

CIVIL LIBERTIES / RELIGION

One of the things the framers considered was state secularism, and they even explicitly state that in the Constitution, that the state and the church should be two separate entities. This was termed the **wall of separation** by Jefferson: the wall that detaches the state from religion. This means no state religion, no official taxes going to a certain religion, etc.

Eventually, this would make it into the BOR as the **Establishment Clause**, which reads (truncated) "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." This is usually interpreted to mean "governmental bodies may not favor, sanction, throw out or recognize any religion over another." The **Free Exercise Clause** also stops the government from taking action against the practice of religion (with a number of exceptions, such as when the practice poses a threat to the public, etc.).

EVERSON

In **Everson v. Board of Education 1947**, the New Jersey law that stated "if you want, you can pay parents for transporting their own children to school rather than relying on us, even if the schools they go to aren't the state managed ones." was accused of violating the establishment clause. The court upheld the law in this case. This case also helped further the idea that the Bill of Rights applied to the state and federal levels.

ENGEL

Then came **Engel v. Vitale** in 1962. The state of New York tried to make prayer a standard in its public schools. It created a prayer that seemed to satisfy most religions. It was then implemented. Teachers had to recite the prayer and the Pledge of Allegiance, and students had the option to stand mute or leave (with parental consent), although the students often felt compelled to participate.

Engle was the name of the person who filed the suit against the local school board. The chairman of said board was the respondent.

It was argued that the mandatory attendance of schools and forcing teachers to do so was in violation of the ESTC, as the school boards now made it their business to force some form of religious activity. It was also argued that the prayer (which used the word "God") was denominational as not all religions believed in one god or at all and thus constituted favoring one religion over the other.

The majority opinion was "YES, this action does violate the ESTC, and although it seems unsubstantial it still constituted a violation." The opinion specifically cites this quote from Madison: "It is proper to take alarm at the first experiment on our liberties..."

The concurring opinion was that "YES, this action is a violation", citing the fact that:

- students were frequently compelled to partake in the prayer anyways; and that
- teachers were forced to recite the prayer.

The dissenting opinion was "NO, it's not a violation, as this action does not constitute a creation of state religion, because the option to not opt out of religion was present."

LEMON

One more court case. **Lemon v. Kurtzman** in 1971 established the **Lemon test**, which was supposed to determine whether or not an action violated the ESTC. In order to lower controversies and potential gray areas, this test was created. The criteria are:

1. The action must have a secular purpose that does not approve or disapprove of religion.
2. The action must not have the effect of approving or disapproving religion.
3. The action must not have the effect of establishing a relationship between governmental body and religious organization in which either or both are involved in each others' business.

(the court case stemmed from a number of states funding religious schools to help it meet state requirements for subjects such as math. the ruling was "NO, you can't do that, it creates entanglement between state and church.")

THE BALANCING GAME (side section)

Religious freedom is sometimes called into questions when it interferes with other rights. For instance, a question arises when a shopkeep denies an LGBTQ person services on account of religion: is religious liberty or the rights of the LGBTQ person taking precedence? Another question arises with the teaching of evolution in schools, which stems from religious freedom.