Living on a Prayer: An inquiry into whether a State University’s approval of a “prayer room” in a University facility for a Muslim-student organization offends the Establishment Clause set forth in the First Amendment

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By Brandy Gillette Price

INTRODUCTION

Sitting in the middle of campus, the University of North Carolina at Chapel Hill’s (UNC) Carolina Union is the Mecca of student expression and student governance.

Students fill every corner of the facility while indulging in conversation, studying, eating, and, most commonly, student organizational meetings and forums. The Carolina Union allows recognized student organizations to reserve its facility meeting rooms for “meetings, programs, workspace, and the distribution of information.” ¹ These organizations consist of religious and non-religious affiliations.² The Muslim Student Association, commonly known as the MSA, has reserved a meeting room in the Carolina Union as a prayer room.³ The Carolina Union Event Planning Department has listed the room as a prayer room on the Carolina Room Reservation List and the Carolina Union

³ Id.
Operation’s staff deliberately arranges this room for Muslim prayer. The specific room reserved does not change from year to year.

Along with its reservation policy, UNC has a diversity mission, which seeks to accommodate the beliefs, ideals, practices, and involvements of its students. The policy, ultimately, attempts to facilitate a liberal-learning environment. The Carolina Union Reservation policy incorporates that mission by allowing all recognized student organizations to reserve its meeting rooms for student organizational expression.

This university policy and mission presents many different possible perspectives of conflict for the religious, non-religious, and fee-paying student. The religious student could question whether the allowance of a Muslim prayer room in the student union favors the Muslim religion. The non-religious student could question whether the allowance of this religious indoctrination endorses religion in general. Finally, the fee-paying student could question whether his or her student fees that the public university partly allocates to the operation of the facilities are neutrally applied to the uses allowed in the student union, which include the university’s allowance of a Muslim prayer room. Overall, the issue presented is whether the public university, serving as a governmental entity, has involved itself so substantially in the religious practices of the MSA, through its policies, that they bear the imprimatur of endorsement and therefore display a preference for the Muslim religion.

\[\begin{align*}
\text{4 Id.} \\
\text{5 Id.} \\
\text{6 Core Diversity Values of the University, http://www.unc.edu/diversity/corevalues.htm (last updated 2010).} \\
\end{align*}\]
Part I of this article gives the scope of the University’s on-campus liberal-learning culture and how the University tailors its Core Values in respect to Diversity, Student Organizational, and Union Reservation policy to complement that culture. Part II describes the aims and purpose of the Muslim Student Association and offers a description of the reservation and approval of the prayer room. Part III examines the broad viewpoint of the Establishment Clause according to Justice Rehnquist’s dissent in Wallace v. Jaffree, which argues against a modern application of the conservative “wall of separation” between church and state. Part IV decides that the Lemon test must be applied to maintain the “wall of separation” that protects religious freedom. Part V considers the endorsement test, in conjunction with the Lemon test, which penetrates the “wall of separation” ideal, creating a standard that accounts for religious freedom and government accommodation. Part VI applies the Lemon and endorsement standards to the facts of the room reservation and concludes that the University has not favored or endorsed religion and therefore has not offended the Establishment Clause. Lastly, Part VII presents a counterpoint, which questions whether the University has given special treatment to the MSA and concludes that the University has merely accommodated the MSA much like the University accommodates the special needs of other student organizations.
I. SCOPE OF THE UNIVERSITY CULTURE AND POLICY WITH RESPECT TO DIVERSITY AND STUDENT ORGANIZATIONS.

UNC bases its school culture, and ultimately its school policy, around liberal thinking.\footnote{Diversity Plan: Goals, \url{http://www.unc.edu/diversity/diversityplan/goals.html} (last updated 2010).} The UNC Department of Multicultural Affairs sets policy around this liberal ideal.\footnote{Id.} UNC calls this “Core Values of the University.”\footnote{Core Diversity Values of the University, \url{http://www.unc.edu/diversity/corevalues.htm} (last updated 2010).} UNC builds its policy around five core values with respect to diversity:

- The University supports intellectual freedom, promotes personal integrity and justice, and pursues values that foster enlightened leadership devoted to improving the conditions of human life in the state, the nation, and the world.
- The University believes that it can achieve its educational, research, and service mission only by creating and sustaining an environment in which students, faculty, and staff represent diversity, for example, of social backgrounds, economic circumstances, personal characteristics, philosophical outlooks, life experiences, perspectives, beliefs, expectations, and aspirations, to mention some salient factors.
- The University will achieve and maintain diversity on the campus through the admission of students and employment of faculty and staff who broadly reflect the ways in which we differ.
- The University promotes intellectual growth and derives the educational benefits of diversity by creating opportunities for intense dialogue and rigorous analysis and by fostering mutually beneficial interactions among members of the community.
- The University provides an environment that values and respects civility and cordiality of discourse in order that all members of a diverse community feel welcomed and feel free to express their ideas without fear of reprisal.\footnote{Id.}
The policy serves to support students in their diverse ideals and beliefs. UNC allows for community and student expression.\textsuperscript{12} UNC hosts separate freshman orientations based around cultural, social, and philosophical differences.\textsuperscript{13} Walking on UNC’s campus, one could hear a Christian sermon, witness a rally about homelessness, or see posters of a mangled, aborted fetus in protest against abortion laws.

A. THE IMPORTANCE OF THE STUDENT ORGANIZATION TO THE UNIVERSITY’S DIVERSITY POLICY AND THE REQUIREMENTS FOR RECOGNIZED STUDENT ORGANIZATIONS.

Student organizations are at the core of this student expression. In 2009-2010, UNC had 653 student co-curricular organizations that were extended official University recognition.\textsuperscript{14} These student organizations were based around political, religious, and community service principles.\textsuperscript{15} The University:

supports an atmosphere where students can openly share ideas, interests, and concerns. Through involvement with co-curricular activities and attendance at programs sponsored by student groups, students can develop their skills, knowledge, attitudes, and behaviors in regard to ethics, pluralism, communications, management, vision, and aesthetics, as well as find opportunities to confront and discuss ideas that may be new to them. Involvement in co-curricular activities plays an important and complementary role to learning in the classroom and the University strongly supports student creation of and involvement in organizations.\textsuperscript{16}

\textsuperscript{12} Diversity Plan: Goals, \url{http://www.unc.edu/diversity/diversityplan/goals.html} (last updated 2010).
\textsuperscript{13} \textit{Id.}
\textsuperscript{14} Requirements of Official University Recognition, \url{http://carolinaunion.unc.edu/index.php?option=com_content&task=view&id=55&Itemid =91} (last visited May 7, 2012).
\textsuperscript{15} Virtual EMS, \url{http://ems.union.unc.edu/VirtualEMS} (last visited May 7, 2012).
The University also requires that every student organization that wishes to take advantage of University services achieve “Official University Recognition.”\(^{17}\) Student organizations must apply to the University Student Affairs Office to achieve this status.\(^{18}\)

