

## Ten Commandments-Related Cases

### **Everson v. Board of Education (1947)**

A New Jersey law authorized payment by local school boards of the costs of transportation to and from private schools, including religious schools. A lawsuit was filed claiming that this indirect aid to religion through the mechanism of reimbursing parents and students for costs incurred as a result of attending religious schools violated both the New Jersey State Constitution and the First Amendment. The 5-4 decision was handed down on February 10, 1947. The Court, through Justice Hugo Black, ruled that the state law was constitutionally permissible. Perhaps as important as the actual outcome, though, was the position that the entire Court adopted on the Establishment Clause. It reflected a broad interpretation of the Clause that was to guide the Court's decisions for decades to come. Black's language was sweeping:

"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 to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'" 330 U.S. 1, 15-16.

### **Stone v. Graham (1980)**

Sydell Stone and a number of other parents challenged a Kentucky state law that required the posting of a copy of the Ten Commandments in each public school classroom. In a 5-to-4 decision, the Court ruled that the Kentucky law violated the first part of the test established in *Lemon v. Kurtzman* (the law was not passed for a secular purpose), and thus violated the Establishment Clause of the Constitution. The Court found that the requirement that the Ten Commandments be posted "had no secular legislative purpose" and was "plainly religious in nature." The Court noted that the Commandments did not confine themselves to arguably secular matters (such as murder, stealing, etc.), but rather concerned matters such as the worship of God and the observance of the Sabbath Day.

### **Lynch v. Donnelly (1984)**

The city of Pawtucket, Rhode Island, annually erected a Christmas display located in the city's shopping district. The display included such objects as a Santa Claus house, a Christmas tree, a banner reading "Seasons Greetings," and a nativity scene. The crèche had been included in the display for over 40 years. In a 5-to-4 decision, the Court held that notwithstanding the religious significance of the crèche, the city had not violated the Establishment Clause. The Court found that the display, viewed in the context of the holiday season, was not a purposeful effort to advocate a particular religious message. The Court found that the display merely depicted the historical origins of the Holiday and had "legitimate secular purposes."

### **Marsh v. Chambers (1983)**

Ernest Chambers, a member of the Nebraska legislature, challenged the legislature's chaplaincy practice in federal court. This practice involves the offering of a prayer at the beginning of each legislative session by a chaplain chosen by the state and paid out of public funds. In a 6-to-3 decision, the Court upheld the chaplaincy practice. In his opinion for the Court, Chief Justice Warren Burger abandoned the three-part test of *Lemon v. Kurtzman* (which includes having to show a secular purpose). In its place, Burger rested the Court's opinion on historical custom. Prayers by tax-supported legislative chaplains could be traced to the First Continental Congress and to the First Congress that framed the Bill of Rights. As a consequence, the chaplaincy practice had become "part of the fabric of our society." The Court further reasoned that the same First Congress that proposed the Bill of Rights also voted to hire a congressional chaplain and begin its legislative days with a prayer, and therefore could not have intended in the Establishment Clause to have prohibited legislative prayers.

### **Edwards v. Aguillard (1987)**

The Court ruled that a Louisiana law requiring that creation science be taught in public schools whenever evolution was taught was unconstitutional, because the law was specifically intended to advance a particular religion. At the same time, however, it held that "teaching a variety of scientific theories about the origins of humankind to school children might be validly done with the clear secular intent of enhancing the effectiveness of science instruction." The Court found that, although the Louisiana legislature had stated that its purpose was to "protect academic freedom," that purpose was dubious (a sham) because the Act gave Louisiana teachers no freedom they did not already possess and instead limited their ability to determine what scientific principles should be taught. Because it was unconvinced by the state's proffered secular purpose, the Court went on to find that the legislature had a "preeminent religious purpose in enacting this statute."

### **County of Allegheny v ACLU (1989)**

the U.S. Supreme Court considered the constitutionality of two recurring holiday displays located on public property in downtown Pittsburgh. The first, a crèche, was placed on the grand staircase of the Allegheny County Courthouse. Its manger had at its crest an angel bearing a banner proclaiming *Gloria in Excelsis Deo*. The second of the holiday displays in question was an 18-foot Chanukah menorah, which was placed just outside the City-County Building next to the city's 45-foot decorated Christmas tree. At the foot of the tree was a sign bearing the mayor's name and containing the following text: "During this holiday season, the city of Pittsburgh salutes liberty. Let these festive lights remind us that we are the keepers of the flame of liberty and our legacy of freedom."

In a complex and fragmented decision, the majority held that the County of Allegheny violated the Establishment Clause by displaying a crèche in the county courthouse, because the "principal or primary effect" of the display was to advance religion within the meaning of *Lemon v. Kurtzman*, when viewed in its overall context. The crèche angel's words endorsed a patently Christian message: Glory to God for the birth of Jesus Christ. Moreover, in contrast to *Lynch v. Donnelly*, nothing in the crèche's setting detracted from that message.

A different majority held that the menorah display did not have the prohibited effect of endorsing religion, given its "particular physical setting". Its combined display with a Christmas tree and a sign saluting liberty did not impermissibly endorse both the Christian and Jewish faiths, but simply recognized that both Christmas and Chanukah are part of the same winter-holiday season, which, the court found, has attained a secular status in U.S. society.