Allegheny County Courthouse. The second display was a large Chanukah menorah, erected each year by the Chabad Jewish organization, outside the City-County building. The ACLU claimed the displays constituted state endorsement of religion. This case was decided together with *Chabad v. ACLU* and *City of Pittsburgh v. ACLU of Greater Pittsburgh*.

Justice Blackmun delivered the opinion of the Court.

This litigation concerns the constitutionality of two recurring holiday displays located on public property in downtown Pittsburgh. . . . The second is a Chanukah menorah placed just outside the City-County Building, next to a Christmas tree and a sign saluting liberty. The Court of Appeals for the Third Circuit ruled that each display violates the Establishment Clause of the First Amendment because each has the impermissible effect of endorsing religion. We . . . reverse the Court of Appeals' judgment [that the display was unconstitutional] regarding the menorah display. . . .

On December 22 of the 1986 holiday season, the city placed at the Grant Street entrance to the City-County Building an 18-foot Chanukah menorah of an abstract tree-and-branch design. The menorah was placed next to the city's 45-foot Christmas tree, against one of the columns that supports the arch into which the tree was set. The menorah is owned by Chabad, a Jewish group, FN35 but is stored, erected, and removed each year by the city. The tree, the sign, and the menorah were all removed on January 13. . . .

II. This litigation began on December 10, 1986, when respondents, the Greater Pittsburgh Chapter of the American Civil Liberties Union filed suit against . . . the city, seeking permanently to enjoin . . . the city from displaying the menorah in front of the City-County Building.

. . .

III. In the course of adjudicating specific cases, this Court has come to understand the Establishment Clause to mean that government may not promote or affiliate itself with any religious doctrine or organization, may not discriminate among persons on the basis of their religious beliefs and practices, may not delegate a governmental power to a religious institution, and may not involve itself too deeply in such an institution's affairs. . . .

Whether the key word is “endorsement,” “favoritism,” or “promotion,” the essential principle remains the same. The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief or from “making adherence to a religion relevant in any way to a person's standing in the political community.” . . .

. . . [T]he government's use of religious symbolism is unconstitutional if it has the effect of endorsing religious beliefs, and the effect of the government's use of religious symbolism depends upon its context. These general principles are sound, and have been adopted by the Court in subsequent cases. . . [W]e must ascertain whether “the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denominations as an endorsement, and by the nonadherents as a disapproval, of their individual religious choices.” . . .

VI. The menorah, one must recognize, is a religious symbol: it serves to commemorate the miracle of the oil as described in the Talmud. But the menorah's message is not exclusively religious. The menorah is the primary visual symbol for a holiday that, like Christmas, has both religious and secular dimensions. . .

Accordingly, the relevant question for Establishment Clause purposes is whether the combined display of the tree, the sign, and the menorah has the effect of endorsing both Christian and Jewish faiths, or rather simply recognizes that both Christmas and Chanukah are part of the same winter-holiday season, which has attained a secular status in our society. Of the two interpretations of this particular display, the latter seems far more plausible. . .

Thus, unless the combined Christmas-Chanukah display fairly can be seen as a double endorsement of Christian and Jewish faiths, it must be viewed as celebrating both holidays without endorsing either faith. . .

The Christmas tree, unlike the menorah, is not itself a religious symbol. Although Christmas trees once carried religious connotations, today they typify the secular celebration of Christmas. Numerous Americans place Christmas trees in their homes without subscribing to Christian religious beliefs, and when the city's tree stands alone in front of the City-County Building, it is not considered an endorsement of Christian faith.

. . . [I]t is not "sufficiently likely" that residents of Pittsburgh will perceive the combined display of the tree, the sign, and the menorah as an "endorsement" or "disapproval ... of their individual religious choices." . . .

When measured against this standard, the menorah need not be excluded from this particular display. The Christmas tree alone in the Pittsburgh location does not endorse Christian belief; and, on the facts before us, the addition of the menorah "cannot fairly be understood to" result in the simultaneous endorsement of Christian and Jewish faiths. On the contrary, for purposes of the Establishment Clause, the city's overall display must be understood as conveying the city's secular recognition of different traditions for celebrating the winter-holiday season.