The application requires that student organization candidates:

1. State the purpose and scope of your proposed organization.
2. Define the vision of/for the group and how they intend to fulfill that vision.
3. Outline how they intend to fund their organization and meet other organizational needs such as meeting space, performance space, storage space, rehearsal space as appropriate.
4. State the intended learning outcomes for the group’s leadership, the members of the group, and the intended recipients of the programs/services provided by the group.
5. On a yearly basis for five years, project the membership and leadership development programs that will assist in meeting these learning outcomes.
6. On a yearly basis for five years, project recruitment plans and retention plans for members and leadership training and development to assure continuity of their organization and the transition plans intended to ensure smooth change from one administration to the next.\(^{19}\)

The benefits of student organization recognition include:

A. Use, through reservation, of specified University facilities, property, services, or equipment pursuant to the University of North Carolina at Chapel Hill’s Facilities Use Policy.
B. Use of the University’s name in the organization’s title, so long as University sponsorship or endorsement is not implied or stated.
C. Access to funding from the Student Activity Fee that is legislatively apportioned by the Student Congress.
D. Assistance of the Division of Student Affairs including, but not limited to, Carolina Leadership Development, Carolina Union,


Disability Services, Office of Fraternity and Sorority Life, and the Student Activities Fund Office.  

The University does not guarantee recognized student organizations:

A. Tax exempt status and/or use of the University’s tax ID number.
B. Funding for the student organization.
C. Endorsement of the viewpoints of the student organization.

The University also reiterates in its “Organizational Manual” that it does not “sponsor or endorse activities associated with these groups. The use of the University's name in the organization's title is possible, so long as University sponsorship or endorsement is not implied or stated.”

B. THE INCORPORATION OF THE UNIVERSITY DIVERSITY CORE VALUES IN THE STUDENT UNION RESERVATION POLICY.

The Frank Porter Graham Student Union, also called the Carolina Union (The Union), is the common meeting place for most if not all student organizations. The Union consists of a café with seating, large couches and chairs for watching television in the Union lobby, two computer labs with printing, copying, and scanning capabilities, offices for Union personnel and staff, artistic displays, which are usually products of student organizational expression, and most importantly, large and small meeting rooms where student organizations can have general meetings and programs. Based on the Union Reservation Policy, these meeting rooms are for the use and enjoyment of student

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21 Id.
22 Id.
23 Id.
25 Id.
organizations. The policy also states that student organizations can reserve these meeting rooms at no charge by completing a Reservation Request in the Events Management Office. The Reservation Policy states that “student fees have already paid a sizable portion of the operating costs of the facility. There is no charge for most uses.” Ultimately, the Union policy notes that, “the University has the responsibility to determine how its space will be used.” University professionals consider time, place, and manner of activities when they administer policies, procedures, guidelines, and laws.

If a student organization wishes to reserve a meeting room, it must create a “Virtual EMS” account and request reservations online. The “Virtual EMS” is the Virtual Events Management System. Students use this system to make and maintain online reservations. Student organizations also have access to browse events that have been previously reserved to check the availability of a meeting room, the time of the reservation, the title of the event, the room location, and the customer or student organization’s name. The student can click on the title of the event to see all concurrent

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26 Id.  
29 Id.  
30 Id.  
reservations. The Office of Events Management handles room reservations on a case-by-case basis. Room reservations require planning and approval 30 days prior to the reservation. Minor reservations usually only require approval 2 days prior to the reservation. Meeting room request are accepted on a first-come, first-served basis beginning two weeks prior to the first day of classes of the prior semester. Meetings must begin and adjourn between 8 a.m. and 11 p.m. during the regular school year.

II. THE UNIVERSITY APPROVES A PRAYER ROOM RESERVED BY THE MUSLIM STUDENT ASSOCIATION.

The Muslim Student Association (MSA) is a recognized student organization. The MSA “seeks to provide Muslim students a community for Islamic worship and interchange of ideas while seeking to promote Islamic values and understanding to the university community generally.” The organization consists of a President, Publicity Coordinator, Social Coordinator, Fundraising Coordinator, Community Service Chair, Outreach Chair, Educational Coordinator, and Treasurer. The MSA maintains bylaws and a constitution as required by University policy. Article II of the MSA constitution supplies the aims and purpose of the MSA:

36 Id.
37 Id.
38 Id.
39 Id.
41 M.S.A. CONST. art II, §1-3 (amended 2011).
Section 1
The purpose of the MSA of UNC-CH shall be to enable and encourage its members to serve the needs of the Muslim community at the University of North Carolina at Chapel Hill, in conformance with Islamic doctrines as prescribed in the Holy Qur’an and Ahl-Al Sunnah Wa Al-Jama’a.\(^\text{42}\)

Section 2
In all its procedures and activities, the MSA of UNC-CH shall implement and practice Islam as prescribed in the Holy Qur’an and Ahl-Al Sunnah Wa Al-Jama’a. It shall avoid any practice that violates those principles and doctrines.\(^\text{43}\)

Section 3
The purpose of the MSA of UNC-CH shall be to serve the best interests of Islam and the Muslim community at the University of North Carolina, toward this end, the goals, and objectives of the MSA of UNC-CH shall be:

1) To help the Muslims at the University of North Carolina at Chapel Hill carry out activities in the pursuit of Islam as a complete way of life.
2) To conduct religious, educational, social, civic, charitable, literary, athletic, scientific, research and other Islamic activities in the manner stipulated in Article II Section 2.
3) To establish good, healthy, and friendly relations with the Chapel Hill Community at large and promote better understanding between Muslims and non-Muslims.
4) To present Islam to the people of other faiths.
5) To further cooperation with other organizations at the University of North Carolina at Chapel Hill.
6) To attempt to provide a place of prayer for the Muslim Community of UNC-CH on or near the campus of the University of North Carolina at Chapel Hill.\(^\text{44}\)

The MSA has reserved a room in the Union of moderate size.\(^\text{45}\) The room is positioned upstairs near the front of the building.\(^\text{46}\) The room is also requested to be

\(^\text{42}\) Id.
\(^\text{43}\) Id.
\(^\text{44}\) Id.
\(^\text{45}\) Virtual EMS, [http://ems.union.unc.edu/VirtualEMS/BrowseEvents.aspx](http://ems.union.unc.edu/VirtualEMS/BrowseEvents.aspx) (last visited May 7, 2012).
\(^\text{46}\) Id.
emptied therefore the room contains no chairs or tables.\textsuperscript{47} On any given day, the TV display that sits next to the information desk in the downstairs lobby of the Union, as well as the Union website “Browse Events” tab, displays “12:00pm-5:00pm… MSA Prayer Room… FPG Union- Room 3203… Muslim Students Association.”\textsuperscript{48} For those viewing it online, they can see all the bookings from the present date to the last booking, which ends on the last day of classes, April 25, 2012.\textsuperscript{49}

