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Religion in Public Schools

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INTRODUCTION

It is important for all schools to teach about religion in order to foster tolerance and peaceful co-existence among diverse groups, especially in the recent social climate of our country and the rest of the world. A sufficient educational background might show students that religion is central to the identity of many people in the world, and possibly worth exploring further than the school context, in order to give them a better understanding of society as a whole. A solely secular curriculum is an impoverished education. The Supreme Court has specifically noted, "It might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization."[1] While all of this is true, it is of equal importance that schools do not cross the Constitutional boundaries set out for the protection of citizens' own religious freedoms, and refrain from interfering with students' free exercise rights and from unlawfully establishing religious ideals. There is undoubtedly a delicate balance to strike; however, with the help of the Supreme Court, that balance seems to have been found by lower courts everywhere.

In addition to learning about the religious commitments of others, public education that includes religion in the curriculum can expose students to the existence of religious traditions and beliefs that they themselves might adopt. The number of people who do not identify with or believe in any religion at all has dramatically increased over the last several years in the United States.[2] While every American is entitled to their beliefs, whether they entail belief in a religion or adamant denial of such, it might be true that nonbelief is the result of lack of education or exposure to religion at an early age. Perhaps if students were given a better understanding of religion at school, as parents get busier and have less time for practice and discussion of religion with their children,

[1] *School Dist. Of Abington Tp., PA v. Schempp*, 374 U.S. 203, 255 (1963).
[2] Caroline Mala Corbin, *Nonbelievers and Government Speech*, 97 IOWA L. REV. 347, 347 (2012).

they would be better equipped with tools to make an informed decision about their beliefs or consider more possibilities.

This look at religion in public schools will first include a discussion of the constitutional framework laid out by the Supreme Court, cases that have led to that framework, and themes that framework has established. Next, the discussion will move to center around decisions on teaching the Bible and prayer in public schools and how lower courts have applied the Supreme Court's framework in such cases, followed by a discussion of parental claims of constitutional violation by public schools. Then, there will be a section on religion and science and lastly an analysis of the framework's application to the lower court decisions.

SECTION I: CONSTITUTIONAL FRAMEWORK

The Supreme Court has established a number of themes regarding the presence of religion in public school curriculums. One of the most concrete and sweeping themes, seen first in the early 1960s, places a prohibition on prayer or devotional bible reading in public schools.[3] The theme of refraining from these activities touches upon a narrower theme. The narrower theme could be said to be that allowing prayer or devotional bible reading in schools, even with a permissive exception for non-participants or objectors, is inherently coercive.[4] Justice Kennedy in particular voices strong objection to the coercive nature of some exercises of religion schools try to implement, noting that at a graduation ceremony, for example, prayer chosen by the school principal would subject students to pressure to either stand or maintain respectful silence during the invocation and benediction, thereby participating in the exercise of religion, even though the school maintains that

[3] *People of State of Ill. ex rel. McCollum v. Board of Ed. of School Dist. No. 71, Champaign County, Ill. et al.*, 66 S. Ct. 461 (1948), *Engel v. Vitale*, 370 U.S. 421 (1962), *School Dist. Of Abington Tp., PA v. Schempp*, 374 U.S. 203 (1963), *Lee v. Weisman*, 505 U.S. 577 (1991), *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000).
[4] *Lee*, 505 U.S. at. 588, *Edwards v. Aguillard*, 482 U.S. 578 (1987).

a graduation ceremony is an optional occasion. [5] While the Supreme Court undoubtedly established a prohibition against devotional religious teaching in public schools, the Court also insisted that teaching about religion in a secular way is allowed. Teaching about religion in a non-devotional way is compatible with the prohibitions established by the Court.

Another overarching theme created by the Supreme Court in the context of public schools and religion is that even non-devotional practices that are still the clear promotion of religion are prohibited. For example, schools cannot, under any circumstance, post the Ten Commandments in classrooms, as they have an underlying purpose which is plainly religious in nature.[6] The Court also strictly established a prohibition on the teaching of creation science, even asserting that the teaching of creation science impermissibly endorses religion by advancing the religious belief that a supernatural being created humankind.[7]

The Supreme Court also created an unmistakable theme in favor of the protection of student-initiated religious speech. The Court made clear that forbidding students to meet within the school's forum on the basis of religion amounted to impermissible discrimination.[8] The school's forum was a limited one created by the existence of various clubs, and religion could not be excluded therefrom.[9] It is important to distinguish, however, the difference between the Court's protection of student-initiated religious speech when done privately and in the capacity of a club setting, and the prohibition on such student-initiated religious speech at a more public event such as a football game. The distinction stems from the Court's well-established desire to avoid coercion of participation in religious exercises for those in attendance at voluntary school functions.[10]

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[5] *Lee*, 505 U.S. at 577.
[6] *Stone v. Graham*, 499 U.S. 39 (1980),
[7] *Edwards v. Aguillard*, 482 U.S. 578 (1987), *Epperson v. State of Ark.*, 393 U.S. 97 (1968)
[8] *Bd. of Educ. of Westside Cmty. Sch. v. Mergens By & Through Mergens*, 496 U.S. 226 (1990).
[9] *Id*.
[10] *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000).