[This opinion has been edited for pedagogical purposes and internal citations, footnotes, and page numbers have been omitted.]

Engel (Petitioner) v. Vitale (Respondent)

Facts of the Case

The Board of Regents for the State of New York authorized a short, voluntary prayer for recitation at the start of each school day. This was an attempt to defuse the politically potent issue by taking it out of the hands of local communities. The blandest of invocations read as follows: "Almighty God, we acknowledge our dependence upon Thee, and beg Thy blessings upon us, our teachers, and our country."

Mr. Justice Black delivered the opinion of the Court.

The respondent Board of Education of Union Free School District No. 9, New Hyde Park, New York, acting in its official capacity under state law, directed the School District's principal to cause the following prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day:

'Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.'

. . . [T]he parents of ten pupils brought this action in a New York State Court insisting that use of this official prayer in the public schools was contrary to the beliefs, religions, or religious practices of both themselves and their children. . . . [T]hese parents challenged the constitutionality of both the state law . . . and . . . the recitation of this particular prayer on the ground that these actions of official governmental agencies violate that part of the First Amendment of the Federal Constitution which commands that 'Congress shall make no law respecting an establishment of religion' . . .

We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. . .

. . . [W]e think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government. . .

Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause . . . of the First Amendment. . . The Establishment Clause . . . does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. . . The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate. Another purpose of the Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand. . . The New York laws officially

prescribing the Regents' prayer are inconsistent both with the purposes of the Establishment Clause and with the Establishment Clause itself.

It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, or course, could be more wrong. . . . It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance. . .

To those who may subscribe to the view that because the Regents' official prayer is so brief and general there can be no danger to religious freedom in its governmental establishment, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment:

'(I)t is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?'

[This opinion has been edited for pedagogical purposes and internal citations, footnotes, and page numbers have been omitted.]

Abington (Petitioner) v. Schempp (Respondent)

Facts of the Case

The Abington case concerns Bible-reading in Pennsylvania public schools. At the beginning of the school day, students who attended public schools in the state of Pennsylvania were required to read at least ten verses from the Bible. After completing these readings, school authorities required all Abington Township students to recite the Lord's Prayer. Students could be excluded from these exercises by a written note from their parents to the school. In a related case -- *Murray v. Curlett* -- a Baltimore statute required Bible-reading or the recitation of the Lord's Prayer at open exercises in public schools. Murray and his mother, professed atheists -- challenged the prayer requirement.

Mr. Justice Clark delivered the opinion of the Court.

Once again we are called upon to consider the scope of the provision of the First Amendment to the United States Constitution which declares that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.' These companion cases present the issues in the context of state action requiring that schools begin each day with readings from the Bible. . . In light of the history of the First Amendment and of our cases interpreting and applying its requirements, we hold that the practices at issue and the laws requiring them are unconstitutional under the Establishment Clause, as applied to the States through the Fourteenth Amendment.

I. The Commonwealth of Pennsylvania by law . . . requires that 'At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian.' The Schempp family, husband and wife and two of their three children, brought suit to enjoin enforcement of the statute, contending that their rights . . . are, have been, and will continue to be violated unless this statute be declared unconstitutional as violative of these provisions of the First Amendment. .

On each school day at the Abington Senior High School between 8:15 and 8:30 a.m., while the pupils are attending their home rooms or advisory sections, opening exercises are conducted pursuant to the statute. The exercises are broadcast into each room in the school building through an intercommunications system and are conducted under the supervision of a teacher by students attending the school's radio and television workshop. Selected students from this course gather each morning in the school's workshop studio for the exercises, which include readings by one of the students of 10 verses of the Holy Bible, broadcast to each room in the building. . .