This article considers the ramifications of this meeting room designation under the Establishment Clause. This article answers whether the governmental action, the approval of a Muslim prayer room in a public university facility, can be reasonably attributed to governmental preference because the state university allows the MSA to reserve a prayer room.\textsuperscript{50}

III. THE ANALYTICAL FRAMEWORK OF THE RELIGION CLAUSES AS IT RELATES TO THE ESTABLISHMENT CLAUSE

The Religion Clauses provide that “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.”\textsuperscript{51} The Establishment Clause, in particular, endeavors to protect citizens from governmental preference for religion or any religious sect.\textsuperscript{52} Part III of this article analyzes Justice Rehnquist’s dissent in Wallace v. Jaffree and Professor Vincent Phillip Munoz’s article, “The Original Meaning of the Establishment Clause and the Impossibility of its Incorporation,” to

\textsuperscript{47} \textit{Id.}

\textsuperscript{48} \textit{Id.}

\textsuperscript{49} \textit{Id.}

\textsuperscript{50} Mitchell v. Helms, 530 U.S. 793, 794 (2000).

\textsuperscript{51} U.S. CONST. amend. I.

expose the controversy that continues to revolve around the Framers’ intent during the ratification of the Religion Clauses. Scholars do not have a substantial amount of available legislative record that thoroughly informs scholars of the Framers’ intent, on either side of the coin. Justice Rehnquist’s Wallace v. Jaffree dissent and Professor Munoz’s article provide a compilation of the commentary and debates of the Framers and modern-day legal scholars. Justice Rehnquist and Professor Munoz use their research to formulate a conclusion about the Framers’ intent. Analysis of Justice Rehnquist’s dissent and Professor Munoz’s article reveals that the Establishment Clause standard must account for an approach that does not strictly rely on a “wall of separation” approach or strictly rely on an abandonment of the “wall of separation.” The standard must straddle the line, creating a standard that protects religious liberty while providing governmental accommodation for the people: the penetrable “wall of separation” approach.

In Wallace v. Jaffree, Justice Rehnquist’s dissent argues that the Framers of the Religion Clauses did not intend to establish a conservative “wall of separation” between the church and state. Professor Munoz’s article provides an argument from Justice

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54 Id.
55 Id.
56 Id.
57 See Wallace v. Jaffree, 472 U.S. 38 (1985) (Rehnquist, J., dissenting). In Wallace v. Jaffree, the Court faced the issue of whether an Alabama silent prayer statute violated the Establishment Clause based on an “impermissible intent to advance religion.” 472 U.S. 38, 109 (1985). The statute mandated that students participate in “a period of silence for ‘meditation or voluntary prayer’.” Id. at 40. The Court held that the Alabama statute was unconstitutional and that the governmental action did endorse religion. Id. at 61. The Court used the three-prong Lemon v. Kurtzman test to justify its decision. Id. at 55.
Souter, which rejects Justice Rehnquist argument. Munoz follows Justice Souter’s reasoning and concludes that the Framers intended a conservative approach; however, the courts must abandon that approach to account for modern Establishment Clause issues.

**A. A BROAD ANALYSIS OF THE ESTABLISHMENT CLAUSE**

Justice Rehnquist’s dissent in Wallace v. Jaffree stated his views on the primary intent in the analysis of the Establishment Clause. Justice Rehnquist argued, “the Establishment Clause prohibited only establishing a state religion or preferring one denomination or sect at the expense of others.” Justice Rehnquist’s historical analysis gives a perspective of the original Framers’ intent. He began his analysis with an introduction of the 1947 case, Everson v. Board of Education. That case introduced the concept of separatism: “the clause against establishment of religion by law was intended to erect ‘a wall of separation between church and State’.” It appears that the origin of this “wall of separation” can be traced back to Thomas Jefferson, who wrote this metaphor in his letter to the Danbury Baptist Association fourteen years after the ratification of the Religion Clause. Justice Rehnquist referred to Jefferson as a

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59 Id.
61 Id. at 93
64 Id. at 92. See also Raymond W. Kaselonis, Jr., Everson and "The Wall of Separation Between Church and State": The Supreme Court's Flawed Interpretation of Jefferson’s Letter to the Danbury Baptists, 17 Regent U. L. Rev. 101 (2005). Kaselonis illustrates the doctrinal weaknesses of modern “separation of church and State” jurisprudence by focusing on its divergence from the original meaning of the First Amendment.
“detached observer,” noting that Jefferson was not present at the ratification debates on the Clauses.65

Justice Rehnquist then described the role fellow Virginian James Madison played in their ratification.66 Madison presented a different perspective then the “highly simplified wall of separation” view held by Thomas Jefferson.67 Madison proposed the early language that would later be refined into the Religion Clause: “The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.”68 Justice Rehnquist relied solely on Madison as the “most important architect among the Members of the House.”69 However, Madison was not the only Framer who affected the language of the Establishment Clause.70

House Representative Benjamin Huntington “hoped that ‘the amendment would be made in such a way as to secure the rights of conscience, and a free exercise of the rights of religion, but not patronize those who professed no religion at all’.”71 Huntington feared that state-established religions would impose on religious liberty.72 Representative Elbridge Gerry thought the language should be changed to read: “no religious doctrine

66 Id. at 92.
67 Id.
68 Id. at 94.
69 Id. at 97.
70 Id.
71 Id. at 96.
72 Id.
shall be established by law.”73 Many of the Framers sought to make the language of the Amendment conform to the “wall of separation between the church and State.”74

Justice Rehnquist also relied on the ratification of the Thanksgiving Proclamation.75 President George Washington as well as many Framers including Representative Elias Boudinot supported the Thanksgiving resolution.76 Justice Rehnquist argued that the Thanksgiving proclamation is a symbol of the Framers’ intention to stray away from the conservative “wall of separation” ideal, suggesting that the Framers possessed a religious purpose behind the Thanksgiving Proclamation.77 The Proclamation allowed people the freedom to celebrate Thanksgiving, as they will.78 Ultimately, the Establishment Clause read as a protection of religious liberty. Justice Rehnquist concludes that the “wall of separation” idea was not the Framers’ true intent and he request that the Court “frankly and explicitly” abandon it.79 Justice Rehnquist’s dissent urges the Court to move past conservative thought and consider standards that appropriately handle modern Establishment Clause challenges.80