In furtherance of that balance and ensuring the Constitution's protections are preserved, the Supreme Court has developed a framework for lower courts to follow in cases of schools and religious materials. Once a party brings a case to a district court, it will be necessary for the school or school officials against whom the claims are being brought to prove that there is a secular, non-devotional purpose of the religious teaching in order to prevail. The way this is accomplished is typically through the *Lemon* test. *Lemon v. Kurtzman*[11] held that statutes providing for state aid to or for the benefit of non-public schools were unconstitutional under the Establishment Clause of the First Amendment[12] since the cumulative impact of the entire relationship arising under the statutes involved excessive entanglement between government and religion. *Lemon* established that every analysis in the area of the evils the Establishment Clause was intended to prevent, those being 'sponsorship, financial support, and active involvement of the sovereign in religious activity,'[13] must begin with consideration of three tests gleaned from the Court's consideration of cases addressing such over the years: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion;[14] finally, the statute must not foster 'an excessive government entanglement with religion.'"[15] Aside from the *Lemon* test, the Court has also recognized the endorsement test as a way to determine whether a government entity's conduct establishes an impermissible endorsement of religion. Justice O'Connor first began to articulate the endorsement test as a way to conceptualize *Lemon*, and since 1984, both the *Lemon* and endorsement tests have been widely used by lower courts to determine whether particular state action constitutes impermissible establishment of religion.[16]

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[11] *Lemon v. Kurtzman*, 43 U.S. 602 (1971).
[12] Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; *U.S. Const*. amend. I.
[13] *Lemon v. Kurtzman*, 43 U.S. 602, 612 (1971) (internal citations omitted).
[14] *Id*. at 612 (internal citations omitted).
[15] *Id*. (internal citations omitted).
[16] *Kitzmiller v. Dover Area School District*, 400 F. Supp. 2d. 707, 713 (M.D. Pa. 2005).

SECTION II: DECISIONS ON TEACHING THE BIBLE AND PRAYER IN PUBLIC SCHOOLS

The first Supreme Court case addressing the issue of teaching the Bible and prayer in public schools was *People of State of Ill. ex rel. McCollum v. Board of Education of School Dist. No. 71, Champaign County Ill, et al*.[17] In *McCollum*, a resident taxpayer brought an action against the Board of Education alleging that religious teachers, employed by private religious groups, were permitted to come weekly into the school buildings during the regular hours set apart for secular teaching, and then and there for a period of thirty minutes substitute their religious teaching for the secular education provided under a compulsory education law the state had in place.[18] The petitioner alleged that this was a violation of the First and Fourteenth Amendments to the Constitution.[19] The Court relied on the principle set forth in the seminal case of *Everson v. Bd. of Education*, which provided that the Establishment Clause, properly interpreted, had erected a wall of separation between Church and State.[20] The Court explained that this arrangement by the Board of Education presented powerful elements of inherent pressure by the school system in the interest of religious sects.[21] *McCollum* noted the Court's theme of anti-coercion in the context of public schools and religion, explaining that even though children are offered an alternative to the religious course, this does not "not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain."[22] Thus, the classes were enjoined.[23]

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[17] *People of State of Ill. ex rel. McCollum v. Board of Education of School Dist. No. 71, Champaign County Ill, et al*., 333 U.S. 203 (1948).
[18] *McCollum*, 333 U.S. at 205.
[19] *Id*.
[20] *Id*. at 211 *citing Everson v. Bd. of Education*, 330 U.S. 1 (1947).
[21] *Id*. at 227.
[22] *Id*.
[23] *Id*. at 231.

While *McCollum* involved religious groups teaching in the public schools, *Engel v. Vitale* involved the school board itself writing and directing a prayer for students to say.[24] In *Engel*, the respondent Board of Education directed the school district's principal to have its prayer said aloud in each class at the beginning of every school day.[25] Parents of children that attended the school challenged the constitutionality of the prayer on the ground that it violated the Establishment Clause.[26] The Court held that the state's program undoubtedly established the religious beliefs embodied in the prayer at issue because neither the fact that it can be denominationally neutral nor that observance by students can be "voluntary" are enough to free it from the limitations of the Establishment Clause.[27] The Court explained that violation of the Establishment Clause does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not.[28] Thus, the prayer was enjoined.[29]

Another Supreme Court case that dealt with the issue of Bible teachings in public schools was *School Dist. Of Abington Tp., PA v. Schempp*.[30] *Abington* involved state action that required each day in public schools to begin with bible reading in two separate cases.[31] In case No. 142, the Commonwealth of Pennsylvania 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. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian."[32] A family brought an action to enjoin the Bible reading on the grounds

[24] *Engel v. Vitale*, 370 U.S. 421 (1962).
[25] *Id*. at 422.
[26] *Id*. at 423.
[27] *Id*. at 430.
[28] *Id*.
[29] *Id*. at 436.
[30] *School Dist. of Abington Tp., PA v. Schempp*, 374 U.S. 203 (1963).
[31] *Abington*, 374 U.S. at 205.
[32] *Id*.

that it violated their constitutional rights.[33] In case No. 119, a city school board adopted a rule that provided for the holding of opening exercises in the schools of the city, consisting primarily of the 'reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer.'[34] Atheist petitioners brought suit. The Court found that the exercises at issue in both cases and the laws requiring them were in violation of the Establishment Clause because the states were requiring the selection and reading at the opening of the school day, by the students in unison, and the exercises were prescribed as part of the curricular activities of students who were required by law to attend school, and that such opening exercises were religious ceremonies and intended to be so.[35] Like *Engel*, the Court found that the required exercises were not mitigated by opt-out provisions available to students since they were part of compulsory education.[36]

It is intriguing to follow the case law through the years to see how both state and federal courts have applied the constitutional framework to real-life scenarios in which these issues have presented. One of the first curriculum cases decided after the Supreme Court began laying the framework was *Sills v. Board of Ed. of Hawthorne*.[37] Like *Abington,* the *Sills* court held statutes that required Bible reading and the Lord's Prayer in public schools unconstitutional.[38]

