

## BOW YOUR HEADS

### Purpose:

Freedom of religion like other First Amendment issues, can be complex. At times, the two clauses relating to freedom of religion conflict, as can be seen in two Supreme Court cases involving schools- *Board of Education of Westside Schools v. Mergens* and *Lee v. Weisman*. In this lesson, students will analyze the Court's historic and contemporary application of the Establishment and Free Exercise Clauses of the First Amendment.

### Procedure:

1. Ask students to consider the role of religion in their own lives. Provide students with the handout "Status of Religion in America" and ask the class to draw conclusions about the general spiritual beliefs of most Americans, based on the data provided by these polls.
2. To gain a better understanding of the two clauses and historic examples of controversies arising from their interpretation, divide students into pairs and provide each pair with a copy of the timeline "Landmark Cases in Religious Freedom." Give student pairs time to discuss the historic situations on the timeline to determine which of the clauses is the issue at stake and whether they agree or disagree with the ruling of the Supreme Court. Review student findings as a class.
3. Explain that students will be analyzing two major issues related to religion's role in the public schools. Be sure that students understand that public schools are an "extension" of the government, so there are many opportunities for controversy to arise when schools and religion interact. Review the two clauses of the First Amendment that deal with freedom of religion, pointing out that sometimes these two clauses come into conflict.
4. Using the Human Opinion Continuum strategy, conduct a class discussion of the situation in the case of *Westside v. Mergens*. (See handout with details of the case.) Students will be taking a physical stand and justifying their response to the question, "Should schools provide a forum for student religious meetings?" Following the discussion, announce the Supreme Court's 8-1 decision in favor of *Mergens*. Read aloud the following excerpt from the majority opinion:  
*"There is a crucial difference between government speech and endorsing religion, which the Endorsement Clause forbids...We think that secondary students are mature enough and are likely to understand that a school does not endorse or support student speech...However, to ensure that the school does not give the appearance of endorsing religion, school employees, including teachers, can be present only in a non-participating capacity."* (Justice O'Connor, 1990.)
5. Explain to students that the decision of the *Westside v. Mergens* case put to rest debates about a law passed by Congress a few years earlier, the Equal Access Act of 1984. (See handout.) Ask students to read through the provisions of the law. What conditions did Congress require of schools in order for campuses to be used for religious purposes? Do students agree or disagree with the conditions of the law? Why or why not?
6. Inform students that throughout time, the Supreme court adopts guidelines, or "tests," designed to determine whether actions are unconstitutional. One such test was developed in the 1970s to determine whether government actions denied citizens their religious freedoms under the First Amendment. This "Lemon Test" can be discussed, using the handout "You Make the

Call." Provide a copy of this handout to students (or use an overhead transparency.) Using the five situations on the chart, ask students to apply the three-pronged "Lemon Test" to determine if such actions would be found unconstitutional.

7. Conduct a classroom discussion of the merits of the Lemon Test. Review two newer "tests" that have been developed by the Supreme Court in recent years, the "Endorsement Test" and the "Coercion Test." Do these standards seem more reasonable or not? Should the Lemon Test be abandoned? Why or why not? Students may note their conclusions on the bottom of the handout in a brief paragraph.

8. Inform students that they will be asked to examine one final situation in which the Free Exercise and the Establishment Clause have come into conflict. This case study will involve prayer at school events. Give two students a copy of Rabbi Gutterman's Invocation and Benediction. Ask the two students to stand and read each aloud. Conduct a Human Opinion Continuum, requiring students to respond to the following statement, "Agree or Disagree: Rabbi Gutterman's prayers are appropriate for a public schools' graduation ceremony."

9. Divide the class into pairs and provide each with a copy of the handout for the *Lee v. Weisman* case. Ask students to read about the details surrounding this case and decide if this information would alter their opinions about the appropriateness of Rabbi Gutterman's prayers. Ask students to use both the Lemon Test to determine whether the prayers would be considered unconstitutional. Combine two pairs of students into a group of four and ask them to share their opinions. Conduct a classroom discussion, using the Lemon Test to analyze the case of *Lee v. Weisman*.

