

Lemon v. Kurtzman Argued: March 3, 1971 -
Decided: June 28, 1971

Lemon v. Kurtzman

Alton J. Lemon, et al. v. David H. Kurtzman,
Superintendent of Public Instruction of
Pennsylvania, et al.



- **Case Analysis Project – Presented by Elijah Platchek and Rob Corcoran**

Presentation Objectives:

- o Recognize the origin of the separation of church and state, and understand the “Religion Clauses” of the First Amendment.
- o Describe the issues, facts, viewpoints, and outcome of Lemon v. Kurtzman.
- o Identify the educational implications of Lemon v. Kurtzman.
- o Apply the Lemon Test.



So What Does This Mean?

CHURCH



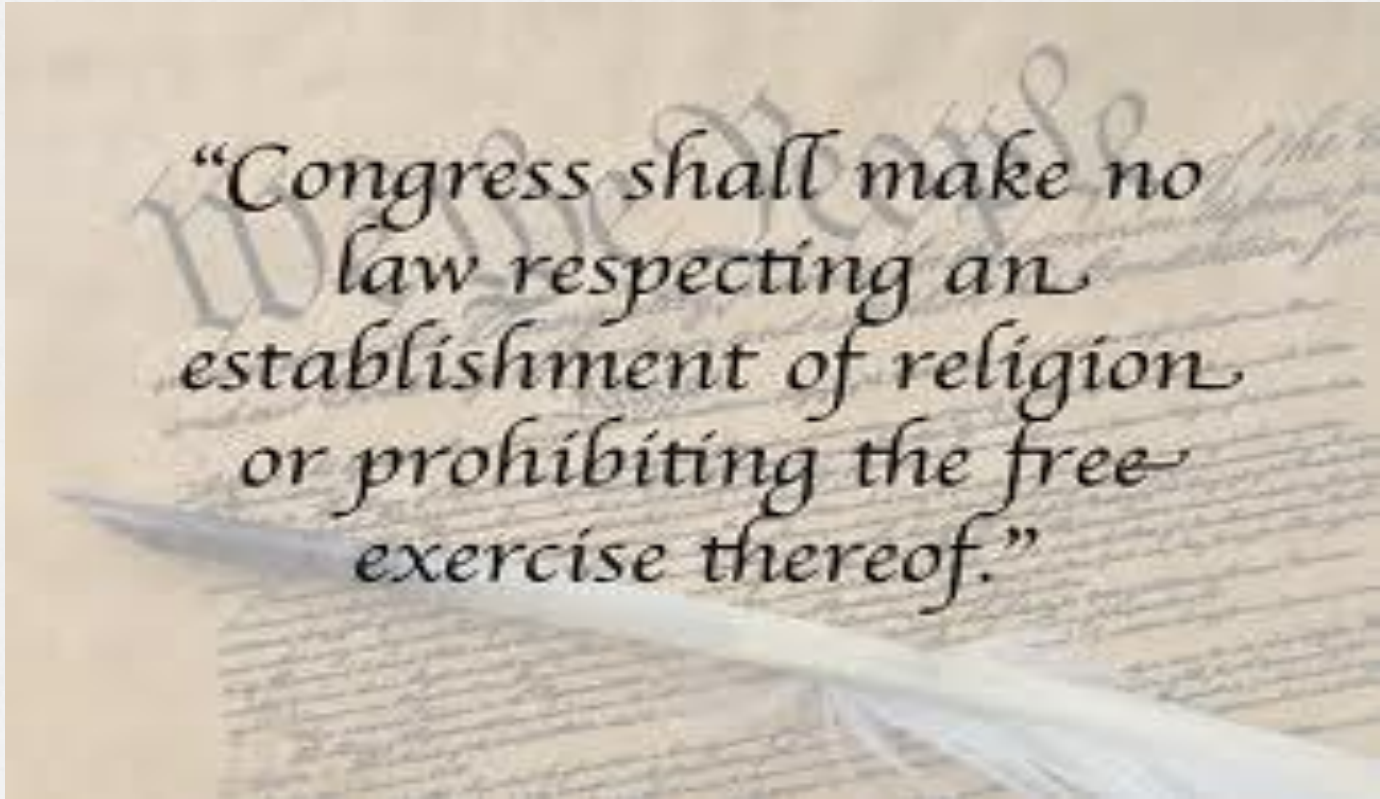
STATE

CHURCH & STATE



- o First Amendment: enacted a “wall of separation between church and state”
- o The Danbury Baptists asked Jefferson for his help in clarifying this Amendment.
- o Jefferson wrote: the central government was, “interdicted from intermeddling with religious institutions”

The Establishment & Free Exercise Clauses – The “Religious Clauses”



“Congress shall make no
law respecting an
establishment of religion
or prohibiting the free
exercise thereof.”

The Participants

March 3, 1971 - June 28, 1971

o Alton Lemon – a member of the ACLU, who volunteered to be part of the challenge of this law.



o David Kurtzman - Superintendent of Public Instruction of Pennsylvania



The Issue & Viewpoint (s)

- Should state aid be given to church-related educational institutions?
- Lemon argued that the States of PA & RI, in particular Education Secretary Kurtzman, should not be allowed to allocate public funds to private religious schools.