There are several cases that came shortly after *Abington* but before *Lemon* that applied the Supreme Court's constitutional framework. The next was *State Bd. of Ed. v. Board of Ed. of Netcong*. This case was decided prior to *Lemon* as well, and thus the test was not applied. *In Netcong*, the Board of Education of a public school had issued a resolution stating that "Superintendent of Schools be authorized, empowered and directed to implement the resolution

[33] *Id*.
[34] *Id*. at 211.
[35] *Id*. at 223.
[36] *Id*. at 210.
[37] *Sills v. Board of Ed. of Hawthorne*, 200 A.2d 615 (N.J. Super. 1964).
[38] *Id*. at 615 (internal citations omitted).

creating a period for the free exercise of religion in whatever manner, in the exercise of his discretion, he considers best under the circumstances."[39] Following the implementation of the resolution, students who arrived at school at 7:55 a.m. (immediately prior to the opening of school) would utilize the bleachers and listen to a student volunteer read the 'remarks' (so described by defendants) of the chaplain from the Congressional Record, giving the date, volume, number and body whose proceedings are being read."[40] The material was of a purely ministerial nature, and students were asked to meditate shortly after the reading either about the material or a topic of their choice.[41] Shortly after implementation, the Board sought to continue the implementation of the resolution, despite the recommendation of the Commissioner of the Board to cease and desist the resolution due to the Attorney General's finding that it violated the First Amendment.[42] The state subsequently decided to file suit. Instead of the *Lemon* test, the Court applied something similar to a balancing approach, suggested by Justice Brennan in *Abington*, to determine if there was an establishment of religion, and if so, whether there was interference with free exercise. [43] The approach suggested that prima facie evidence of aid in establishment might be overcome by proof that the purpose of the aid was to protect free exercise.[44]

The New Jersey Supreme Court explained that the meditation itself was not an issue, but the fact that the meditation occurred so closely and basically as part of the prayer prevented the two from being evaluated separately.[45] The Court also pointed out that if the resolution were not an exercise of religion as the defendants insisted, then students should not have been allowed to excuse themselves from such important a part of the educational process; permissive

[39] *Id*. at 23.
[40] *Id*.
[41] *Id*.
[42] *Id*.
[43] *State Bd. of Ed. v. Board of Ed. of Netcong*, 262 A.2d 21, 26 (Ch. Div. 1970).
[44] *Netcong*, 262 A.2d 21 at 29.
[45] *Id*. at 26 (internal citations omitted).

nonattendance in a vital school program is not consistent with secularity.[46] The Court cited a proposition which was restated in *McCollum*, which said that once a student is excluded from any exercise for any reason, particularly one that involves the Bible which others are taught to revere, they are excluded from groups of students and are subject to reproach and insult.[47] This echoes the fear of coercion stated in the Supreme Court precedent as well. It was ultimately found that the cease and desist of the resolution had no adverse free-exercise effect on the rights of the students who wished to participate, indicating that the balance necessary to allow the religious activity was not present, and thus the resolution was ultimately held unconstitutional.[48]

Another pre-*Lemon* case decided pursuant to the Court's framework was *Vaughn v. Reed*.[49] In *Vaughn*, the United States District Court for the Western District of Virginia found weekly religious classes in public schools unconstitutional.[50] The classes were conducted by teachers sent to school by outside private organizations and purported to teach about religion rather that to indoctrinate students.[51] Students whose parents had not signed cards were excused for study period.[52] One issue for the Court was whether the classes at issue were actually teaching *about* religion, or whether they were indoctrinating students. The Court explained that if the course were being taught within constitutional limits, every student should have been required to attend.[53] The Court relied on *McCollum* and *Abington* in reaching its decision, explaining that in *Vaughn* as in *McCollum*, children who do not take the program are separated from the other members of the class, and this may have resulted in parents who would not have otherwise enrolled their children

[46] *Id*. at 27.
[47] *Id*. at 30 (internal citations omitted).
[48] *Id*. at 32.
[49] *Vaughn v. Reed*, 313 F. Supp. 431(W.D. Va. 1970).
[50] *Vaughn*, 313 F. Supp. at 434.
[51] *Id*. at 432.
[52] *Id*.
[53] *Id*. at 433.

in the class doing so.[54] One of the Court's main concerns here was unconstitutional societal pressures and coercion, which all courts wanted so desperately to be absent in public schools.[55]

Lemon is the predominant test regarding religion in public schools. The first two prongs of the *Lemon* test, that a law must have a legitimate secular purpose, and that it cannot have the primary effect of either advancing or inhibiting religion, came straight from the *Abington* decision. The Court in *Abington* explained that the test for whether legislation was permissible would be as follows: "what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion."[56] *Lemon* added the entanglement prong and created a test with all three prongs, and became the predominant test.