10. Inform the class of the Supreme Court's 5-4 decision and provide students with a copy of excerpts from the Court's majority and dissenting opinions. Based on these excerpts, allow time for the pairs of students to discuss which of the three "tests" they believe the justices used in coming to their decision. Conduct a classroom discussion, sharing the conclusions drawn by from student discussions.

11. For enrichment or extension, use the handout "Oyez: *Santa Fe Schools v. Doe*" and the Internet to research the developing standards of the Free Exercise and Establishment Clauses, as they relate to additional situations of prayer at school activities. Inform students that this website can be used to actually listen to the audio files of the oral arguments presented to the Supreme Court!

### ***Top Twenty Religions in the United States***

<b>Religion</b>	<b>1990 Adult Pop.</b>	<b>2001 Adult Pop.</b>	<b>% of Pop.</b>	<b>% Change</b>
Christianity	151,225,000	159,030,000	76.5%	+5%
Nonreligious/Secular	13,116,000	27,539,000	13.2%	+110%
Judaism	3,137,000	2,831,000	1.3%	-10%
Islam	527,000	1,104,000	0.5%	+109%
Buddhism	401,000	1,082,000	0.5%	+170%
Hinduism	227,000	766,000	0.4%	+237%
Native American Religion	47,000	103,000	0.05%	+119%
Scientology	45,000	55,000	0.02%	+22%

### ***Largest Christian denominational families in U.S.***

<b>Denomination</b>	<b>1990 Est. Adult Pop.</b>	<b>2001 Est. Adult Pop.</b>	<b>% U.S. Pop. 2001</b>	<b>% Change 1990 - 2001</b>
Catholic	46,004,000	50,873,000	24.5%	+11%
Baptist	33,964,000	33,830,000	16.3%	0%
Methodist/Wesleyan	14,174,000	14,150,000	6.8%	0%
Lutheran	9,110,000	9,580,000	4.6%	+5%
Presbyterian	4,985,000	5,596,000	2.7%	+12%
Pentecostal	3,191,000	4,407,000	2.1%	+38%
Episcopalian	3,042,000	3,451,000	1.7%	+13%
Judaism	3,137,000	2,831,000	1.3%	-10%
Latter-day Saints/Mormon	2,487,000	2,697,000	1.3%	+8%
Churches of Christ	1,769,000	2,593,000	1.2%	+47%
Jehovah's Witnesses	1,381,000	1,331,000	0.6%	-4%
Assemblies of God	660,000	1,106,000	0.5%	+68%

## LANDMARK CASES IN RELIGIOUS FREEDOM

Case Name:	Conflict & Decision:	1 <sup>st</sup> Amendment Issue: + = Establishment Clause √ = Free Exercise Clause	SA = Strongly Agree A = Agree D = Disagree SD = Strongly Disagree
<i>Reynolds v. United States</i> (1879)	A Utah Mormon's conviction of polygamy under state law is upheld to enforce morality.		
<i>Cochran v. Louisiana</i> (1930)	Use of public tax money to purchase textbooks of children in private, church schools allowed b/c child benefited, not the church.		
<i>Minersville Schools v. Gobitis</i> (1940)	In order to promote patriotism, state law upheld, requiring Jehovah's Witness children to salute the flag.		
<i>West Virginia Board of Edc. V. Barnette</i> (1943)	State law requiring students to salute the flag struck down as interference with religious principles.		
<i>Engel v. Vitale</i> (1962)	N.Y. School Board's mandatory daily prayer struck down.		
<i>Abington Schools v. Schempp</i> (1963)	School announcements including daily reading of Bible scriptures banned.		
<i>Epperson v. Arkansas</i> (1968)	State law forbidding teaching of evolutionary theory struck down as indirect support of opposing religious theories.		
<i>Wisconsin v. Yoder</i> (1970)	Struck down state law requiring all students, including Amish, to attend school until age of 16 because of interference with religious practices.		
<i>Lemon v. Kurtzman</i> (1971)	State tax money going to both public and private, including religious, teachers' salaries struck down.		
<i>Lynch v. Donnelly</i> (1984)	Rhode Island town's Christmas display of both religious and secular figurines on public property permitted.		
<i>Wallace v. Jaffree</i> (1985)	School's daily "moment of silence" banned because intent was to support student prayers.		
<i>Allegheny County v. ALCU</i> (1989)	Country courthouse's nativity scene outlawed as endorsement of one religion over others.		
<i>Edwards v. Aguillard</i> (1987)	Louisiana's requirement to teach both Evolutionary theory and Creationism banned because of intent to support one religious viewpoint over others.		
<i>Lyng v. Northwest Indian Cemetery</i> (1988)	U.S. forest lands leased to lumber industries trespassing on Indian burial sites permitted as a non-threat to religious beliefs.		
<i>Brown v. Gilmore, Gov. of Va.</i> (2001)	Supreme Court refuses to hear appeals case, thus supporting a strictly neutral "moment of silence" in public schools.		