**B. A NARROW ANALYSIS OF THE ESTABLISHMENT CLAUSE**

Vincent Phillip Munoz, Assistant Professor of Political Science at Tufts University, analyzes Justice Rehnquist’s rejection of the “wall of separation” and his

73 *Id.* at 95.
74 *Id.*
75 *Id.* at 101.
76 *Id.*
77 *Id.*
78 *Id.*
79 *Id.* at 107.
80 *Id.*
declaration that the Framers intended a narrow analysis of the Establishment Clause.\textsuperscript{81} Professor Munoz calls Justice Rehnquist’s dissent a “non-preferentialist” construction.\textsuperscript{82} Professor Munoz presents Justice David Souter’s argument, which challenges Justice Rehnquist’s “non-preferential” approach.\textsuperscript{83} Justice Souter “championed a strict-separationist interpretation in \textit{Lee v. Weisman}, the 1992 public-school graduation prayer case.”\textsuperscript{84} Justice Souter argued that:

the Framers repeatedly considered and deliberately rejected such narrow language and instead extended their prohibition to the state support for religion, in general. Implicit in their choice is the distinction between preferential and non-preferential establishments, which the weight of evidence suggests the Framers appreciated.\textsuperscript{85}

Justice Souter also uses the Thanksgiving Proclamation in his argument, stating that even Madison “claimed that official days of prayer and thanksgiving violated the Constitution.”\textsuperscript{86}

Overall, Professor Munoz favors Justice Souter’s “strict-separationist” approach in regards to the ratification controversy.\textsuperscript{87} However, Professor Munoz concludes, “the precise and clear intention and meaning of those who drafted the Establishment Clause has been lost on the modern Supreme Court.”\textsuperscript{88} Professor Munoz’s conclusion suggests that the Supreme Court must impose a new standard.\textsuperscript{89} He urges the courts to narrow the

\textsuperscript{82} \textit{Id.}
\textsuperscript{83} \textit{Id.}
\textsuperscript{84} \textit{Id.}
\textsuperscript{85} \textit{Id.}
\textsuperscript{86} \textit{Id.}
\textsuperscript{87} \textit{Id.}
\textsuperscript{88} \textit{Id.}
\textsuperscript{89} \textit{Id.}
“wall of separation” approach to overcome modern Religion Clause challenges and therefore account for government accommodation.\textsuperscript{90} Professor Munoz concludes that:

\begin{quote}
It is not necessary to dwell on its history to adjudicate Establishment Clause challenges in the twenty-first century. The motivation behind the Framers’ development of the Establishment Clause offers little assistance in determining the constitutionality of current government practices. Thus, the history of the Establishment Clause is important to understand its objectives, but it is unnecessary in its adjudication.\textsuperscript{91}
\end{quote}

Part IV of this article considers the \textbf{Lemon} test and the endorsement test, dually. The tests are applied in consideration of a University-approved Muslim prayer room. The tests account for a penetrable “wall of separation” approach, which allows the courts to acknowledge and respect religious freedom while allowing the government to accommodate religion in regards to modern Establishment Clause challenges.

### IV. THE ESTABLISHMENT CLAUSE STANDARDS: THE LEMON TEST

In 1971, the Supreme Court decided \textbf{Lemon v. Kurtzman}, holding that two state statutes providing financial aid to religious schools were unconstitutional.\textsuperscript{92} This landmark case established a standard for testing the constitutionality of government conduct against the U.S. Constitution Establishment Clause, most commonly known as the \textbf{Lemon} test.\textsuperscript{93} The Court defined the test in a three-part analysis. First, governments conduct “must have a secular legislative purpose; second its principal or primary effect

\textsuperscript{90} \textit{Id.} Professor Munoz proposes that the Neutrality Theory be applied by the courts as a single and unified guideline for determine modern Establishment Clause challenges. “Under this approach, the government cannot favor one religion over another and cannot favor religion over secularism. In addition, the neutrality theory strictly requires secular criteria as the basis for government interference with religion.” 8 U. Pa. J. Const. L. 585 (2006).

\textsuperscript{91} \textit{Id.} See also \textbf{Lee v. Weisman}, 505 U.S. 577, (1992).


\textsuperscript{93} \textit{Id.}
must be one that neither advances nor inhibits religion, [and] finally, that statute must not foster an excessive government entanglement with religion." 94

The first prong considers the legislative, or policy-making intent of the challenged government conduct. Under this test, “government interference will be invalidated only when there is no secular purpose and ‘there is no question that the statute or activity was motivated wholly by religious considerations.’” 95

The United States Supreme Court has struck down statutes in four cases for violating the secular purpose test. Significantly, however, each of these cases presented the primary evil that the secular purpose prong was intended to protect against: governmental action or legislation adopted for religious reasons. 96

Government conduct is not always based on statutory law; however, the courts have commonly applied the secular purpose prong to un-rebutted evidence contained in the legislative history. 97

In Wallace v. Jaffree, the Court ruled that an Alabama “meditation and voluntary prayer” statute, § 16-1-20.1, was unconstitutional. 98 The Court held that the statute had a non-secular purpose, which was present in the statute’s legislative record, therefore failing the first prong of the Lemon test. 99 The record declared that the “mediation and voluntary prayer” statute “was an ‘effort to return voluntary prayer’ to the public school

94 Id.
96 19 S.C. Jur. Constitutional Law § 42
97 In Fred F. Fielding’s Memorandum about the Wallace v. Jaffree holding, Fielding concludes that the Alabama statute “was thus struck down because of the peculiarities of the particular legislative history.”
99 Id.
district.” While in the district court, Alabama Senator and “prime sponsor” of the bill, Donald G. Holmes was questioned about the statute’s intention which in his testimony indicated “that the legislation was solely an ‘effort to return voluntary prayer’ to the public schools.” Such un-rebutted evidence of legislative intent was confirmed by a “consideration of the relationship between § 16-1-20.1 and two other Alabama statutes—one of which, enacted in 1982 as a sequel to § 16-1-20.1, authorized teachers to lead ‘willing students’ in a prescribed prayer, and the other of which, enacted in 1978 as § 16-1-20.1’s predecessor, authorized a period of silence ‘for meditation’ only.”

Ultimately, the First Amendment requires that the court invalidate government conduct if it is entirely motivated by a purpose to advance religion. Courts examine testimony or statements of the prime sponsors of the government conduct, founding history of the conduct, oral or written records pertaining to the conduct, and other policies that coincide with the primary conduct, which may reveal the intent and therefore the purpose of the government conduct.