In the post-*Lemon* era, in *Wiley v. Franklin*, a federal district court in Tennessee held that a Bible study course violated students' rights to religious freedom by constituting an excessive entanglement between government and religion.[57] The school board attempted to argue through its policy statement that the study of the Bible was "in relation to its place in the origin of the republic, the establishment and development of the public education, the emphasis on individual worth, and its pervading influences in the country's government, history, and the very fabric of American society."[58] Originally, students who were enrolled in the courses stayed in the classroom for instruction while students who were not enrolled were sent to the library and were "omitted from

[54] *Id*.
[55] *Id*. at 432.
[56] *Abington*, 374 U.S. at 222.
[57] *Wiley v. Franklin*, 468 F. Supp. 133 (E.D. Tenn. 1979).
[58] *Id*. at 137.

any meaningful classroom assignment or supervision" during the course.[59] This changed in 1977-78 when enrollment would occur only upon written request by students' parents and students who were not enrolled would remain in the regular classroom under the instruction and supervision of their regular teacher.[60] The federal district court found that the new curriculum's purpose purported to be to provide students with a better understanding of "Biblical characters, stories, settings and events that are often referred to in secular literature, history and social commentary or which provide themes for some of the better known works of music and art in the Western world,"[61] but that there could be little doubt but that the motivation of the Bible Study Committee from its inception was religious.[62] Thus, the purpose prong of the *Lemon* test was not met. While Biblical interpretation, personal commitment to these beliefs and practices as well as any discussion of the religious beliefs and practices of students or of their parents, families or others appeared to be avoided, the Court ultimately held that the courses were unconstitutional. The Court reached its decision citing propositions from *Everson, McCollum, Engel, Epperson* and *Abington*, as well as applying the *Lemon* test in its entirety and holding that the classes advanced the Christian faith and inhibited other faiths, and constituted an excessive entanglement between government and religion.[63]

Like *Wiley*, the case of *Crockett v. Sorenson* involved a bible course.[64] But here, the federal district court chose not to apply the *Lemon* test and found a Bible course at issue impermissible. The Court held the course unconstitutional, while at the same time reiterating the educational value of teaching about religion. In *Crockett*, the public school displayed no authority or supervision

[59] *Id*. at 138.
[60] *Id*. at 137.
[61] *Id*. at 141.
[62] *Id* at 150.
[63] *Id*. at 151.
[64] *Crockett v. Sorenson*, 568 F. Supp 1422 (W.D. Va. 1983).

over the Bible Teaching in Public Schools group, composed of ministers and representatives of Protestant denominations; children who were not enrolled were impermissibly separated, as in *Vaughn*, creating pressure upon students to enroll; and the class consisted of Bible teachings, prayers, and hymns. [65] The Court, again, noted the Supreme Court foundations established in *McCollum*, *Engel*, and others, to explain that religious instruction, in and of itself, is not permitted in public schools. The Court then noted the *Lemon* test, but explained that such a three-prong analysis did not seem appropriate in this case, and that the only appropriate inquiry was simply whether the Bible teaching program constituted a forbidden religious exercise (i.e., advances religion) or a permissible academic program.[66] For the reasons stated above, the Court found in favor of the former. Thus, the program was enjoined.[67]

Gibson v. Lee involved a case in which two Bible history courses were at issue. The federal district court ultimately found the Bible History I curriculum, one of the curriculums at issue, satisfied the secular purpose prong of *Lemon* test after modifications of defendant's counsel were implemented, but that the Bible History II class addressing resurrection and miracles could not be taught as secular history.[68] In its analysis of Bible History I, the Court cited to the Supreme Court's proposition that the Bible has great significance on Western civilization aside from its religious significance, which cannot be ignored.[69] This furthers the notion that a completely secular education is an impoverished one. On the other hand, the Court also emphasized the Supreme Court's vigilance in monitoring compliance with the Establishment Clause in elementary schools because of the vulnerable and impressionable nature of elementary-aged children.[70] The Court

[65] *Crockett*, 568 F. Supp. 1422 at 1424.
[66] *Id*. at 1430.
[67] *Id*. at 1432.
[68] *Gibson v. Lee County School Bd.*, 1 F. Supp.2d 1426 (M.D. Fl. 1998).
[69] *Id*. at 1421 (internal citations omitted).
[70] *Id*. at 1432 (internal citations omitted).

applied the *Lemon* test to see if the school had a secular purpose for the course, and made sure that this purpose was sincere and not a sham.[71] It was held that the adoption of a curriculum ostensibly designed to teach history and not religion met the secular purpose requirement.[72] Regarding the Bible History II class, also at issue, the Court found it difficult to conceive how the account of the resurrection or of miracles could be taught as secular history, and thus enjoined the school from teaching the course.[73]

The case law demonstrates that the courts have consistently approved efforts to teach about religion as history and literature, but are committed to rejecting those that promote or appear to promote faith. They are also careful to make sure that public-school children are not subject to pressures, stigma, or coercion through the implementation of constitutionally violative courses.

SECTION III: PARENTAL CLAIMS OF CONSTITUTIONAL VIOLATION

This section will discuss parental claims of constitutional violation by schools. Courts apply the *Lemon* test as well considering its prongs from the perspective of a reasonable observer in order to determine whether public school uses of certain materials violate constitutional protections. In some of these cases, the parents also seek an accommodation under the Free Exercise Clause.

One case with claims under both clauses, *Grove v. Mead School Dist. No. 354*, involved an issue surrounding a school board's refusal to remove a book from a sophomore English literature curriculum based on plaintiffs' religious objections to the book.[74] The state action at issue in *Grove* was school board policy of academic freedom and refusal to remove from the curriculum a book

[71] *Id*. at 1433 (internal citations omitted).
[72] *Id*.
[73] *Id*. at 1434.
[74] *Grove v. Mead School Dist. No. 354*, 753 F.2d 1528, 1532 (9th Cir. 1985).

that offends Grove's religious sensibilities.[75] The Court found no violation of the Free Exercise Clause because the student was assigned an alternate book to read and was given permission to leave the classroom upon discussion of the offensive text.[76] Regarding the Establishment Clause, the Court explained that it required government neutrality with respect to religion.[77] Plaintiffs claimed that that use of *The Learning Tree* in an English literature class has a primary effect of inhibiting their religion, fundamentalist Christianity, and advancing the religion of secular humanism.[78] The Court found no violation of the Establishment Clause. It applied the *Lemon* test and held that the use of the book was not a religious activity and that it served a secular educational function, because the book's central theme was life, especially racism, from the perspective of a particular person, and comment on religion in the book was very minimal.[79] The Court cited *Abington* in explaining that to establish a First Amendment violation, one can show that challenged state action has a coercive effect that operates against the litigant's practice of his or her religion.[80] Analysis of the second and third prongs of *Lemon* were thus not necessary, and no Constitutional violation was found.

