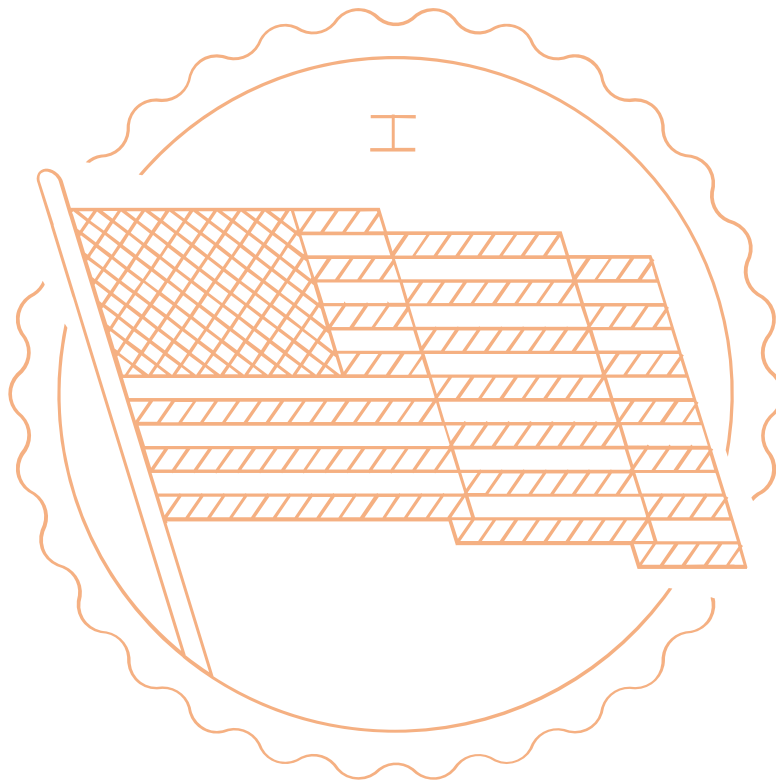


INTERACTIVE
CONSTITUTION

ESTABLISHMENT CLAUSE

LESSON PLAN



ESTABLISHMENT CLAUSE LESSON PLAN

GRADE LEVELS:

7th and 8th

AUTHOR:

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INTRODUCTION/LESSON OVERVIEW:

When James Madison set out to write the First Amendment, he was careful to include protections against the national establishment of religion. The framers had experienced a world in which the church ran the government and did not want to repeat that experience. The issue of government established religion is still relevant in our country today. In this lesson, students will learn about the establishment clause and will examine four major issues that center around it.

Essential Questions:

- What is the establishment clause?
 - Why did America's founding generation include it in the Bill of Rights?
 - What does it attempt to prevent?
 - What role does it play in shaping debates over the role of religion in American society?
 - What are specific issues that arise under the establishment clause?
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Objectives:

- Students will analyze the establishment clause and learn why it was included in the First Amendment.
 - Students will be able to interpret the text of the establishment clause and apply it to current issues.
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Materials:

- Warm Up/Exit Ticket Scenarios – One for Each Group
- Warm Up/Video Reflection/Exit Ticket Questions (May be printed back-to-back with Graphic Organizer)
- Access to *Interactive Constitution* Middle Level Articles (Multiple copies for each station)
- Graphic Organizers
- “Tweet-It-Out” Homework page

PROCEDURES:

Warm up/Activation of Prior Knowledge:

- Class will begin by reading the text of the establishment clause. As a class, students will discuss what they think the clause means.
- The teacher will then assign students to four small groups, with each group responsible for a different scenario. Students will be asked to decide whether the government action in their scenario violates the establishment clause.