## Westside v. Mergens



### **Background:**

Bridget Mergens never thought of herself as an activist. She wasn't the political type. She had never been to a rally or demonstration. All she knew really about America's legal system was what she picked up watching television. She certainly never imagined that she could ignite a legal battle that would land in the chambers of the U.S. Supreme Court.

But that's what happened her senior year in high school. Bridget's journey began when she approached her teachers to start an after-school Bible Club. Bridget thought the principal would be delighted. "I thought the school would be happy that a bunch of students wanted to sit around and talk about the Bible." Dr. Findley, the principal, refused to let her group use the building's rooms. Findlay believed that letting the group meet on school property would violate the First Amendment.

Bridget mulled over the decision and began to wonder about it. She was opposed to school prayers on the announcements; she was also opposed to reading verses from the Bible over the intercom. But she did not see a comparison to voluntary Bible clubs. Bridget received the assistance of an attorney who attended her church and filed a protest with the school board. Her lawyer pointed out that all sorts of clubs were permitted to use classrooms outside of the school day. He argued that the school should treat all groups equally, religious or not.

The school board was not swayed. They argued that permitting one religious club would require that they accept all religious clubs who applied, including those who may claim to be atheists or even Satanists. This was not, in their opinion, why school buildings were built. The battle went to the Supreme Court.

## The Equal Access Law:

The *Equal Access Act* was passed in the Senate with a vote of 88 to 11; it passed in the House 337 to 77; it became law in 1984. The law applies only to public secondary schools which:

- Receive federal financial assistance.

The language of the act is quite clear. Such schools must allow additional clubs to be organized, as long as:

- Attendance is voluntary.
- The group is student-initiated.
- The group is not sponsored by the school itself, by teachers, by other school employees, or by the government.
- The group is not disruptive.

The school is required to treat all of its student-led non-curriculum clubs equally:

- Each club must have equal access to meeting spaces.
- School officials have the right to monitor meetings.
- The school may limit meeting times and locations, but must apply rules equally to all groups.

## Background Information:

In 1981, the U.S. Supreme Court ruled in *Widmar v. Vincent*, that public universities which allowed political student-led groups to use campus buildings for their meetings could not deny equal privileges to a Christian student group on campus. The *Equal Access Act* was ruled constitutional by the U.S. Supreme Court in 1990 case "*Board of Education of Westside Community Schools v. Mergens*."

## The First Amendment's Establishment Clause: You Make the Call

In determining the constitutionality of government actions related to religious freedoms of the First Amendment, the justices of the Supreme Court have, over several years, utilized differing "tests" or standards. One such standard was developed out of a 1971 case, *Lemon v. Kurtzman*. This "**Lemon Test**" argued that a law or action would be deemed "unconstitutional" if the answer to any ONE of the three questions below was "yes."

1. Was the reason or intent of the action or law religious?
2. Does the action or law advance (help) or harm (discriminate) one religion over another?
3. Will government officials be overly involved in church affairs in order to enforce the law?