The reading of the verses, even without comment, possesses a devotional and religious character and constitutes in effect a religious observance. The devotional and religious nature of the morning exercises is made all the more apparent by the fact that the Bible reading is followed immediately by a recital in unison by the pupils of the Lord's Prayer. . .

II. The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself. This background is evidenced today in our public life . . .

This is not to say, however, that religion has been so identified with our history and government that religious freedom is not likewise as strongly imbedded in our public and private life. Nothing but the most telling of personal experiences in religious persecution suffered by our forebears, could have planted our belief in liberty of religious opinion any more deeply in our heritage. . .

III. [T]his Court has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another. Almost 20 years ago . . . the Court said that '(n)either a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.' . . .

V. As we have indicated, the Establishment Clause has been directly considered by this Court eight times in the past score of years and . . . it has consistently held that the clause withdrew all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. . .

Applying the Establishment Clause principles to the cases at bar we find that the States are requiring the selection and reading at the opening of the school day of verses from the Holy Bible and the recitation of the Lord's Prayer by the students in unison. These exercises are prescribed as part of the curricular activities of students who are required by law to attend school. They are held in the school buildings under the supervision and with the participation of teachers employed in those schools. . .

We agree with the trial court's finding as to the religious character of the exercises. Given that finding, the exercises and the law requiring them are in violation of the Establishment Clause. . .

The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners. Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause. Further, it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent . . .

[This opinion has been edited for pedagogical purposes and internal citations, footnotes, and page numbers have been omitted.]

Court Case Charts- ANSWER KEY

1. *Marsh v. Chambers*

- a. Facts
 - The Nebraska legislature started each of their legislative sessions with a prayer given by a Presbyterian minister who was paid with government money.
- b. Issue
 - Does this practice of allowing a religious figure to open a legislative session violate the Establishment Clause of the First Amendment?
- c. Decision
 - This practice does not violate the First Amendment.
- d. Reasoning
 - Most Important: The original drafters of the First Amendment engaged in this practice, and it has been continued for almost 200 years, and this historical practice provides some insight into their intent when they passed the Amendment. This practice has become part of the “fabric of our society.”
 - The continued use of one type of minister does not show endorsement of one religion because he was continually used, not because of his beliefs, but because of his personal qualities that made him well suited for the job.
 - The fact that he is paid also does not matter because this was traditionally done.
 - The prayer was neutral and did not advance or disparage any specific religion.
- e. Why *Lee* should not violate the First Amendment
 - High schools throughout our history have offered invocations and benedictions. Just like prayer has become part of the fabric of legislative sessions, it has likewise become part of graduation ceremonies.
 - The minister selected for the graduation ceremony, like the minister selected for the legislative prayer, was not chosen for his religion but because he was respected in the community.
 - The high school prayer given was completely neutral and did not advance any one religion and tried to expound principles which we all agree on.

2. *Allegheny v. ACLU*

- a. Facts
 - The city of Pittsburgh placed a Chanukah menorah and Christmas tree, as part of a holiday display, outside of the City-County building on land owned by the government.
- b. Issue
 - Does this display endorse religion in such a way that it violated the Establishment Clause?
- c. Decision
 - This practice does not violate the First Amendment.
- d. Reasoning
 - The menorah and Christmas tree represent a holiday season which has both a religious and secular dimension; the city in this case, by putting up the display, is merely celebrating the secular part of each holiday and not endorsing religion.
 - It is not sufficiently likely that anyone will view this as an endorsement of a specific religion or a disapproval of any specific religion.
- e. Why *Lee* should not violate the First Amendment
 - The use of invocations and benedictions may have both a religious and secular purpose; they can be seen as merely one way of wishing graduates good luck and offering support. There is nothing inherently religious about them.
 - No one is likely to see this as an endorsement of a specific religion because the invocations and benedictions are religiously neutral and given by figures from a different religion each year.

3. *Engel v. Vitale*

- a. Facts
 - A state law was passed which required public school districts to begin each school day with a prayer that stated: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country.”
- b. Issue
 - Does this prayer violate the Establishment Clause of the First Amendment?