The second prong the government must prove is that the “primary effect of the regulation neither advances nor inhibits religion.” “Unlike the secular purpose prong that is concerned with whether a government's action is intended to affect religion, the primary effect prong is concerned with government actions, apparently neutral in purpose but with the essential effect of ‘influencing, either positively or negatively, the pursuit of

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100 Id.
104 Id.
105 Id.
a religious tradition or the expression of a religious belief.” 106 This prong depends on
the type of governmental involvement in the religious expression.107 Some government
involvement can result in a per se violation such as involvement favoring one sect over
the other or involvement which gives governmental power to religious denominations.108
However, it is rare for the courts to find a “clear cut” primary effect on religion.109
Accordingly, the Court has “rarely interpreted ‘primary’ to mean first in order of
importance; instead, the Court has held that consequences of a regulation need only be
‘significant or substantial,’ rather than merely ‘remote, indirect or incidental’.” 110
Therefore, a secular primary effect can violate the Constitution because the government
conduct has a substantial effect on religion.111

In Lee v. Weisman, public prayer at official public middle and high school
graduation ceremonies violated the Establishment Clause.112 The Court relied on three
considerations for analyzing the second prong: the age of the students, the setting in
which the prayer took place, and “the brevity and infrequency of the permissible
prayer.”113 Jones v. Clear Creek Independent School District cites Lee and concludes that
the brief prayer only at school graduations “tempered any advancement of religion.”114
The Court also considered the likelihood that the prayer would attract “new believers” or

107 Id.
108 Id.
109 Id.
110 Id.
111 Id.
113 Jones v. Clear Creek Indep. Sch. Dist., 977 F.2d 963 (5th Cir. 1992).
114 Id.
increase the “faith of the faithful.”\textsuperscript{115} In Jones, the school required that all graduation invocations be non-secretarian and non-proselytizing in nature, which the Court states also “minimizes any such advancement of religion.”\textsuperscript{116}

In School District of Abington Township v. Schempp, a Pennsylvania statute required that “at least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day.”\textsuperscript{117} The Court held that Bible reading may have served secular purposes, but the Pennsylvania statute still violated the Establishment Clause because of a significant effect on religion.\textsuperscript{118} The Court concluded that the statute favors Christianity by enacting a Bible reading mandate, therefore resulting in a non-secular effect on religion.\textsuperscript{119} The second prong considers the type of government conduct such as the target audience, the setting of the government conduct, the brevity and infrequency of the government conduct, and the context of the government conduct.\textsuperscript{120} This evidence must be substantial and significant.\textsuperscript{121}

Accordingly, “the entanglement requirement remains the heart of the test,” even though “the existence of any one of the three elements of the Lemon test creates an establishment of religion.”\textsuperscript{122} “The principle is obvious: ‘government must avoid any involvement with religious societies that may touch upon the matters central to their religious identity and mission.’ As a result, the test is violated by a showing of actual or

\textsuperscript{115} Jones v. Clear Creek Indep. Sch. Dist., 977 F.2d 963 (5th Cir. 1992).
\textsuperscript{116} Id.
\textsuperscript{118} 19 S.C. Jur. Constitutional Law § 42.
\textsuperscript{119} Id.
\textsuperscript{120} Id.
\textsuperscript{121} Id.
\textsuperscript{122} Id.
even a material risk of entanglement.” The Supreme Court has created three factors to determine excessive entanglement:

First, if the religious organization is "pervasively religious," it is unlikely that the governmental contact is permissible. Second, if the regulation provides the public official with sufficient discretion to trespass upon sectarian concerns, the involvement is likely prohibited. Third, if that relationship is one requiring continued surveillance by public officials, the entanglement is likely excessive.

Under this principle, the Establishment Clause bars both “administrative” and “doctrinal” entanglement. “First, the entanglement test limits ‘doctrinal entanglement’ so that the government may not become involved in religious practices or disputes.” More specifically, “courts may not pry into matters of a religious organization's prayer practices, preaching, faith, doctrine, internal administration, and discipline.” Second, the entanglement test “limits ‘administrative entanglement’ so that the government may not excessively control or oversee religious organizations.” This entanglement test prohibits religious groups from collecting inappropriate government financial aid as well as protects religious groups from “certain government interference.”

Ingebretsen v. Jackson Public School District offers persuasive authority for the application of the third prong of the Lemon test. In Ingebretsen, Mississippi legislation enacted a “School Prayer Statute” that permitted “student-initiated voluntary prayer” at “school assemblies, student sporting events, graduation or commencement ceremonies,

124 Id.
125 Id.
126 Id.
127 Id.
128 Id.
129 Id.
and other school-related student events.”  

The statute allowed “representatives of the government to lead students in prayer and punish students” who left assemblies to avoid listening to prayer.  

School officials were able to determine if the prayer was “non-secretarian or non-proselytizing.”  

School officials also designated students to say prayers at events.  

The court concluded that the school prayer statute excessively entangled the government with religion due to the extent the administrators participated in prayer in their “official capacity” and their ultimate review of the content of prayer.  

In Lynch v. Donnelly, the Supreme Court affirmed the Rhode Island District Court’s finding that there had been “no administrative entanglement between religion and state resulting from [Pawtucket]’s ownership and use” of a public display of the Christian nativity scene or crèche.  

The Court concluded that, “entanglement is a question of kind and degree.”  

The Court found no evidence that Pawtucket officials had any contact with “church authorities concerning the content or design of the exhibit.”  

The Court concluded that because Pawtucket’s involvement required “far less on-going, day-to-day interaction” than other public religious expression, “there is nothing here… like the comprehensive, discriminating, and continuing state surveillance… present in Lemon.”  

Ultimately, the unwillingness of the courts to formally reject the Lemon test displays a need for the Lemon inquiry in Establishment Clause challenges. An

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131 Id. at 278.
132 Id.
133 Id. at 277.
134 Id.
135 Id. at 279.
137 Id. at 684.
138 Id.
139 Id.
application of the Lemon test limits government involvement in religious expression, which maintains the “wall of separation” between church and state. However, the court must not completely abandon the “wall of separation” ideal, as Justice Rehnquist suggested.\textsuperscript{140} The court must support a standard that penetrates the “wall of separation” to account for government accommodation to religious groups. This new standard will allow the government to accommodate religious groups while protecting the groups’ religious freedom. Ultimately, the Lemon test enforces religious freedom for which many of the Framers fought so diligently during the ratification of the Bill of Rights.