Using this "Lemon Test," determine the constitutionality of the following situations:

Situation:	Ques. # 1. (Yes or No)	Ques. # 2.	Ques. # 3.	Constitutional or Unconstitutional?
A. State law requires a non-denominational prayer to be read for daily announcements.				
B. Kentucky requires the Ten Commandments to be posted in every public school classroom.				
C. Tallahassee displays the Christian cross on its city seals, seen on police cars, firetrucks, and city documents.				
D. School officials ask a student to lead a prayer at high school graduation ceremonies.				
E. Moments of silence are permitted in schools for students to pray or meditate or quietly think.				

Some Constitution experts and justices have argued that the "Lemon Test" places too strict of a separation between church and state. Some have argued that decisions should be made according to a more moderate test, known as the "**Endorsement Test**." This standard does not weigh the *intent* of a law, but only considers the *impact*. Its goal is to prevent government endorsement of one religion over another. Which of the above situations would be considered "constitutional" if utilizing this "Endorsement Test?"

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Still other jurists argue that the First Amendment merely prohibits government from setting up ("establishing") one official, national religion. These experts claim that government can assist and support religious activities in public places, as long as no one is forced into participating. This is known as the "**Coercion Test**." Which of the above situations would be considered "constitutional" if utilizing this "Coercion Test?"

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Which constitutional "test" would you find most acceptable in determining future cases of the First Amendment's Establishment Clause? Justify your answer in a short paragraph.

## **Invocation**

God of the Free, Hope of the Brave,

For the legacy of America where diversity is celebrated and the rights of minorities are protected, we thank you. May these young men and women grow up to enrich it.

For the liberty of America, we thank you. May these new graduates grow up to guard it.

For the political process of America in which all of its citizens may participate, for its court system where all can seek justice, we thank you. May those we honor here this morning always turn to it in trust.

For the destiny of America, we thank you. May the graduates of this school so live that they might help to share it.

May our aspirations for our country and for these young people, who are our hope for the future, be richly fulfilled.

Amen.

## **Benediction**

O God, we are grateful to you for having endowed us with the capacity for learning which we have celebrated on this joyous commencement.

Happy families give thanks for seeing their children achieve an important milestone. Send your blessings upon the teachers and administrators who help prepare them.

The graduates now need strength and guidance for the future; help them to understand that we are not complete with academic knowledge alone. We must each strive to fulfill what you require of us all- to do justly, to love mercy, and to walk humbly.

We give thanks to you, Lord, for keeping us alive, sustaining us and allowing us to reach this special happy occasion.

Amen.

## Lee v. Weisman



### **Background:**

For many years, the Providence Superintendent has permitted school principals to include invocations and benedictions in the graduation ceremonies of the city's public schools. The invocations and benedictions are not written or delivered by public school employees, but by members of the clergy invited to participate in these ceremonies. The clergy who have delivered these prayers in recent years have included ministers of various Christian and Jewish denominations.

Attendance at graduation ceremonies is voluntary, with parents and friends of the students invited to attend. Daniel Weisman's daughter, Deborah, graduated from Nathan Bishop Middle School in June, 1989. Rabbi Gutterman, from a local synagogue, delivered the invocation and benediction at the ceremony. Daniel Weisman, Deborah's father, objected to the invocation and benediction. He believed he had good reason to be concerned. Three years earlier, when he attended his older daughter's graduation from the same school, a Baptists minister had presided over the invocation, leading the audience in a prayer ending with a reference to Jesus Christ. Mr. Weisman, who is Jewish, had felt terribly uncomfortable and thought it was inappropriate.

When it came time for Deborah to graduate, he renewed his complaint. He was told that since a rabbi would be giving the invocation, he should not be concerned. Believing that the school was violating the First Amendment, Weisman asked the local court to prevent the public school from including invocations and benedictions at upcoming graduation ceremonies. He contended that inviting religious leaders to provide such prayers violated the separation of church and state required by the First Amendment.