Textbooks continued to be the controversial element in *Smith v. Board of School Com'rs of Mobile County*, where the Federal Court of Appeals for the Eleventh Circuit's inquiry centered around whether the use of certain home economics, social studies, and history textbooks had a primary effect of either advancing or inhibiting religion.[81] The claimants in *Smith* believed that the forty-four textbooks at issue both advanced a religion and inhibited theistic faiths in violation of

[75] *Grove*, 753 F.2d 1528 at 1533.
[76] *Id*. at 1534.
[77] *Id*. (internal citations omitted).
[78] *Grove*, 753 F.2d at 1534.
[79] *Id*.
[80] *Id*. at 1533.
[81] *Smith v. Board of School Com'rs of Mobile County*, 827 F.2d 684 (11th Cir. 1987).

the Establishment Clause.[82] The district court's finding that the textbooks had violated the Constitution was based on the fact that the home economics textbook required students to accept as true certain tenets of humanistic psychology, and this was a "manifestation of humanism," and that the history and social studies textbooks failed to include a sufficient discussion of the role of religion in history and culture.[83] The Eleventh Circuit analyzed whether the use of the books impermissibly established and furthered the religion of secular humanism. The Court analyzed this by applying the *Lemon* test to the facts of the case. The parties agreed that there was no question of a religious purpose or excessive government entanglement in this case, and the record confirmed this.[84] Ultimately, the Court concluded that none of these books conveyed a message of governmental approval of secular humanism or governmental disapproval of theism.[85] With respect to the home economics textbook, the Court found that the message conveyed is one of a governmental attempt to instill in Alabama public school children such values as independent thought, tolerance of diverse views, self-respect, maturity, self-reliance and logical decision-making, an entirely appropriate secular effect.[86] Regarding the social studies and history books, the Court found that an objective observer could not conclude from the mere omission of certain historical facts regarding religion or the absence of a more thorough discussion of its place in modern American society that the State was conveying a message of approval of the religion of secular humanism, nor that these omissions themselves discriminated against the very concept of religion.[87]

[82] *Smith*, 827 F.2d at 689.
[83] *Id*. at 691.
[84] *Id*. at 690.
[85] *Id*.
[86] *Id*. at 692.
[87] *Id*. at 693-94.

Reading material was again at issue in *Mozert v. Hawkins County Bd. of Educ.* In this case, a parent who was a "born again Christian" objected to a reading material that included mention of mental telepathy, claiming that any teaching of such violated her religious beliefs.[88] The claim was that forcing the students to read materials which violate their religious beliefs was a violation of the Free Exercise Clause.[89] One of the plaintiffs testified that the books discussed subjects that were offensive to her religious beliefs, including evolution, "secular humanism", "futuristic supernaturalism," pacifism, magic and false views of death, claiming that these subjects taught themes such as "Man As God" and other themes of an occult nature.[90] The Court referenced the Supreme Court's framework to explain that it violates the Establishment Clause to tailor a public school's curriculum to satisfy the principles or prohibitions of any religion.[91] The framework was also noted to establish that although balance of the treatment of religion in public schools was the goal, efforts to achieve that balance desired by any particular group by the addition or deletion of religious materials would be a forbidden entanglement of a school creating the very establishment of religion sought to be avoided.[92] The Court further explained that the issue of concern was not what the district court thought to be the fact that materials 'compelled the plaintiffs to "declare a belief," "communicate by word and sign [their] acceptance" of the ideas presented, or make an "affirmation of a belief and an attitude of mind.'[93] Rather, it was the governmental coercion either to do or refrain from doing an act that violated one's religious beliefs repeatedly referenced in the framework.[94] The Court held that such coercion was not present here.[95]

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[88] *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058, 1060 (6th Cir. 1987).
[89] *Id*. at 1061.
[90] *Id*. at 1062.
[91] *Id*. at 1064 (internal citations omitted).
[92] *Id*. (internal citations omitted).
[93] *Id*. at 1066.
[94] *Id*. (internal citations omitted).
[95] *Id*. at 1070.

In the next case, *Brown v. Woodland Joint Unified School Dist.*, parents sought injunctive and declaratory relief against teaching aids used for their children that they claimed promoted witchcraft, or the religion of "Wicca".[96] The school board had reviewed the materials in response to opposition, but the case still went to litigation.[97] The plaintiffs conceded that the text was adopted for a secular purpose, and thus the first prong of *Lemon* was not at issue. The second prong, however, is contested. The Court analyzed this prong from the perspective of a reasonable person, but considered the more vulnerable age of school-aged children.[98] The Court went a step further so as to cite *Lee v. Weisman*, which prohibited graduation prayers, explaining that the Supreme Court has applied an objective standard for public school Establishment Clause inquiries, rather than considering the effect disputed materials have on one particular student.[99] Citing *Grove*, the Court went on to conclude that merely reading, discussing or contemplating witches, their behavior, or witchcraft, which was what was required by the disputed texts, cannot reasonably be viewed as communicating a message of endorsement. However, the challenged sections requiring children to participate in "rituals" of casting spells could potentially be problematic because it could have amounted to the school persuading or compelling a student to participate in religious exercise, which is exactly what the Supreme Court prohibited in *Lee*.[100] Ultimately, however, the Court explained that "a practice's mere consistency with or coincidental resemblance to a religious practice does not have the primary effect of advancing religion."[101] Thus, it was determined that a reasonable observer in the position of a school-aged child would not view the challenged selections as religious rituals endorsing witchcraft, and thus the second