V. THE ESTABLISHMENT CLAUSE STANDARDS: THE ENDORSEMENT TEST

The endorsement test penetrates the “wall of separation” that the Lemon test erects, allowing for certain governmental accommodations for religion. Justice O’Connor initially formulated the endorsement test in her concurrence in Lynch v. Donnelly.\textsuperscript{141} “Along with a focus on institutional entanglement, she has described [the endorsement test] as a clarification of the Lemon test as an analytical device. This endorsement test has, however, also been used as an essentially separate analytic test.”\textsuperscript{142} Justice O’Connor stated that “endorsement sends a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.”\textsuperscript{143} She concludes that the test must determine whether the government conduct, in fact, conveys

\begin{footnotes}
\item[142] Ronna Greff Schneider, Analytical frameworks for adjudication of religion issues in the school context under the federal constitution, 1 Education Law § 1:3. (Aug. 2011).
\item[143] Id.
\end{footnotes}
a message of endorsement of religion. The term “endorsement” “is closely linked to the term ‘promotion,’” and the courts have held that “government ‘may not ... promote one religion or religious theory against another or even against the militant opposite.’” Ultimately, the court must consider

both “the intention of the speaker”—the subjective government purpose—and the ‘objective’ meaning of the statement in the community—its effect. If the government's actual purpose was improper, the statute or policy could offend the Constitution notwithstanding its effect; likewise, an effect of appearing to endorse religion could invalidate a statute or policy regardless of a constitutionally proper intent.

The subjective view looks at the intention of the government actor or the intention of a “potential insider,” by considering the purpose and effect of the action. In Wallace v. Jaffree, the Court applied the Lemon test’s secular purpose, effect, and entanglement prongs. “Justice O'Connor's concurring analysis of government purpose in Wallace expressed caution and deference to the government's stated purpose, finding an impermissible religious motivation only because it is beyond purview that endorsement of religion or a religious belief was and is the law's reason for existence.” Justice O’Connor distinguished her subjective “insider” analysis from the Lemon secular purpose and effect prongs. The subjective analysis must go beyond the governments’

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144 Id.
147 Id.
150 Id.
stated purpose and focus on the meaning of the stated purpose to the “insider” or government actor.\textsuperscript{151}

In Jones, the court considered Clear Creek’s purpose: to solemnize the graduation ceremony.\textsuperscript{152} The effect of the solemnizing prayer was non-secretarian and non-proselytizing prayer which the students were allowed to deliver at graduation.\textsuperscript{153} The court held that the school district’s stated purpose and effect revealed the intent of the school district’s resolution.\textsuperscript{154} The court concluded that prayer at a graduation in Clear Creek School District meant allowing students to embrace their graduation experience while respecting the experiences of others.\textsuperscript{155} The court did not view the graduation prayer as an endorsement of religion.

The objective view looks at the “outsider’s” view of the government conduct.\textsuperscript{156} Justice O’Connor coined the term “reasonable observer” to refer to the person who determines whether the government has improperly endorsed religion.\textsuperscript{157} In Capital Square Review and Advisory Board v. Pinette, the Court commented on Justice O’Connor’s reasonable observer, referring to it as “a personification of a community ideal of reasonable behavior, determined by the collective social judgment.”\textsuperscript{158} Justice O’Connor further noted that while conducting an objective analysis, a court must
consider the “history and ubiquity” of a practice.\textsuperscript{159} In Justice O'Connor's concurrence in County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, Justice O’Connor explained that “both the ‘history and ubiquity’ of a publicly displayed religious symbol matter to a reasonable observer, because these factors compose part of the context a reasonable observer would consider when determining whether there is a perceived endorsement.”\textsuperscript{160} The reasonable observer is therefore “deemed aware of the history and context of the community and forum in which the religious display appears.”\textsuperscript{161} This assumes that if the reasonable observer is informed and therefore aware that the “community and forum” has commonly allowed government conduct within the realm of the particular religious expression, then the government has not conveyed a message of endorsement through its conduct.\textsuperscript{162} “Justice O'Connor admitted her reasonable observer has extensive knowledge of the history and context of the state action, but denied vesting the reasonable observer with sophisticated knowledge of First Amendment law.”\textsuperscript{163} Ultimately, the reasonable observer is a “community member who embodies ‘a community ideal of social judgment, as well as rational judgment’.”\textsuperscript{164}

In Jones, the court held that “after participating in a student determination of what kind of invocation their graduation will contain, we do not believe that students will perceive any government endorsement of religion from the graduation prayer


\textsuperscript{162} Id.

\textsuperscript{163} Id.

\textsuperscript{164} Id.
The Court concluded that students “perceive a less-direct relationship between state and religion,” and as reasonable observers, are aware of the school district’s history and context of student-dictated invocations, and therefore find “no unconstitutional endorsement.”

In Zelman v. Simmons-Harris, the Court upheld 5-4, Ohio’s private school voucher and tutoring funding program against an Establishment Clause challenge. After a brief review of the program's historical context, the Court held that the state program was motivated by a secular purpose of providing better educational opportunities to the poorest students in the ‘demonstrably failing’ 75,000-student Cleveland City School District. The Court then turned to the heart of the decision, an effect analysis that remained technically independent from the government purpose analysis. In reaching its ultimate conclusion that the program was not marred by an unconstitutional effect, the Court first characterized and contextualized its precedent, stating, ‘we have repeatedly recognized that no reasonable observer would think a neutral program of private choice, where state aid reaches religious schools solely as a result of the numerous independent decisions of private individuals, carries with it the imprimatur of government endorsement.’

Foremost, the endorsement test is an appropriate standard, in combination with the Lemon test, because the Lemon purpose and effect prongs are represented in the endorsement analysis. The endorsement test maintains some of the unique qualities of the Lemon inquiry. Second, the endorsement test extends the Lemon inquiry by allowing an objective look at the facts. Justice O’Connor notes that the mere presence of a secular purpose does not dominate an underlying, but often dominating, religious message, such as in Stone v. Graham where a Ten Commandments display in school conveyed a

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166 Id.
religious message despite the fact that the school recorded a secular objective in its legislative history.\textsuperscript{168} The consideration of the “insiders” intent and the “outsiders” knowledge of the history and ubiquity of a religious practice makes the “wall of separation” penetrable, allowing avenues for government accommodation in a “wall of separation” built to protect religious liberty. Both, the \textit{Lemon} and endorsement inquiries, offer a balance between religious freedom and government accommodation.