## LEE v WEISMAN Decision

*In a 5-to-4 decision, the Court held that government involvement in this case creates "a state-sponsored and state-directed religious exercise in a public school." The school's rule creates subtle and indirect coercion (students must stand respectfully and silently), forcing students to act in ways which establish a state religion. The cornerstone principle of the Establishment Clause is that government may not compose official prayers to recite as part of a religious program carried on by government.*

**JUSTICE KENNEDY** delivered the opinion of the Court:

"A school official, the principal, decided that an invocation and a benediction should be given; this is a choice attributable to the State, and from a constitutional perspective it is as if a state statute decreed that the prayers must occur. The principal chose the religious participant, here a rabbi, and that choice is also attributable to the State. It is a cornerstone principle of our Establishment Clause jurisprudence that 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. The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State. The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere."

**JUSTICE BLACKMUN**, with whom **JUSTICE STEVENS**, **JUSTICE SOUTER**, and **JUSTICE O'CONNOR** join, concurring.

**JUSTICE SCALIA**, with whom the **CHIEF JUSTICE**, **JUSTICE WHITE**, and **JUSTICE THOMAS** join, dissenting:

"The history and tradition of our Nation are replete with public ceremonies featuring prayers of thanksgiving and petition. From our Nation's origin, prayer has been a prominent part of governmental ceremonies and proclamations. The Declaration of Independence, the document marking our birth as a separate people, 'appeal[ed] to the Supreme Judge of the world.' In addition to this general tradition of prayer at public ceremonies, there exists a more specific tradition of invocations and benedictions at public school graduation exercises. The Court presumably would separate graduation invocations and benedictions from other instances of public 'preservation and transmission of religious beliefs' on the ground that they involve 'psychological coercion.' The Court's notion that a student who simply sits in respectful silence during the invocation and benediction has somehow joined-or would somehow be perceived as having joined in the prayers is nothing short of ludicrous."



## Santa Fe Independent School Dist. v. Doe

**Docket:** 99-62  
**Citation:** 530 U.S. 290 (2000)  
**Petitioner:** Santa Fe Independent School Dist.  
**Respondent:** Doe

## Case Media

- [Oral Argument](#)
- [Opinion Announcement](#)
- [Written Opinion](#)

## Abstract

**Oral Argument:** Wednesday, March 29, 2000  
**Decision:** Monday, June 19, 2000  
**Issues:** First Amendment, Establishment of Religion

## Advocates

[John Cornyn](#) (Argued the cause for Texas, et al., as amici curiae)  
[Anthony P. Griffin](#) (Argued the cause for the respondents)  
[Jay A. Sekulow](#) (Argued the cause for the petitioner)

## Facts of the Case

Prior to 1995, a student elected as Santa Fe High School's student council chaplain delivered a prayer, described as overtly Christian, over the public address system before each home varsity football game. One Mormon and one Catholic family filed suit challenging this practice and others under the Establishment Clause of the First Amendment. The District Court enjoined the public Santa Fe Independent School District (the District) from implementing its policy as it stood. While the suit was pending, the District adopted a new policy, which permitted, but did not require, student-initiated and student-led prayer at all the home games and which authorized two student elections, the first to determine whether "invocations" should be delivered at games, and the second to select the spokesperson to deliver them. After the students authorized such prayers and selected a spokesperson, the District Court entered an order modifying the policy to permit only nonsectarian, nonproselytizing prayer. The Court of Appeals held that, even as modified by the District Court, the football prayer policy was invalid. The District petitioned for a writ of certiorari, claiming its policy did not violate the Establishment Clause because the football game messages were private student speech, not public speech.

## Question

Does the Santa Fe Independent School District's policy permitting student-led, student-initiated prayer at football games violate the Establishment Clause of the First Amendment?

## Conclusion

Yes. In a 6-3 opinion delivered by Justice John Paul Stevens, the Court held that the District's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause. The Court concluded that the football game prayers were public speech authorized by a government policy and taking place on government property at government-sponsored school-related events and that the District's policy involved both perceived and actual government endorsement of the delivery of prayer at important school events. Such speech is not properly characterized as "private," wrote Justice Stevens for the majority. In dissent, Chief Justice William H. Rehnquist, joined by Justices Antonin Scalia and Clarence Thomas, noted the "disturbing" tone of the Court's opinion that "bristle[d] with hostility to all things religious in public life."