- c. Decision
 - This is a violation of the Establishment Clause.
- d. Reasoning
 - The fact that the prayer is denominationally neutral and voluntary does not mean that it does not violate the Establishment Clause. No showing of the government coercing people into engaging in a religious activity is necessary.
 - When the government power and prestige support a religion by the passage of laws, this necessarily involves some level of coercion.
 - The mixing of government action and religion can pervert religion, the very thing which the Establishment clause seeks to avoid.
 - Government endorsement of a religion and religious persecution go hand in hand.
 - The fact that this is a minor breach, since the prayer is brief, does not matter. Madison stated that “It is proper to take alarm at the first experiment on our liberties...”
- e. Why *Lee* should violate the First Amendment
 - The use of an invocation and benediction, even if they are denominationally neutral and voluntary, does not mean that they do not violate the Establishment Clause; both of them in this case had religious overtones and were delivered by a clergyman.
 - When the school seeks out and finds a clergyman, and gives him directions on how to deliver his address, this must be seen as the government at least partially supporting religion and even provides some level of coercion.
 - Even though this is a relatively minor part of the ceremony, it does not matter as Madison’s quote demonstrates.

4. ***Abington v. Schempp***

- a. Facts
 - Pennsylvania passed a law which required that at least ten verses from the Holy Bible would be read to open each school day. These reading had a religious nature and constituted a religious observance.
- b. Issue
 - Does this state law violate the Establishment Clause of the First Amendment?
- c. Decision
 - The opening prayer requirement does violate the Establishment Clause.
- d. Reasoning
 - “Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.”
 - If either the purpose or the primary effect of the law is to advance or inhibit religion, then a violation of the Establishment Clause exists. In this case, the activity is clearly of a religious nature and advances religion.
 - The fact that participation is voluntary is no defense to a constitutional claim under the Establishment Clause, nor is the fact that it is a relatively minor encroachment.
- e. Why *Lee* should violate the First Amendment
 - The offering of the invocation and benediction by a clergyman has the primary purpose and effect of endorsing at least some religion over none at all. What else could it be doing?
 - The fact that participation in that part of the graduation ceremony is voluntary and relatively brief provides no defense to the fact that the invocation and benediction violate the Establishment Clause.

ESSAY:

***Lee v. Weisman* and the Use of Invocations and Benedictions at Public School Graduations**

Based upon the four decisions discussed in your class, write a judicial opinion in the case of *Lee v. Weisman*.

Remember the four cases discussed:

- *Marsh v. Chambers* – The Court held that opening state legislative sessions with prayer by a chaplain did not violate the Establishment Clause of First Amendment.
- *Allegheny v. ACLU* – The Court held that the presence of a Christmas tree and menorah in a holiday display on government property did not violate the Establishment Clause of First Amendment.
- *Engel v. Vitale* – The Court held that opening the school day with a prayer to “Almighty God” violated the Establishment Clause of the First Amendment.
- *Abington v. Schempp* – The Court held that a state law requiring the day to be opened with a reading from the Bible violated the Establishment Clause of the First Amendment.

Basic requirements for this assignment:

- Write a 4-5 paragraph opinion deciding the case of *Lee v. Weisman*.
- At the top of the page include the name of the case and below include the statement “Mr./Ms. Justice _____ delivered the opinion of the Court.”
- Include an introductory paragraph that discusses the facts of the case, the basic issue, and the decision you reached.
- Include a concluding paragraph that has a concise statement of the conclusion you reached and why you came to this conclusion.

When writing the opinion, remember the following:

- Clearly state the facts of the case which are legally important
- Explicitly state the issue you are deciding
- Make clear the decision you have reached and why
- Make comparisons between the case you are deciding and the cases you studied (Hint: say why *Lee* is the same as the cases that favor the decision you reach and different from the other cases)

As you write your essay, make sure to use the cases discussed in class to make your argument. Throughout the writing process and after you finish, make sure to check your work for proper grammar and basic language rules. Good luck!