Preparing for Group Activity:

- **Option 1:** Teacher should then show the video clip from the National Constitution Center's website about the history of the establishment clause, and have students answer the 3-2-1 questions on the Video Reflection of their Warm Up/Exit Ticket. (Freedom of Religion Part I – 2:42-4:57) <https://constitutioncenter.org/ic-2019/big-question/freedom-of-religion-the-establishment>
- **Option 2:** Show the entire Freedom of Religion Part 1 video and use the Middle School Video Reflection Guide provided. This will take an additional 10-15 minutes.
- After reviewing the answers to the video questions, the teacher should explain the directions for the stations activity. The four stations are designed to familiarize students with four main areas of debate surrounding the establishment clause. Students should move with their group to each of the stations, completing their graphic organizer as they move (10 minutes per station).

Analysis:

- Students will then return to their original tables and re-examine the assigned scenarios from the Warm-Up. Referring to their completed graphic organizer, they will decide which of the four categories their scenario fits into, and they will discuss what they believe the Supreme Court might have decided about it.

Homework:

- Write a three-sentence tweet describing the establishment clause and the four key issues arising under it. You may include up to three fun hashtags with it.

Extension Activities:

- The following day, students can watch the entire Freedom of Religion, Part I video and complete the video guide.
- Then have the class choose one of the scenarios that most interests them and have a civil dialogue.
- You may also have students do research to find the Supreme Court case(s) that fits their scenario. The *Interactive Constitution* articles have links to the decisions. They may also use Oyez to learn more about a specific case.

Optional Lesson Modification:

- Begin with discussion and scenarios.
- Show the entire video on the establishment clause and have students complete the Full Video Reflection Guide.
- Go over the responses.
- Have students return to scenarios, decide based on the new information they have learned, and complete their exit ticket.
- Tweet-It-Out Homework assignment could be optional or could be completed in class.

WARM UP SCENARIO WORKSHEET

DIRECTIONS:

Read your scenario. What do you think? Does this violate the establishment clause? Talk about it as a group and list as many reasons as you can supporting why you agree or disagree. Remember to consider this case on a constitutional basis, not on the basis of your personal beliefs.

SCENARIO # _____

Does this scenario violate the establishment clause? List your reasons.

Remember to Consider:

Who? What? What's the legal rule? Where? Why does it matter?

SCENARIO	
1	A football coach at a public high school was put on paid administrative leave and was not allowed to coach the football team after leading students in voluntary prayers before and after games. Does a public high school coach leading voluntary prayers violate the establishment clause?
2	A state constitution prohibits the state's funding of religious institutions. A religiously operated school applies to receive funding to pay for materials made from used tires for a playground, arguing that the specific benefit has no relation to religion. Is a state's funding playground equipment a violation of the establishment clause?
3	A county courthouse has a nativity scene (Jesus, Mary, Joseph, sheep, and manger) in its entryway. The same display has been used since the courthouse opened more than 100 years ago. Recently, Bible verses have been added to the display. Does this violate the establishment clause?
4	A school requires that no students wear hats during the school day. The principal allows an Islamic female student to wear her head covering. Another student protests, saying that this favors one religion over other religions. Is this principal violating the establishment clause?

STATION 1:

DEBATES OVER AID TO RELIGIOUS INSTITUTIONS

This debate centers around whether or not the government can give money to religious groups.

BACKGROUND INFORMATION ON THIS DEBATE:

From the [Common Interpretation of the Establishment Clause](#) on the [Interactive Constitution](#)

Scholars have long debated between two opposing interpretations of the Establishment Clause as it applies to government funding: **(1) that the government must be neutral between religious and non-religious institutions** that provide education or other social services; **or (2) that no taxpayer funds should be given to religious institutions** if they might be used to communicate religious doctrine. Initially, the Court tended toward the first interpretation, in the 1970s and 1980s the Court shifted to the second interpretation, and **more recently the Court has decisively moved back to the first idea.**

After two early decisions upholding state statutes allowing students who attend private religious schools to receive transportation, *Everson v. Board of Education* (1947), and textbook subsidies available to all elementary and secondary students, *Board of Education v. Allen* (1968), the Court attempted for about fifteen years to draw increasingly sharp lines against the use of tax-funded assistance for the religious aspects of education. At one point the Court even forbade public school teaching specialists from going on the premises of religious schools to provide remedial assistance. *Aguilar v. Felton* (1985). More recently, the Court has upheld programs that provide aid to educational or social programs on a neutral basis “only as a result of the genuine and independent choices of private individuals.” *Zelman v. Simmons-Harris* (2002). Indeed, the Court has held that it is unconstitutional under free speech or free exercise principles to exclude otherwise eligible recipients from government assistance solely because their activity is religious in nature. *Rosenberger v. University of Virginia* (1995).

