

## Civil Liberties and the Bill of Rights

Bill of Rights	
1st Amendment	protected right to free speech, press, assembly, religion, and petition of government
2nd Amendment	protected right to bear arms
3rd Amendment	no quartering of soldiers during peace time in private homes without consent
4th Amendment	right to be secure in your property & person against unreasonable search or seizure
5th Amendment	grand jury, against double jeopardy & self incrimination, due process, eminent domain
6th Amendment	criminal procedure—speedy & public trial, impartial jury, counsel, etc.
7th Amendment	civil procedure—jury trial according to rules of common law
8th Amendment	no excessive bail or fine, no cruel and unusual punishment
9th Amendment	rights not enumerated belong to the people
10th Amendment	powers not delegated to US belong to the states & the people

### The First Amendment: The Right of Religious Freedom

The First Amendment restricts the power of the government to punish people for expressing their political and religious beliefs. The First Amendment contains two clauses that are related to religion.

The first is the **Establishment Clause** – it protects against the government requiring citizens to join or support a religion.

The second is the **Free Exercise Clause** – it protects the rights of individuals to express and exercise their religious beliefs.

The Establishment and Free Exercise Clauses sometimes seem to conflict with one another. For example, if a student in public school is the valedictorian and in their speech during the ceremony they want to say a prayer it could create a problem. Some people might view the prayer at a public school event as a violation of the establishment clause. Others might view this as restrictions on a student's rights as a violation of the free exercise clause.

## The Establishment Clause and the Supreme Court

The Supreme Court case of *Engel v. Vitale* in 1962 saw the Court rule that a school-sponsored prayer violated the establishment clause. [Note, this case began in a local school in Herricks on Long Island]. <https://www.oyez.org/cases/1961/468>

The key issue was whether the following prayer spoken over the loudspeaker in the public high school violated the establishment clause of the First Amendment.

*“Almighty God, we acknowledge our dependence upon Thee,  
and we beg Thy blessings upon us, our parents, our teachers,  
and our Country.”*

Supporters of the prayer said that it was nondenominational and students could remain silent or be excused from the classroom during the reading. The Supreme Court disagreed that the prayer was neutral.

<b>Facts</b>	A daily prayer referencing “Almighty God” was said over the loud speaker in a public high school. Engel, the parent of a student in the public school district, sued Vitale, the school board president. The lawsuits was actually brought by five sets of parents, Two were Jewish, including Steven Engel, one was an atheist, one was a Unitarian church member and one was a member of the New York Society for Ethical Culture.
<b>Issue</b>	Did a school-sponsored prayer violate the establishment clause of the First Amendment?
<b>Decision and Holding</b>	Engel won. School-sponsored prayer violates the establishment clause of the First Amendment as applied to the states through the due process clause of the Fourteenth Amendment.
<b>Reasoning</b>	The prayer was an endorsement of religion by the government and put coercive pressure on religious minorities to conform to the majority’s religious beliefs.

Administrators and teachers in the nation’s public schools and universities have to find the balance between the separation of church and state and the right of individuals to express their faith. According to the guidelines from the U.S. Department of Education, students cannot pray during instructional time but can, at their own discretion, pray at noninstructional times such as before school or during lunch.

Teachers and administrators in public schools may not encourage or discourage prayer in their official capacity, but may participate in religious activities when not in their official capacity, such as a Bible study group that meets outside of instructional time.

The Supreme Court created the **Lemon test** to set guidelines for what is permissible under the establishment clause. The test is named after the decision in the 1971 case of **Lemon v. Kurtzman**. The case dealt with Rhode Island and Pennsylvania programs that supplemented teachers' salaries and provided educational materials in religiously based private schools for the purpose of teaching nonreligious subjects.

The Court struck down both programs as they violated the establishment clause. This decision created a three-pronged test for permissible government involvement in religious institutions.

1. The underlying statute must have a "secular legislative purpose."
2. Its effect "must be one that neither advances nor inhibits religion."
3. It must not foster "excessive entanglement between government and religion."

### **Free Exercise and the Supreme Court**

Under the free exercise clause, Americans can hold any religious beliefs that they wish. However, they are not always free to act on them. Similar to the establishment clause, the Supreme Court has wrestled with the boundaries of free exercise.

In 1972, the Supreme Court case of **Wisconsin v. Yoder** was decided. Jonas Yoder and Wallace Miller, members of the Old Order Amish and Adin Yutzy, a member of the Conservative Amish Mennonite Church, challenged the compulsory attendance law in Wisconsin. The law required that their children had to attend public or private school until the age of sixteen. <https://www.oyez.org/cases/1971/70-110>

They argued that the compulsory attendance law violated their rights under the free exercise clause because they believed that making their children attend high school, public or private, went against their Amish religion and way of life. They further stated that this law would endanger their own salvation and that of their children. The state of Wisconsin agreed that the plaintiffs held these religious beliefs but then the state had a more important interest in universal education.

In the **majority opinion**, Chief Justice Burger emphasized the negative impact of the law on the Amish way of life. Although the state of Wisconsin had a genuine interest in education, the unique way of life of the Amish community was threatened by the mandatory attendance law.

In his **dissent**, Justice William Douglas expressed a concern that the Court was listening only to the Amish parents and was not considering the desires of the children.

<b>Facts</b>	The Yoders were Amish, and they objected to a law in Wisconsin that mandated school attendance beyond the eighth grade. The Amish live in separated farming communities that are crucial in practicing their faith.
<b>Issue</b>	Did Wisconsin's law mandating school attendance past the eighth grade violate the free exercise rights of the Amish?
<b>Decision and Holding</b>	The Yoders won. Wisconsin's law mandating school attendance past the eighth grade violated the free exercise clause.
<b>Reasoning</b>	The state's interest in universal education must be balanced with other fundamental rights. Amish communities have a long history of being self-sustaining, and community is a cornerstone of their faith. Requiring school attendance beyond the eighth grade would endanger their religious beliefs, and it violates the free exercise clause of the First Amendment, which applies to the states through the due process clause of the Fourteenth Amendment.

Establishment and Free Exercise was again challenged when the Supreme Court struck down part of the Lemon test in 2022 with the case of ***Kennedy v. Bremerton School District***.

Joseph Kennedy was a former marine and the football coach at Bremerton High School, a public school in the state of Washington. After each game he prayed on the field to give thanks for “*what the players had accomplished and for the opportunity to be part of their lives through the game of football.*” A few players asked if they could join him, and eventually most of the team plus some of their opponents joined him in prayer.

The school district asked him to stop in fear of a potential law suit for violating the establishment clause. Kennedy continued to pray even though the district asked him to stop and even gave him the option to pray in private. He was placed on administrative leave and then fired! Kennedy had many supporters and began a legal case.

The district court and the Ninth Circuit Court of Appeals ruled in favor of the school district, citing that the school fired Kennedy as they did not want a legal case for violating the establishment clause.

The Supreme Court reversed the lower court's decisions stating that the free speech and free exercise clauses protect personal religious observance. The prayers did not take place during Kennedy's official coaching duties. The Court abandoned the “endorsement” test established in ***Lemon v. Kurtzman*** and replaced it with a consideration of “historical practices and understandings.” The Supreme Court ruled that the establishment and free exercise clauses were meant to be complimentary and did not conflict in this case. According to the majority opinion, allowing Kennedy to pray in public is not only protected under the First Amendment, it demonstrates the importance of toleration.