**THESIS**

The historically blurry line separating church and state was defined clearer by Supreme Court case Everson v. Board, where a precedent was set that would be the basis of other Supreme Court cases regarding the establishment clause.

**Engel v. Vitale 370 U.S. 421 (1962)**

In New York, the Board of Regents permitted schools to have a brief prayer at the start of school days. This was challenged as a violation to the Establishment Clause of the First. Even though the prayer was optional and non-denominational, it was still found to be unconstitutional because it breached the wall separating church and state built in Everson v. Board of Ed.

This is a good example of the precedent from Everson which helped develop the application of the Establishment Clause

**Everson v. Board of Education of the Township of Ewing (No. 52) 330 U.S. 1 (1947)**

I will discuss how this precedent is cited and interpreted in several court cases. Also, I will be using portions of Justice Black’s majority opinion throughout the essay to illustrate points, such as the purpose of the First Amendment:

“requires the state to be a neutral in its relations with groups of religious believers and nonbelievers; it does not require the state to be their adversary.”

**Lynch v. Donnelly, 465 U.S. 668 (1984)**

A city named Pawtucket in Rhode Island annually celebrated Christmas by putting up a Christmas tree, Santa’s house, and a scene from the bible. Daniel Donnelly sued, claiming the bible Nativity scene violated the Establishment Clause. The court acknowledged the wall metaphor, but concluded that this approach was too much of a “callous indifference.” The court applied the Lemon Test, and Justice Burger presented the majority opinion. They decided that the scene did not violate the Establishment clause by the Lemon Test.

Now there is a strong and applicable definition of the wall separating church and state. This is an example of the Lemon Test discussed in Lemon v. Kurtzman. I will use this case to discuss how the lemon test isn’t always hard and fast, but how there’s always more consideration when evaluating the prongs of the test.

**Jefferson, Thomas. Letter to the Danbury Baptists – The Final Letter. 1 Jan. 1802. Library of Congress.**

This letter is a primary source which contains some of Thomas Jefferson’s opinions on why religion must be separate from the government.

“religion is a matter which lies solely between Man & his god”

“their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between church & state”

**Lee v. Weisman, 505 U.S. 577 (1992).**

In this case, Robert E. Lee (Not to be confused with the general), a middle school principal, was organizing a graduation ceremony. He asked a Jewish rabbi to deliver a speech at the ceremony and lead prayers at the end. It was challenged by some parents. The supreme court, in a 5-4 decision, voted that this situation violates the Establishment Clause. They applied the lemon test and determined that the result of the rabbi attending due to government invitation coerced students to participate in the religious exercise. This fails the resulting effect portion of the lemon test.

A great example which further shows the developing definition of the Establishment Clause in American constitutional law.

**Lemon v. Kurtzman 403 U.S. 602 (1971)**

Pennsylvania and Rhode Island both passed laws that permitted using tax-payer money to subsidize secular material, such as textbooks for non-secular, private schools. Part of the laws included subsidizing the teacher’s paychecks. Appellant Lemon, challenges the law, saying it violated the Establishment Clause. In the supreme court, they determined that total separation is impossible (hence balancing church and state). Justice Burger cites Everson v. Board of Ed., saying that Justice Black mentioned that that decision was on “the verge” of violating the First. However, the justices developed the three-part Lemon Test to determine if laws were violating the establishment clause.

1. Clear secular legislative purpose
2. It cannot effectively promote or inhibit religion
3. Cannot cause “excessive government entanglement with religion.”

Also: Burger: “We can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law”

I intend to discuss how Burger acknowledges that there is a fine balance in balancing church and state separation, and how he lets the Lemon Test precedent. This further expands the constitutional law behind the separation of church and state.

**Nolan-Ferrell, Catherine. “Balancing Classroom Civility and Free Speech.” American Association of University Professors, AAUP, 2017,** [**www.aaup.org/article/balancing-**](http://www.aaup.org/article/balancing-) **classroom-civility-and-free-speech#.XbfEe-hKhPY.**

In her article, Catherine Nolan-Ferrell discusses the First Amendment right to free speech and how it applies in the classroom. She introduces herself to the reader as she introduces herself to all her classes: as a researcher of “the Guatemalan refugee crisis of the early 1980s.” She explains some concepts prevalent in the study of history, such as primary sources and the process of analysis and interpretation. Then she shares her experience lecturing a history class amid the 2016 election. She discusses how the charged rhetoric of the campaigns made contemporary issues difficult to debate. A problem that arose in her classroom was the use of “alternative facts,” or the idea that primary sources may not be reliable. Catherine confronts the concept of “alternative facts” and how it’s a perversion of the fundamental truth of knowledge.

I will expand on her issue of “multiple challenges to classroom civility and academic freedom.” Essentially, how can she balance two important, yet contradicting rules? A similar situation arises in the First Amendment with the Freedom of Religion and Establishment Clauses.

How do you balance the establishment of religion by the government without violating a religious person’s freedom of religion, both guaranteed by the first?

**Reynolds v. U.S. 98 U.S. 145 (1878)**

At this time, there was a federal law that prohibited polygamy. Reynold, the defendant, was convicted of polygamy. He used his religious obligations as a defense, declaring that the law violated his freedom of religion by banning a requirement of his religion. The supreme court unanimously decided that citizens cannot claim immunity to law because of religion.

This case specifically dug into a lot of history and quotes from famous historical figures such as Thomas Jefferson. I want to quote a quote that this supreme court used from Thomas Jefferson: “legislature should make no law respecting an establishment of religion or prohibiting the free exercise thereof; thus building a wall of separation between church and State”

This is a start to the discussion of the separation of church and state. The wall is to be debated defined in the centuries to come in other supreme court cases, especially in Everson v. Board of Ed.

**Straus, Oscar S. “Chapter IV.” Roger Williams, the Pioneer of Religious Liberty, The Century Co., 1894, pp. 42–57.**

In this chapter, Oscar Straus discusses a trial in Salem where Roger Williams was accused of deviating from the established religion. He was charged with having “a dangerous opinion.” Straus stresses that Williams did not change in beliefs before court despite threats of being sentenced to banishment, death, and excommunication (where you are permanently banished from the church, a severe punishment of the time). He was convicted in the end.

During his trial, Williams stated that “the civil magistrates may not intermeddle to stop a church from apostacy and heresy.” This was a quote that is an early ancestor of the Establishment Clause. I will use this in explaining background and history of the separation of church and state.