- **Opposing Interpretations:** Different opinions
 - **Government Funding:** What the government will spend money on
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RELEVANT SUPREME COURT CASES:

- [Everson v. Board of Education](#) (1947)
- [Board of Education v. Allen](#) (1968)
- [Aguilar v. Felton](#) (1985)
- [Zelman v. Simmons-Harris](#) (2002)
- [Rosenberger v. University of Virginia](#) (1995)

STATION 2:

DEBATES OVER GOVERNMENT-SPONSORED PRAYER

This debate centers around whether or not prayer should be allowed in public schools and governmental meetings.

BACKGROUND INFORMATION ON THIS DEBATE:

From the [Common Interpretation of the Establishment Clause](#) on the [Interactive Constitution](#)

The Court's best-known Establishment Clause decisions held that it was **unconstitutional for public schools to lead schoolchildren in prayer** or Bible reading, even on an ostensibly voluntary basis. *Engel v. Vitale* (1962); *Abington School District v. Schempp* (1963). Although these decisions were highly controversial among the public (less so among scholars), the Court has not backed down. Instead, it has extended the prohibition to prayers at graduation ceremonies, *Lee v. Weisman* (1992), and football games, *Santa Fe Independent School District v. Doe* (2000).

In less coercive settings **involving adults, the Court has generally allowed government-sponsored prayer**. In *Marsh v. Chambers* (1983), the Court upheld legislative prayer, specifically because it was steeped in history. More recently, the Court approved an opening prayer or statement at town council meetings, where the Town represented that it would accept any prayers of any faith. *Town of Greece v. Galloway* (2014).

- **Ostensibly:** Supposedly
 - **Prohibition:** Forbidding it from happening
 - **Coercive:** Threatening
 - **Steeped in History:** An established tradition
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RELEVANT SUPREME COURT CASES:

- [Engel v. Vitale](#) (1962)
- [Abington School District v. Schempp](#) (1963)
- [Lee v. Weisman](#) (1992)
- [Santa Fe Independent School District v. Doe](#) (2000)
- [Marsh v. Chambers](#) (1983)
- [Town of Greece v. Galloway](#) (2014)

STATION 3:**DEBATES OVER THE ACCOMMODATION OF RELIGION**

This debate centers around whether people can be excused from following governmental laws that go against their religious beliefs.

BACKGROUND INFORMATION ON THIS DEBATE:

From the [Common Interpretation of the Establishment Clause](#) on the [Interactive Constitution](#)

Hundreds of federal, state, and local laws exempt or accommodate religious believers or institutions from otherwise neutral, generally-applicable laws for whom compliance would conflict with religiously motivated conduct. Examples include military draft exemptions, kosher or halal meals for prisoners, medical neglect exemptions for parents who do not believe in medical treatment for their ill children, exemptions from some anti-discrimination laws for religious entities, military headgear requirements, and exemptions for the sacramental use of certain drugs. **The Supreme Court has addressed very few of these exemptions.** While the Court held that a state sales tax exemption limited to religious publications was unconstitutional in *Texas Monthly, Inc. v. Bullock* (1989), it unanimously upheld the exemption of religious organizations from prohibitions on employment discrimination for ministers. *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.* (2012).

Two federal laws, the Religious Freedom Restoration Act (RFRA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA), **provide broad-based statutory accommodations for religious practice when it conflicts with federal and certain state and local laws. A unanimous Court upheld this approach** for prisoners against a claim that granting religious accommodations violates the Establishment Clause, reasoning that RLUIPA “alleviates exceptional government-created burdens on private religious exercise” in prisons. *Cutter v. Wilkinson* (2005).

