**Establishment & Free Exercise Cases**

**Notable Quotes in the Case Law and Legislation**

Excerpted from Ch. 13 of *Major Problems in American Constitutional History* (Hall & Huebner, 2010)

**Engel v. Vitale, 1962**

***Justice Black – opinion of the Court***

* By the time of the adoption of the Constitution, our history shows that there was a widespread awareness among many Americans of the dangers of a union of Church and State. These people knew, some of them from bitter personal experience that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government’s placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services.
* The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say – that the people’s religions must not be subjected to the pressures of government for change each time a new political administration is elected to office.
* 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 swerve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which operative against the States by virtue of the Fourteenth Amendment.
* To those that 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:

*It 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?*

***Justice Stewart, dissenting opinion***

* With all respect, I think the Court has misapplied a great constitutional principle. I cannot see how an “official religion” is established by letting those who want to say a prayer say it. On the contrary, I think that to deny the wish of these school children to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation.

**President John F. Kennedy Comments on the School Prayer Decision, 1962**

* And I would think that it would be a welcome reminder to every American family that we can pray a good deal more at home, we can attend our churches with a good deal more fidelity, and we can make the true meaning prayer much more important in the lives of all of our children.

**Lemon v. Kurtzman, 1971**

***Justice Berger – opinion of the Court***

* First Amendment….Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead they commanded that there should be “no law *respecting* an establishment of religion.”
* Three such tests may be gleaned from our cases. First, the statue must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, *Board of Education v. Allen ….*finally, the statue must not foster “an excessive government entanglement with religion.”
* Our prior holding does not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organization is inevitable…Fire inspections, building and zoning regulations, and state requirement sunder compulsory school attendance laws are example of necessary and permissible contacts.
* Judicial caveats against entanglement must recognize that the line of separations, far from being a “wall,” is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.
* In order to determine whether the government entanglement with religion is excessive, we must examine the character and purposes of the institutions that benefited the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority….

**Wallace v. Jaffree, 1985**

***Justice Stevens – opinion of the Court***

* Just as the right to speak and the right to refrain from speaking are complementary components of a broader concept of individual freedom of mind, so also the individual’s freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority.
* But when the underlying principle has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all.
* …The First Amendment requires that a statute must be invalidated if it is entirely motivated by a purpose to advance religion.
* For whenever the State itself speaks on a religious subject, one of the questions that we must ask is “whether the Government intends to convey a message of endorsement or disapproval of religion.”

***Justice Rehnquist -dissenting opinion***

* …It is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history, but unfortunately the Establishment Clause has been expressly freighted with Jefferson’s misleading metaphor for nearly 40 years.
* Whether due to its last of historical support of its practical unworkability, the *Everson* “wall” has proved all but useless as a guide to sound constitutional adjudication. It illustrates only too well the wisdom of Benjamin Cardozo’s observation that “{m}etaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it.

**Employment Division, Department of Human Resources of Oregon v. Smith, 1990**

Justice Scalia – opinion of the Court

* 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.”
* We have never held that an individual’s religious belief’s excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate.
* As described succinctly by Justice Frankfurter in *Minersville School Dist. Bd. Of Ed. V. Gobitis,* … “Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities.”
* Subsequent decisions have consistently 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).”

**Zelman v. Simmons-Harris, 2002**

***Justice Rehnquist – opinion of the Court***

* Reviewing our earlier decisions, we stated that “government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge.”
* A program that shares these features permits government aid to reach religious institutions only by way of the deliberate choices of numerous individual recipients. The incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual recipient, not to the government, whose role ends with the disbursement of benefits.