[96] *Brown v. Woodland Joint Unified School Dist.*, 27 F.3d 1373, 1377 (9th Cir. 1994).
[97] *Id*.
[98] *Id*. at 1378-79 (internal citations omitted).
[99] *Id*. at 1379 (internal citations omitted).
[100] *Id*. (internal citations omitted).
[101] *Id*. at 1380.

prong of *Lemon* was satisfied.[102] Regarding the third prong, it was held that there was no excessive entanglement with religion as plaintiffs argued because the one-time review of the challenged material by the school board was not an excessive entanglement.[103] Therefore, there was no constitutional violation.

In contrast to these cases, the next curriculum case we see the constitutional framework applied to is *California Parents for Equalization of Educational Materials v. Nanoon* (*CAPEEM*).[104] In this case, parents brought an action in the Eastern District of California seeking partial summary judgment on its Establishment Clause claim.[105] The claim was that a textbook which represented Hinduism in a discriminatory and denigrating manner (1) expressed intent to model portions of the subject history textbooks after the New Testament; (2) had improper influence of religious figures in approving the material addressing Christianity and religious considerations that went into evaluating the suggested edits of the textbooks; (3) treated biblical narratives as historical facts and biblical events, including miracles, as actual events; and (4) contained teachers' materials which purportedly emphasized aspects of indoctrination.[106]

Prior to applying the *Lemon* test in *CAPEEM*, the federal district court explained that alleged violations of the Establishment Clause in the elementary school setting present heightened concerns for courts due to the coercive pressure present in elementary schools.[107] The court also mentioned how some of the heightened concern is counteracted by the broad discretion school boards have in selecting their curriculums, and that the Supreme Court wants courts to get involved

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[102] *Id*. at 1381.
[103] *Id*. at 1384.
[104] *California Parents for the Equalization of Education Materials v. Noonan*, 600 F. Supp.2d 1088, 1095 (E.D. Ca. 2009).
[105] *Id*.
[106] *Id*.
[107] *Id*. at 1116 (internal citations omitted).

the daily operation of a school system only if basic constitutional values are "directly and sharply implicate[d]."[108]

The district court applied the *Lemon* test and found that the school's purpose in adopting the sixth grade history-social science textbooks was patently secular because it was fulfilling its obligation to adopt instructional materials for California students that are accurate and consistent with the State's learning objectives.[109] Regarding the second prong, and whether the textbooks had primarily the effect of advancing other religions and inhibiting the Hindu religion, the Court evaluated this from the perspective of an objective sixth grader because the Supreme Court generally has not relied on expert testimony to determine whether a school practice reasonably appears to endorse or inhibit religion.[110] The Court concluded that it could not find that the textbooks conveyed a message of government endorsement or disapproval of a particular religion.[111] As for the third prong of *Lemon* and whether the school displayed an excessive entanglement with a particular religion, the Court held that the Plaintiffs' discussion of history books that contain some discussion of religion did not create an excessive entanglement with religion.[112] Thus, the Court in *CAPEEM* found no unconstitutional endorsement of religion. This case furthers the proposition that the mere teaching about religion does not amount to endorsement, safeguarding the principle of the necessary presence of religion in public school curriculums.

A challenge to the teaching about Islam came in *Wood v. Arnold.* The material at issue contained statements concerning Islamic belief presented as part of a history course, including a comparative faith statement, which stated that "Most Muslim's faith is stronger than the average

[108] *Id*. (internal citations omitted).
[109] *CAPEEM* citing Cal. Const. Art. IX, § 7.5; Cal. Educ.Code § 60200
[110] *Id*. at 1119.
[111] *Id*.
[112] *Id*. 1122

Christian" and a worksheet requiring students to fill in the blanks with information comprising the "Five Pillars" of Islam.[113] The Fourth Circuit held that challenged coursework did not violate First Amendment rights, because they did not impermissibly endorse any religion and did not compel students to profess any belief.[114] The Court came to its conclusion using the *Lemon* test. Regarding the first prong, the Court reiterated that the Supreme Court has recognized the secular value of studying religion on a comparative basis.[115] In *Wood*, the Court pointed out Islam's core principals were studied among other things (including politics, culture, geography)[116] and thus, *Lemon's* first prong was satisfied.[117] The Court also established that the challenged material involved no more than having the class read, discuss, and think about Islam, did not suggest that a student should adopt those beliefs as her own, and thus the second prong of the test was satisfied.[118] Finally, the Court determined that the material did not create an excessive entanglement between government and religion, so as to violate the third prong of *Lemon*, because it did not involve "the government's 'invasive monitoring' of certain activities in order to prevent religious speech," or the funding of religious schools or instruction.[119] Thus, since the challenged material satisfied every prong of the *Lemon* test, the Court ruled that there was no constitutional violation.

