

A state law imposed a generally applicable sales tax payable by the vendor. That law exempted from its provisions the sale of "all magazines, periodicals, newspapers, and books." In order to raise additional revenue, the state legislature eliminated that broad exemption and substituted a narrower exemption. The new, narrower exemption excluded from the state sales tax only the sale of those "magazines, periodicals, newspapers, and books that are published or distributed by a state-recognized religious faith and that consist wholly of writings sacred to such a religious faith."

A magazine devoted to history and politics paid under protest the sales tax due on its sales according to the amended sales tax law. The magazine then filed suit against the state in an appropriate state court for a refund of the sales taxes paid. It contended that the state's elimination of the earlier, broader exemption and adoption of the new, narrower exemption restricted to sacred writings of state-recognized religious faiths violates the First and Fourteenth Amendments to the Constitution.

In this case, how will the court likely rule?

- A. The Eleventh Amendment bars the state court from exercising jurisdiction over this suit in the absence of a state law expressly waiving the state's immunity.
- B. The magazine lacks standing to sue for a refund of sales taxes imposed by a generally applicable state law because Article III of the Constitution precludes taxpayers from bringing such suits.
- C. The new, narrower exemption from the state sales tax law violates the establishment clause of the First and Fourteenth Amendments by granting preferential state support to religious faiths recognized by the state.
- D. The new, narrower exemption from the state sales tax law violates the freedom of the press guaranteed by the First and Fourteenth Amendments because it imposes a prior restraint on nonreligious publications that are required to pay the tax.

Explanation:

Establishment clause tests

Test	Requirements	Applicability
Historical*	<ul style="list-style-type: none">Longstanding tradition & historical foundation	Default
Endorsement	<ul style="list-style-type: none">No appearance that government endorses religion	Public displays or monuments (eg, holiday displays)
Coercion	<ul style="list-style-type: none">No forced conformity with religious belief or practice	Public schools (eg, convocation prayer)

*Courts may apply strict scrutiny if government directly benefits/burdens religion.

Government benefits to religious organizations must comply with the First Amendment **establishment clause**, which applies to the states through the Fourteenth Amendment. Challenges brought under this clause are generally reviewed under the historical test. However, courts may forego this test and apply the more stringent **strict scrutiny** test when the law **directly benefits or burdens a particular religion**. Under strict scrutiny, the law is invalid unless the government proves that the law is **necessary** to achieve a **compelling government interest**.

Here, the new sales tax exemption applies only to sacred writings published or distributed by religious faiths recognized by the state. This exemption directly benefits state-recognized religions and burdens unrecognized religions, so strict scrutiny applies. And since it is unlikely that the state will be able to show that granting preferential state support to state-recognized religious faiths is necessary to achieve a compelling interest, the court will likely rule that the exemption violates the establishment clause.

(Choice A) The Eleventh Amendment bars private parties (and foreign governments) from suing a state in *federal* court without the state's express consent. But since the magazine sued in *state* court, the Eleventh Amendment does not apply.

(Choice B) Article III's **standing** requirement only applies to federal courts. But even if it applied to state courts, taxpayers *do* have standing to sue the government for sales tax refunds or any other issue regarding taxes owed if that injury is redressable by the remedy sought.

(Choice D) Prior restraints are a form of government censorship that bans publication before it occurs. As a result, they are unconstitutional absent exceptional circumstances (eg, national security). Here, the tax exemption is not a prior restraint since it does not prohibit publication.

Educational objective:

Establishment clause challenges are generally reviewed under the historical test. But strict scrutiny can be used instead when a law directly benefits or burdens a particular religion. In that case, the law is invalid unless the government proves that the law is necessary to achieve a compelling government interest.

References

- Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 14–15, 20 (1989) (holding that preferential tax exemptions solely for religious groups violate the establishment clause).
- Larson v. Valente, 456 U.S. 228, 246 (1982) (explaining that strict scrutiny applies to laws that aid or prefer one religion).

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