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From the SelectedWorks of Alan E Garfield

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Test Your Knowledge of Church and State

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This is the 11th year that Delaware Law School and The News Journal have teamed up to provide you with a collection of essays to celebrate Constitution Day, September 17, the national observance marking the date in 1787 when the Framers signed the Constitution in Philadelphia. This year's collection is a series of quizzes to test your knowledge of constitutional law. Of course, we realize that most of you are not judges or lawyers so don't feel badly if you get stumped by some or all of the questions. But we do hope you welcome this opportunity to expand your knowledge of constitutional law. After all, lawyers and judges did not "ordain and establish" the Constitution; "We the People" did. If our nation is to continue becoming an ever "more perfect Union," it needs citizens who are educated and engaged, and who are eager to participate in the democratic process with their voices and votes. That's why Justice Louis Brandeis said "the greatest menace to freedom is an inert people" and "public discussion is a political duty."

1. The First Amendment says that "Congress shall make no law . . . prohibiting the free exercise [of religion]." This is called the Free Exercise Clause. It now applies to all levels of government: federal, state, and local, including public schools.

Free Exercise Clause issues typically arise when the government passes neutral laws that interfere with a person's religious practice. For example, if the military passed a law that forbade soldiers from wearing any non-military headgear, it would interfere with a Sikh soldier's religious obligation to wear a turban. The law is neutral in that it does not target people who wear headgear for religious purposes. But it still interferes with the Sikh's religious practice.

How has the Supreme Court interpreted the Free Exercise Clause to apply in these types of situations?

a. The government must exempt religious observers from any laws that interfere with their religious practice because the Free Exercise Clause provides that the government shall make "no law" prohibiting the free exercise of religion.

b. The government must grant religious objectors an exemption, except in



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Freedom of religion or belief is a principle that supports the freedom to manifest religion or belief in teaching, practice, worship, and observance.

cases where the government has a compelling reason for making observers comply with the law.

c. The Constitution does not require the government to give religious objectors exemptions from neutral laws. (Instead, religious objectors can ask their legislators to put an exemption in the law.)

d. The government must grant exemptions to Christians but not to other religious groups.

2. The First Amendment also says that "Congress shall make no law respecting an establishment of religion." This is the Establishment Clause. It's clear that this Clause forbids us from having a national church, but what other types of religious establishments does it forbid? Which of the following government displays is likely to violate the Establishment Clause?

a. A holiday display with a Christmas Tree, Santa, a Menorah and reindeer.

b. A holiday display on the main staircase of a courthouse that consists of only a crèche scene with baby Jesus in the manger.

c. A public art museum that displays

medieval artwork with religious images of Jesus.

d. A national Christmas tree near the White House.

3. Which of the following is not permitted in public schools?

a. Starting off school with a daily non-sectarian prayer.

b. Prayers given by clergy members at a public school graduation.

c. Teaching creationism in biology classes.

d. All of the above.

4. Which of the following violates the Establishment Clause?

a. Clerks at private department stores saying "Merry Christmas" to customers.

b. Children at public schools using their free time to say a prayer.

c. A law that forbids the teaching of evolution.

d. Beginning congressional sessions with a prayer given by a member of the clergy.

5. Establishment Clause concerns are raised whenever government funding goes to religious institutions. Nevertheless, the Supreme Court has said that governments can

give public school students vouchers to use at private schools including private religious schools.

What was the Court's logic for upholding voucher programs?

a. Education is so important that the government is always free to fund education, even at private religious schools.

b. The decision to use the money at private religious schools was being made by the students and their parents and not the government.

c. Private religious schools that accept these vouchers are not allowed to teach any religious doctrines.

d. The Framers did not intend for the Establishment Clause to place any limits on using taxpayer money to support religious institutions.

ANSWERS

1. The answer is C. The Constitution does not require the government to exempt religious objectors from neutral laws of general applicability. This rule was announced by Justice Antonin Scalia in a 1990 opinion. Prior to that, the Court applied a rule similar to that mentioned in answer B. After the 1990 opinion was issued, Congress enacted the Religious Freedom Restoration Act ("RFRA") which requires the federal government to exempt religious objectors from neutral laws unless the government has a compelling reason for making them comply with the law. Many states have mini-RFRA laws. But note that these are statutory rules and not constitutional rules.

2. The answer is B. The Court is leery of religious displays that suggest government endorsement of a particular religion. It permitted a crèche scene when that was mixed in with other less overtly religious symbols like Santa's sleigh and a Christmas tree, but found a crèche scene unconstitutional when it was displayed alone on a courthouse's main staircase.

3. The answer is D. All of the activities are forbidden in public schools.

4. The answer is C. The Court said that bans on the teaching of evolution are meant to serve a religious and not secular purpose.

5. The answer is B. School vouchers serve the secular purpose of improving educational opportunities. Parents and their children, not the government, make the decision to use the vouchers at religious schools.

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