The Facts Surrounding the Issue

o 1968 – Pennsylvania

Nonpublic Elementary and Secondary Education Act

Allows the Superintendent of Public Instruction of Pennsylvania (David H. Kurtzman) to reimburse or repay teacher salaries for teaching secular material and using secular textbooks.

o 1969 - Rhode Island

Salary Supplement Act

Allows teachers in nonpublic schools to be paid a 15% bonus in their salary. The teachers have to agree to use the materials and supplies that are also used in public schools.

The Outcome



- o The Supreme Court ruled in complete agreement that this was forcing an “entanglement between government authorities and religious schools.”
- o Mr. Chief Justice Burger delivered the opinion of the Court, “Under each statute, state aid has been given to church-related educational institutions. We hold that both statutes are unconstitutional.”
- o BURGER, C.J., delivered the opinion of the Court, in which BLACK, DOUGLAS, HARLAN, STEWART, MARSHALL (as to Nos. 569 and 570), and BLACKMUN, JJ., joined. DOUGLAS, J., filed a concurring opinion, post, p. 625, in which BLACK, J., joined, and in which MARSHALL, J. (as to Nos. 569 and 570), joined, filing a separate statement, post, p. 642. BRENNAN, J., filed a concurring opinion, post, p. 642. WHITE, J., filed an opinion concurring in the judgment in No. 89 and dissenting in Nos. 569 and 570, post, p. 661. MARSHALL, J., took no part in the consideration or decision of No. 89. [p606] - [http://en.wikisource.org/wiki/Lemon v. Kurtzman](http://en.wikisource.org/wiki/Lemon_v._Kurtzman)

The Lemon Test

(“Tripartite Test”)



Three Questions to Help Schools Decide!

- o Does the policy or practice have a secular purpose?
- o Is the primary effect of the policy or practice one that neither advances nor inhibits religion?
- o Does the policy or practice avoid an excessive entanglement with religion?



How to Tally the Lemon Test!

In order to be deemed 'constitutional,' the answers must be "YES" for all three questions.



- o A School Christmas Program containing only "Protestant & Catholic" songs, acts, and monologues
- o A picture of Jesus hanging in the school hallway.
- o Studying the "Sistine Chapel" ceiling paintings in Art History club.

Some Outcomes of: The Lemon Test

- *Lubbock, Texas*
- Students led ethical, moral, and religious activities before or after school hours.
- Courts ruled against allowing this activity to continue.
- *Wallace vs. Jaffree*
- Voluntary silent prayer time in school is unconstitutional
- Courts ruled that this also violated the Lemon test and therefore done away with

Educational Outcomes (additional cases upheld by the three prongs of the Lemon Test) based on Chapter 11 of Schimmel text)

- o **Title VII of the 1964 Civil Rights Act**
 - Requires reasonable accommodation to religious beliefs.
- o 1997 – Georgia’s Moment of Quiet Reflection in Schools Act – “In each public school classroom, the teacher in charge shall, at the beginning of every school day, conduct a brief period of quiet reflection, for not more than 60 seconds with the participation of all pupils therein assembled.” (page 187) – *Upheld by the Eleventh Circuit Court of Appeals.*

Educational Outcomes (additional cases upheld by the three prongs of the Lemon Test) based on Chapter 11 of Schimmel text)

- o 2001 – “Virginia Law which mandates a “moment of silence at the beginning of the school day during which a student in the exercise of his or her individual choice , could meditate, pray, or engage in any other silent activity.” (page 188) – *Upheld by the Fourth Circuit.*

Educational Outcomes (additional cases upheld by the three prongs of the Lemon Test) based on Chapter 11 of Schimmel text)

- o Schools can not promote curriculum which suggests superstition over religion.
(example – Bedford Central School District NY which required the construction of a model of Ganesha a Hindu God and Worry Dolls) (page 192)
- o A teacher can limit the religious content of a writing assignment if the teacher states legitimate educational objectives and criteria ahead of time. (page 193)

Educational Outcomes (additional cases upheld by the three prongs of the Lemon Test) based on Chapter 11 of Schimmel text)

- o Marple Newtown, PA – Parent (“All About Me” program) could not read from the Bible.

(page 195) - Upheld by the Third Circuit of Appeals.

- o Equal Access Act surrounding religious groups using school facilities.– Brief reading of a paragraph on page 196.

PA Outcome: Act 90

- o “A private academic school (Kindergarten through Grade 12) which is licensed or registered with the Department of Education...can participate in Acts 195/90/35 Program, which is the loan of textbooks, instructional materials, and equipment.”
- o “based on the # of students, a per diem is calculated per eligible student totaling allotment for the following school year.”

Book Stamps ?

Pennsylvania
Department of
Education
Act 90-195

631 ÷ 6

THIS BOOK IS THE PROPERTY OF:

STATE _____
PROVINCE _____
COUNTY _____
PARISH _____
SCHOOL DISTRICT _____
OTHER _____

Book No. **19**
Enter information
in spaces
to the left as
instructed

Presentation Closure

- What are the “religious clauses” of the First Amendment? Describe a school situation where someone might argue that either of these clauses was violated.
- Describe the Lemon Test?
- Whip Around Activity (Thanks Kelly!) – Name three things you learned from this presentation.

References

- Images:
- <https://www.google.com/search>
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 - Separation of Church & State
 - Lemon Test
 - Alton Lemon
 - David Kurtzman
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 - Objectives
- Other Sources:
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