The application of the *Lemon* test to the above cases evidences that for a court to hold a piece of legislation unconstitutional, it must bear an unquestionable constitutional violation. The courts seem adamant about refusing to completely remove religious materials from curriculums,

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[113] *Id*. at 312.
[114] *Wood v. Arnold*, 915 F.3d 308 (4th Cir. 2019).
[115] *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963).
[116] *Wood*, 915 F.3d at 318. (the court stated that school authorities, not the courts, are charged with the responsibility of deciding what speech is appropriate in the classroom, so as to avoid such a focus on isolated statements effectively transforming each student, parent, and by extension, the courts, into de facto "curriculum review committee[s].")
[117] *Id*.
[118] *Id*.
[119] *Id*. at 319 (internal citations omitted).

as long as they can be found to display useful information about history, culture, and the like, and do not mirror indoctrination.

SECTION IV: RELIGION AND SCIENCE

The Supreme Court has addressed religious teaching in the science curriculum in several important cases. The first discussing the issue of religion and science was *Epperson v. State of Ark.*[120] In *Epperson*, a public school teacher brought a claim for declaration that Arkansas antievolution statutes were void.[121] The statute prohibited the teaching in Arkansas public schools and universities of the theory that man evolved from other species of life.[122] The school administration adopted and prescribed a biology textbook containing a chapter on evolution on the recommendation of the teachers.[123] A teacher faced with the dilemma of whether to teach the material brought the action. The Court held that the statute violated the Establishment Clause.[124] The Court further explained that the law selected "from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine."[125] The statutes were therefore struck down.

Another Supreme Court case, *Edwards v. Aguillard*, also discussed religion and evolution in public schools.[126] In this case, an action was brought challenging the constitutionality of an act, the Louisiana Balanced Treatment for Creation-Science and Evolution-Science in Public School Intrusion Act. The Act forbid the teaching of the theory of evolution in public elementary schools unless accompanied by the teaching of creation science, and did not require the teaching of either

[120] *Epperson v. State of Ark.*, 393 U.S. 97 (1968).
[121] *Epperson*, 393 U.S. at 100.
[122] *Id*. at 98.
[123] *Id*. at 99.
[124] *Id*. at 107.
[125] *Id*. at 103.
[126] *Edwards v. Aguillard*, 428 U.S. 578 (1987).

theory unless the other were taught.[127] The theories of evolution and creation science are statutorily defined as "the scientific evidences for [creation or evolution] and inferences from those scientific evidences."[128] Louisiana parents, teachers, and religious leaders challenged the act's constitutionality.[129] The Court held that the act was facially invalid as violative of the Establishment Clause because it lacked secular purpose.[130] The Court held this because the act did not further its secular stated purpose of "protecting academic freedom" since it did not enhance the freedom of teachers to choose what they taught and did not further the goal of 'teaching all of the evidence,' and because it impermissibly endorsed religion by advancing the religious belief that a supernatural being created humankind.[131]

These precedents were applied in a lower court decision involving intelligent design. In *Kitzmiller v. Dover Area School Dist.*[132], parents of school-aged children and member of high school science faculty brought action against school district and school board, challenging constitutionality of district's policy on teaching of intelligent design in high school biology class, which required students to hear a statement mentioning intelligent design as an alternative to Darwin's theory of evolution.[133] The Court held that district's policy on the teaching of intelligent design in a high school biology class, which required students to hear a statement mentioning intelligent design as an alternative to Darwin's theory of evolution, amounted to an endorsement of religion in violation of the Establishment Clause, violated the Establishment Clause under the *Lemon* test, and violated the freedom of worship provision in Pennsylvania Constitution.[134]

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[127] *Edwards*, 428 U.S. at 581.
[128] *Id*. (internal citations omitted).
[129] *Id*.
[130] *Id*. at 578
[131] *Id*.
[132] *Kitzmiller v. Dover Area School Dist.*, 400 F. Supp.2d 707 (M.D. PA 2005).
[133] *Kitzmiller*, 400 F. Supp.2d at 709.
[134] *Id*. at 709.

Intelligent design differs from creation science but still holds that a supernatural being designed humankind and the world.[135] *Kitzmiller* applied a slightly different version of the Supreme Court's framework than previously discussed. It first applied the endorsement test, and then proceeded to apply the *Lemon* test. The Court discussed how the holding of *Epperson* constituted a radical change in the legal landscape that existed at the time when the Court struck down Arkansas's statutory provision against the teaching of evolution.[136] The Court also noted the *Edwards* decision which resulted in a national prohibition of teaching creation science in public schools.[137] Regarding the present issue in *Kitzmiller*, the Court applied the *Lemon* test and the endorsement test in order to determine whether the teaching of intelligent design was constitutional.[138] The endorsement test has been described as "a gloss on *Lemon*" that encompasses both the purpose and effects prongs, and looks at whether an objective observer acquainted with a statute would perceive it as a state endorsement of prayer in public schools.[139] The federal district court followed the Supreme Court's lead and used the endorsement test.[140]

In order to establish whether or not the endorsement test was satisfied, the Court looked at whether an objective observer, in this case a reasonable, objective adult, would perceive official support for the religious activity.[141] The Court concluded that the religious nature of intelligent design would be readily apparent to an objective observer, adult or child, thereby violating the endorsement test.[142] This was because it was established through an expert witness at trial, that intelligent design was not a new scientific argument, but is rather an old religious argument for the

[135] *Id*. at 720.
[136] *Id*. at 711 (internal citations omitted).
[137] *Id*. at 712 (internal citations omitted).
[138] *Id*. at 713 (internal citations omitted).
[139] *Id*. at 714.
[140] *Id*.
[141] *Id*. at 715.
[142] *Id*. at 718

existence of God.[143] Further, the intelligent design movement describes intelligent design as a religious argument, intelligent design's religious nature is evident because it involves a supernatural designer, and intelligent design is a progeny of creationism, which the Supreme Court and Constitution forbid teaching as science.[144] The Court went on to say that a reasonable, objective observer would view the disclaimer given by teachers prior to the teaching of intelligent design as a strong official endorsement of religion because such an observer would "perceive the text of the disclaimer, 'enlightened by its context and contemporary legislative history,' as conferring a religious concept on "her school's seal of approval."[145]