VI. THE APPROVAL OF A PRAYER ROOM IN THE UNIVERSITY STUDENT UNION IS A GOVERNMENTAL ACTION WHICH PASSES BOTH THE \textit{LEMON} AND ENDORSEMENT TEST

A. THE UNIVERSITY CONSIDERS AND RESPECTS THE RELIGIOUS FREEDOM OF STUDENT ORGANIZATIONS

The University’s policy does not include a record of its policymaking history, or any amendments to its current diversity policy. Evidence of the University’s purpose for allowing the reservation of a prayer room for the MSA is derived directly from the University’s Core Diversity Values, the University’s Policy on Recognized Student Groups, and the Union’s Reservation policy.\textsuperscript{169} The second core value states that:

The University believes that it can achieve its educational, research, and service mission only by creating and sustaining an environment in which students, faculty, and staff represent diversity, for example, of social backgrounds,


\textsuperscript{169} Reservation and Facilities Use Policies, \url{http://carolinaunion.unc.edu/index.php?option=com_content&task=category&sectionid=10&id=34&Itemid=92} (last updated Oct. 2011); Core Diversity Values of the University, \url{http://www.unc.edu/diversity/corevalues.htm} (last updated 2010); Requirements of Official University Recognition, \url{http://carolinaunion.unc.edu/index.php?option=com_content&task=view&id=55&Itemid=91} (last visited May 7, 2012).
economic circumstances, personal characteristics, philosophical outlooks, life 
experiences, perspectives, beliefs, expectations, and aspirations.\textsuperscript{170}

The University’s Diversity policy does not respond to religion or religious beliefs.\textsuperscript{171} The 
University’s purpose is to support a liberal-learning environment, evidenced by the 
policies’ reference to an “educational, research and service mission” and “creating and 
sustaining an environment in which students, faculty, and staff represent diversity.”\textsuperscript{172}

The University’s policy for Recognized Student Groups states that the University:

Supports an atmosphere where students can openly share ideas, interests, 
and concerns. Through involvement with co-curricular activities and 
attendance at programs sponsored by student groups, students can develop 
their skills, knowledge, attitudes, and behaviors concerning ethics, 
pluralism, communications, management, vision, and aesthetics, as well as 
find opportunities to confront and discuss ideas that may be new to 
them.\textsuperscript{173}

This policy statement reinforces the mission stated in the Diversity Core Values. The 
Policy embraces a purpose of establishing a liberal-learning environment. Phrases such as 
“support an atmosphere where students can openly share ideas” and “find opportunities to 
confront and discuss ideas that may be new to them” are evidence of the University’s 
purpose of enforcing a liberal-learning environment through the existence of student 
organizations.\textsuperscript{174}

\textsuperscript{170} Core Diversity Values of the University, \url{http://www.unc.edu/diversity/corevalues.htm} 
(last updated 2010).
\textsuperscript{171} \textit{Id.}
\textsuperscript{172} \textit{Id.}
\textsuperscript{173} Requirements of Official University Recognition, 
\url{http://carolinaunion.unc.edu/index.php?option=com_content&task=view&id=55&Itemid=91} 
(last visited May 7, 2012).
\textsuperscript{174} \textit{Id.}
The University states, under the Reservation policy, that the luxury of reserving meeting rooms is “for the use and enjoyment of student organizations.” This statement, in the Introduction of the policy, sets the tone for the policy, revealing the University’s support for student organizational expression, therefore uplifting a secular purpose. The University’s Core Values and Student Organization Recognition requirement are latent in the Reservation policy requirements. Accordingly, the Union reserves rooms through the Events Management Office to student organizations, which consist of college-age students.

Once student organizations reserve a particular meeting room, the organization is the only group permitted in the room during the time of reservation. The MSA reserved the prayer room to “implement and practice Islam” and “provide a place of prayer for the Muslim Community of UNC-CH on or near the campus of the University of North Carolina at Chapel Hill.”

The MSA is a recognized student organization and it is subject to the accommodations that the status allows such as the use of a meeting that it reserved from 12:00 p.m. to 5:00 p.m., Monday through Friday throughout the entire school year.

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176 Id.


178 Id.

179 M.S.A. CONST. art II, §1-3 (amended 2011).

University extends this benefit equally among all recognized student organizations.  

The MSA can reserve the Union meeting room on a frequent basis because it has complied with the Union’s Reservation policy. The MSA submitted its reservation in a timely manner and it has complied with the policy’s room confirmation stipulations. The University allows the reservation of the prayer room based solely on the MSA’s compliance with the Reservation policy.

The University uses student fees as well as University funds to maintain the quality of the facility. The University uses its funds equally to accommodate all students who use the Union facilities. The University has not offered special funding or allocated more funding to the MSA for the upkeep of a prayer room. The University maintains the meeting rooms and allows the designation of a prayer room based on the specifications of the MSA’s reservation, not based on the University’s involvement in the reservation design.

Moreover, the University does not dictate how the MSA must use the prayer room. The University does not suggest to the MSA any particular manner or style of prayer within the prayer room. The MSA can privately choose its praying methods. Overall, the MSA’s reservation of a prayer room and the University’s approval is distinguishable

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183 Id.
184 Id.
from Wallace, Schempp, and Ingebretsen and therefore passes scrutiny under the Lemon test.\textsuperscript{185}

In Wallace, the “mediation and voluntary prayer” statute failed the secular purpose prong due to the stated religious purpose in the legislative history, the other religious Alabama statutes that were made in accordance with the school prayer statute, and the confirmation of the religious purpose by a primary sponsor of the school prayer statute.\textsuperscript{186} UNC purpose is secular which is evidenced through the language of the University’s Core Diversity Values, the University’s requirements for Recognition status, and the University’s Carolina Union Reservation policy. The University seeks to uplift a liberal-learning environment and respect the ideals and philosophies of all its students.

In Schempp, a Pennsylvania Bible reading statute failed the secular effect prong of the Lemon inquiry because it advanced religion and favored Christianity.\textsuperscript{187} The University’s approval of the prayer room does not fail the second prong because it does not favor the Muslim religion by allowing the MSA to designate the room as a prayer room.\textsuperscript{188} The University does not seek to expose other students to Muslim prayer. The prayer room is intended only for those specified in the reservation.

Lastly, in Ingebretsen, a school prayer statute failed the excessive entanglement prong of the Lemon test because the school officials were allowed to dictate the content and

\textsuperscript{188} Id.
punish students for not participating in prayer.\textsuperscript{189} The University did not entangle itself in religion by approving the prayer room because the University does not dictate the content or style of prayer. The University also does not provide any other form of surveillance over MSA activities within the prayer room. The University’s approval of a prayer room, based on the MSA’s reservation, does not offend the Establishment Clause under the three-pronged \textit{Lemon} test. The University has respected the religious freedom of the MSA and maintained the “wall of separation” between church and state.

B. THE UNIVERSITY PROVIDES ACCOMMODATION TO THE MSA AND DOES NOT ENDORSE RELIGION

\textbf{a. SUBJECTIVE VIEW: THE INTENT OF THE UNIVERSITY WAS TO PROMOTE AN EDUCATIONAL AND LIBERAL ENVIRONMENT}

The first inquiry in the endorsement test is a subjective view into the University’s intention when it allowed for the approval of the prayer room.\textsuperscript{190} The University intended to promote a liberal-learning environment in the establishment of its core values with respect to diversity, their “recognized student group” policy, and their Union reservation policy.\textsuperscript{191} The University uses its policy to promote enrichment of its students, and facilitate an atmosphere that accommodates open-minded thinking and a sharing of ideas.

