

Recommended Grade/Ability Level

11th/12th Grade United States History
United States Government

Recommended Lesson Length

60-minute class period

Central Engagement Question/Essential Question

How has the interpretation of the Establishment Clause evolved over time and impacted American Education?

Overview

Within a unit on civil liberties, students will explore how the Establishment Clause has been interpreted over time. The aim of this lesson is to help students explore the intersection of religion, public education, and the Supreme Court.

Materials

Everson v. Board of Education (1947)

Lemon v. Kurtzman (1971)

The Case of St. Hayes

Objectives

1. I can state what the establishment clause is and how it pertains to the First Amendment
2. I can state how and why the implementation of the establishment clauses has caused difficulty and fragmentation on the Supreme Court of the United States
3. I can state the significance of three Supreme Court decisions and how the opinion of the court regarding the establishment court in the American education system has evolved over time.
4. I can articulate arguments opposed to and in favor of various interpretations of the Establishment Clause

Standards

CCSS.ELA-LITERACY.RH.11-12.1

Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-LITERACY.RH.11-12.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas

Background Information/Homework/Pre-Learning

There is no pre-reading for this lesson. Prior knowledge on the First Amendment would be fruitful.

Anticipatory Activity/Bell-Ringer

Two Anticipatory Activities

1. Show students the following excerpt from the case of *Everson v. Board of Education* (1947):

“The establishment of religion clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion”

Think-Pair-Share: What are the implications of this and whether they agree with this or not.

2. Display the First Amendment with the Establishment Clause clearly identified.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Anticipation Question (whole class): Why might this be an issue for schools in the United States?

Activity (Activities)

1. Provide students with the following scenarios---ask them to work in pairs and determine if each violates the establishment clause. Why or why not?
 - a) Public taxpayer dollars will go to pay for teacher salaries at a parochial school
 - b) A Catholic school wants the city of New York to build a new school building for them
 - c) A Jewish school wants New York City to pay for armed security guards for the school and attached synagogue
2. Ensure all students receive **Handout Everson**, **Handout Lemon**, and **Handout Hayes**
3. Have all students read all three documents. Divide the class into thirds—one third representing EANY, representing ANY, and one third playing the role of the Supreme Court. Education for All New Yorkers (EANY) will argue the establishment clause is not violated in this case. Atheists of New York (ANY) will argue the establishment clause is violated in the Supreme Court. The Supreme Court will hear the arguments and decide by vote if the Establishment Clause was violated.

Wrap-Up

1. Students will present their arguments in class and Supreme Court justices will vote

Lasting Question: How has the interpretation of the Establishment Clause evolved over time?

Assessment

Students will write a legal memo from the perspective of their side. Students playing the role of the Supreme Court will write a ruling, explaining their logic.

Additional Resources

Everson: <https://www.oyez.org/cases/1940-1955/330us1>

Lemon: <https://www.oyez.org/cases/1970/89>

HANDOUT EVERSON (from Oyez)

Everson v. Board of Education (1947)

Facts of the Case

A New Jersey law allowed reimbursements of money to parents who sent their children to school on buses operated by the public transportation system. Children who attended Catholic schools also qualified for this transportation subsidy.

Legal Question

Did the New Jersey statute violate the Establishment Clause of the First Amendment as made applicable to the states through the Fourteenth Amendment?

Ruling from the Court

The New Jersey law reimbursing parents for transportation costs to parochial schools did not violate the Establishment Clause. After detailing the history and importance of the Establishment Clause, Justice Black argued that services like bussing and police and fire protection for parochial schools are "separate and so indisputably marked off from the religious function" that for the state to provide them would not violate the First Amendment. The law did not pay money to parochial schools, nor did it support them directly in anyway. It was simply a law enacted as a "general program" to assist parents of all religions with getting their children to school

Questions to Consider

- Do you support the Court's ruling?
- How might this ruling change future establishment clause cases?
- Who "won" this case? Who "lost" in this decision?

HANDOUT LEMON (from Oyez)

Lemon v. Kurtzman (1971)

Facts of the Case

This case was heard concurrently with two others, *Earley v. DiCenso* (1971) and *Robinson v. DiCenso* (1971). The cases involved controversies over laws in Pennsylvania and Rhode Island. In Pennsylvania, a statute provided financial support for teacher salaries, textbooks, and instructional materials for secular subjects to non-public schools. The Rhode Island statute provided direct supplemental salary payments to teachers in non-public elementary schools. Each statute made aid available to "church-related educational institutions."

Legal Question

Did the Rhode Island and Pennsylvania statutes violate the First Amendment's Establishment Clause by making state financial aid available to "church-related educational institutions"?

Ruling from the Court

Yes. Writing for the majority, Chief Justice Burger articulated a three-part test for laws dealing with religious establishment. To be constitutional, a statute must:

- (1) have "a secular legislative purpose"
- (2) have principal effects which neither advance nor inhibit religion
- (3) not foster "an excessive government entanglement with religion"

The Court found that the subsidization of parochial schools furthered a process of religious inculcation, and that the "continuing state surveillance" necessary to enforce the specific provisions of the laws would inevitably entangle the state in religious affairs. The Court also noted the presence of an unhealthy "divisive political potential" concerning legislation which appropriates support to religious schools.

Questions to Consider

- Do you support the Court's ruling?
- How might this ruling change future establishment clause cases?
- What does excessive government entanglement actually mean?

HANDOUT HAYES

The Case of St. Hayes

Saint Hayes is a religious school in New York City that has faced significant challenges in the past few decades. Many of its priests and nuns have retired and fewer are entering the clergy. The lay instructors who have replaced them are outstanding, but their salary demands are outpacing money coming into the school. More students are qualifying for financial aid and the budget gap is increasingly growing. Saint Hayes is in jeopardy of closure and must find a way to fill the budget gap.

The governor of New York wants to prevent the closure of Saint Hayes and other religious schools throughout the state. The governor proposes the Education for All New Yorkers Act (EANY). This would give money to financially struggling nonpublic schools to ensure the school continues. The law would not discriminate against religions and would give to any religious school regardless of faith. The law is passed overwhelming.

After the law is approved, the Atheists of New York (ANY) file a lawsuit which claims EANY violates the Establishment Clause. Lawyers on behalf of the governor of New York immediately challenge this lawsuit and the case percolates up to the Supreme Court of the United States. How should the Supreme Court of the United States rule?