The Court also held that the defendants in this case presented no convincing evidence that they were motivated by a valid secular purpose, and that their attempt to try to prove so amounted to the type of sham specifically prohibited by the Supreme Court.[146] The Court found this because although the school board tried to assert improving science education as its critical purpose, it consulted no scientific materials, contacted no scientists or scientific organizations, failed to consider the advice of the district's science teachers, and relied solely on legal advice from two organizations with demonstrably religious, cultural, and legal missions.[147] Thus, the first prong of the *Lemon* test was not satisfied. Regarding the effect prong, the Court found that the effect of the school's adoption of the curriculum including intelligent design was to impose a religious view of biological origins into the biology course, in violation of the Establishment Clause.[148]

SECTION V: ANALYSIS

[143] *Id*.
[144] *Id*. at 718-21.
[145] *Id*. at 724 (internal citations omitted).
[146] *Id*. at 763 (internal citations omitted).
[147] *Id*.
[148] *Id*. at 764.

In light of the Constitutional framework laid out by the Supreme Court through various ground-breaking cases, the lower courts have complied and applied it notably well. The lower courts have drawn parallels between the facts of cases and various Supreme Court decisions, and gone further to apply the prongs of the *Lemon* or endorsement tests to the facts of their specific cases in order to determine whether or not there were violations of the Constitution. I agree with the way the courts have applied the Supreme Court framework to cases across the country. It seems that courts have been able to strike a sensible balance between respect of all religions as well as for parents' and students' beliefs, albeit some stronger than others, and the courts have been able to rule out those cases which contain mostly frivolous arguments or even phobic attitudes towards certain religions.

The courts' decisions in Bible readings and public schools reflected the lower courts' commitments to safeguarding constitutional values. Particularly, I liked how the courts in *Netcong* and *Vaughn* noted that if the practices at issue were in fact not religious and educational as the defendants insisted, then children would not have been permitted to opt out of so-called educational process. These decisions evidenced the court's concerns about children being coerced to take religious classes out of fear of being stigmatized for opting out. As the courts explained, this coercion could result from negative attitudes toward students who appear to want to avoid classes involving materials such as the Bible, which many are taught to revere.

Regarding the various decisions explored that included parental claims of Constitutional violation, I thought the courts did well at recognizing cases that involved parents that did not want their children having any exposure whatsoever to religious beliefs that differed from theirs, as seemed to be the case in *Wood* and some others. The religion and science cases showcased the relevance of the *Lemon* test's purpose prong. It was clear in *Kitzmiller* that for such topics as

creation science and intelligent design the government could not articulate any secular purpose for having them taught in public schools, and the courts would not enable that.

The cases show that mere exposure to religious ideas such as Islam or Christianity differs from the suggestion of a scientific theory or fact. This is because in the parental claims cases, texts that mentioned religions were held to have value for topics such as politics, history, geography and culture, and were not suggestive of any particular religious beliefs as fact, the way that a scientific theory can be interpreted as unquestionable, especially to school-aged children who tend to be more impressionable than others. The courts' consideration of the ages of reasonable observers when analyzing the parental claims cases furthered the notion that school-aged children were less likely to look so deeply into exposure to religions, whereas if they are taught something as a scientific theory, it is easier to mistake this as concrete fact.

On numerous occasions, the courts mentioned the importance of the presence of religion in public schools. Although it is clear that religion cannot be taught in a devotional manner within curricular materials, students have many ways to practice their religion before, during, and after the school day, in a way that involves no interference from government, which is consistent with free exercise. Martin J. McMahon's 1992 article explains the difference between certain prayers during lunch, free time, recess, or activity period.[149] The article explained that courts have held that student prayer in rooms other than regular homeroom or during lunch were permitted if silent and made during moments of silence set aside for private meditation, while activities such as saying grace at lunchtime were not permitted.[150]

[149] Martin J. McMahon, *Constitutionality of regulation or policy governing prayer, meditation, or 'moment of silence' in public schools*, 110 A.L.R. Fed. 211 (1992).
[150] Martin J. McMahon, *Constitutionality of regulation or policy governing prayer, meditation, or 'moment of silence' in public schools*, 110 A.L.R. Fed. 211 (1992).

President Trump's January 2020 Executive Order safeguarding the right to religious freedom for students and organizations evidences the continued protection of students' rights to practice religion in school.[151] The order maintains that to receive Federal funds, public educational agencies must confirm that their policies do not prevent or interfere with the constitutionally-protected rights outlined in the guidance.[152] The guidance also provides that students can read religious texts or pray during recess and other non-instructional periods, organize prayer groups, and express their religious beliefs in their assignments.[153] While there remains a need for the divide between Church and State, following the framework laid out by the Supreme Court lower courts have been able to ensure religious freedom in school without crossing constitutional boundaries.

[151] The United States Department of Justice, *Department of Justice Announces Proposed Rule Regarding Equal Treatment of Faith-Based Organizations and Guidance on School Prayer* (Jan. 16, 2020), https://www.justice.gov/opa/pr/department-justice-announces-proposed-rule-regarding-equal-treatment-faith-based.
[152] Law & Justice, *President Donald J. Trump is Safeguarding the Right to Religious Freedom for Students and Organizations* (Jan. 16, 2020), https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-safeguarding-right-religious-freedom-students-organizations/
[153] *Id*.