\textsuperscript{189} \textit{Ingebretsen on Behalf of Ingebretsen v. Jackson Pub. Sch. Dist.}, 88 F.3d 274, 281 (5th Cir. 1996).
The MSA’s reservation is a product of its compliance with the University’s policy, which allows student organizations to reserve meeting rooms based on its organizational needs. The University respects the private choice of the MSA. The University allows students to reserve rooms and allows the MSA to designate a prayer room so that student organizations can carry on the University’s “commitment to Diversity and Inclusion.”

In Jones, the court looked at the purpose, to solemnize graduation, and effect of the graduation prayer, brief student-dictated non-secretarian and non-proselytizing prayer, and concluded that the stated purpose and overall effect of the graduation prayer revealed the “insiders” or school officials sought to respect student choice and allow students to embrace their graduation experience. Much like Jones, the University also respects its student choice along with the special needs of its student organizations. The University gives students the opportunity to pursue their interest even if that interest is prayer.

b. OBJECTIVE VIEW: THE REASONABLE OBSERVER DOES NOT VIEW THE PRAYER ROOM AS CONVEYING A MESSAGE OF ENDORSEMENT

The second inquiry of the endorsement test is an objective view of the facts. The objective analysis reveals the message that the University conveys in its approval of the prayer room. Students understand the liberal culture of the University through its display of student expression on almost every surface of the campus. University students

are very aware of the allowance of Christian preachers in the University outdoor common areas. Students often see religious organizations protest against abortion, homelessness, and political rights through signage, posted literature, and other student organizational displays such as public fundraisers or rallies. The approval of a prayer room for the MSA is not distinguishable from an approval of a Christian preacher in the University’s courtyard. The University has allowed the opportunity for the MSA to take advantage of the services that it provides to all student organizations. The student would conclude that the University has been consistent with a tradition of liberalism and education.

In Zelman, the private individual seeking government aid to attend private institutions was the reasonable observer.\textsuperscript{195} The private individual was considered to be aware of the neutral application of the funding program.\textsuperscript{196} The private individual was also aware that funding has traditionally been allowed based on the private choice of parents within the school district.\textsuperscript{197} The Court in Zelman could not support a conclusion that the private individual would determine public funding to the private individual as an endorsement of religion.\textsuperscript{198}

Similar to Zelman, the reasonable observer, the University student, would not see the approval of a prayer room as an endorsement of religion. The University has a long-standing tradition of liberal policy and culture. The student would see the approval and designation of a prayer room for the MSA as an accommodation unlike any other University accommodation that students see throughout campus.

\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} Id.
Therefore, the University’s approval of a prayer room designated in the University’s student union passes the endorsement test. The University has provided the MSA with an accommodation that does not present itself as an advancement or endorsement of religion. The University’s accommodation for the needs of the MSA is consistent with the penetrable “wall of separation” ideal. The endorsement analysis balances the Lemon analysis. The two tests respect the religious freedom of the MSA and allow for government accommodation to the special needs of its student organizations. Ultimately, the University’s actions do not offend the Establishment clause.

VII. ACCOMMODATION OR SPECIAL TREATMENT: THE UNIVERSITY CATERS TO THE SPECIAL NEEDS OF THE MSA

This article, however, raises a counter-argument: does the University accommodate the special needs of the MSA or does the MSA receive special treatment? The University does acknowledge the special needs of the MSA, which are very different from the needs of most student organizations not only because they are based on religious principles, but because they require a venue to practice their religious practices. Most University student organizations have weekly meetings in which they discuss organizational matters. Most student organizations, even religious-affiliated organizations, do not require accommodations, which go to the extent of a designated room for students to use daily.

However, the University applies its policy neutrally among its students. Pauper’s Players is a student musical theater organization that reserves rooms twice a week for theatrical practice. The Black Student Movement is an organization founded on

uplifting minority students on the University campus and reserves a room weekly for meetings in which it host dance recitals, choir practice, and general meetings. The Black Student Movement also requests that the meeting room be located away from the Student Union on an opposite side of campus to cater to the larger minority student population that lives on that side of campus. However, the Pauper’s Players, the Black Student Movement, and the MSA identify their special needs, communicate those needs to the University, and depend on the University to address those needs. The University caters to the special needs of all students. The University seeks to serve its students, not give special treatment to certain organizations. If the University gave special treatment to the MSA, this treatment would present an Establishment Clause issue, which would require a Lemon and endorsement analysis. This article already analyzes and concludes that the University has not offended the Establishment Clause based on the Lemon and endorsement inquiries.

On the other side, if the University did not provide this accommodation to its students, this case would present another Establishment Clause issue: whether the Establishment Clause bars the government from accommodating religion because the religious practice communicates religious content in public facilities. In *Widmar v. Vincent*, the University of Missouri at Kansas City prohibited “the use of University buildings or grounds ‘for purposes of religious worship or religious teaching’.” The Court used a “compelling government interest” analysis to “find no compelling justification, and holding that the Establishment Clause does not bar a policy of equal

\[200\] *Id.*

access, in which facilities are open to groups and speakers of all kinds.” 202 “The University's exclusionary policy violates the fundamental principle that a state regulation of speech should be content-neutral.” 203 The Court’s holding embraces the idea that the government must respect the religious liberty of religious groups while also accommodating religious groups. Many times accommodation is a key element to respecting religious liberty.

CONCLUSION

The public University’s allowance of a designated prayer room is not attributed to governmental endorsement or preference and, ultimately, the University’s policies pass both the Lemon and endorsement inquiries and therefore do not offend the Establishment Clause. The application of the Lemon test reveals UNC’s respect for the religious freedom of the students while the application of the endorsement test shows the accommodating nature of the UNC policy. The University’s Core Values, Student Group Recognition requirement, and Meeting Room Reservation policy respect the penetrable “wall of separation.” The University’s history of liberalism justifies the need for accommodation in University policy. The liberal environment allows students to be freethinkers and open-minded. UNC facilitates an atmosphere where students can embrace the ideals, beliefs, and philosophies of others. The University does not distinguish its recognized student organizations by affiliation, but it allows students to distinguish themselves through particular thought-processes and passions. The University fosters an environment for forward-thinking and progression. The courts can better assess modern challenges to the Establishment Clause, like the facts presented here, by

202 Id.at 267.
203 Id.at 277.
considering a penetrable “wall of separation” approach. Ultimately, the penetrable “wall of separation” ideal supports the University’s liberal mindset, allowing the University to facilitate a liberal-learning environment.