The Court in *Cutter* left open the question whether such a regime applied to land use is constitutional and it also left open the possibility that even some applications in prisons may be unconstitutional if they are not even-handed among religions or impose too extreme a burden on non-believers. **The Court’s recent 5-4 decision in *Burwell v. Hobby Lobby Stores, Inc.* (2014), holding that RFRA exempts for-profit employers from paying for insurance coverage of contraceptive drugs that they believe are abortion-inducing, has reinvigorated the debate over such laws.**

- **Exempt:** To excuse someone from following a law because of a religious reason
 - **Accommodate:** To make practical changes so members of a religious group feel comfortable (like providing food that fits within religious guidelines)
 - **Kosher:** Food that meets the requirements of the Orthodox Jewish religion
 - **Halal:** Food that meets the requirements of the Muslim religion
 - **Compliance:** Following the government’s law
 - **Entities:** Groups
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RELEVANT SUPREME COURT CASES:

- [Texas Monthly, Inc. v. Bullock](#) (1989)
- [Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.](#) (2012)
- [Employment Division v. Smith](#) (1990)
- [Cutter v. Wilkinson](#) (2005)
- [Burwell v. Hobby Lobby Stores, Inc.](#) (2014)

STATION 4:**DEBATES OVER GOVERNMENT-SPONSORED RELIGIOUS SYMBOLS**

This debate centers around whether or not the government should allow religious symbols in government sponsored places.

BACKGROUND INFORMATION ON THIS DEBATE:

From the [Common Interpretation of the Establishment Clause](#) on the [Interactive Constitution](#)

The cases involving governmental displays of religious symbols — such as Ten Commandment displays in public school classrooms, courthouses, or public parks; nativity scenes in courthouses and shopping districts; or crosses on public land — have generated much debate. **The most prominent approach in more recent cases is called the “endorsement test”**; it asks whether a reasonable observer acquainted with the full context **would regard the display as the government endorsing religion** and, therefore, sending a message of disenfranchisement to other believers and non-believers.

The Court’s decisions in this arena are often closely divided. They also illustrate that the Court has declined to take “a rigid, absolutist view” of the separation of church and state. In *Lynch v. Donnelly* (1984), **the Court allowed display of a nativity scene surrounded by other holiday decorations in the heart of a shopping district**, stating that it “engenders a friendly community spirit of good will in keeping with the season.” But in *County of Allegheny v. American Civil Liberties Union* (1989), **a different majority of Justices held that the display of a nativity scene by itself at the top of the grand stairway in a courthouse violated the Establishment Clause** because it was “indisputably religious — indeed sectarian.” In *McCreary County v. American Civil Liberties Union* (2005), the Court held that a prominent display of the Ten Commandments at the county courthouse, which was preceded by an official’s description of the Ten Commandments as the “embodiment of ethics in Christ,” was a religious display that was unconstitutional. The same day, it upheld a Ten Commandments monument, which was donated by a secular organization dedicated to reducing juvenile delinquency and surrounded by other monuments on the spacious statehouse grounds. *Van Orden v. Perry* (2005). Only one Justice was in the majority in both cases.

- **Ten Commandments:** Ten laws written in the Bible that is used in the Christian and Jewish religions.
- **Nativity Scenes:** Displays showing the birth of Jesus, the founder of the Christian religion.
- **Generated:** caused
- **Disenfranchisement:** The feeling of being left out or excluded by the government’s actions

RELEVANT SUPREME COURT CASES:

- [Lynch v. Donnelly](#) (1984)
- [County of Allegheny v. American Civil Liberties Union](#) (1989)
- [McCreary County v. American Civil Liberties Union](#) (2005)
- [Van Orden v. Perry](#) (2005)

ESTABLISHMENT CLAUSE DEBATES GRAPHIC ORGANIZER

Using the information found at the four stations, fill in the main idea for each kind of establishment clause issue. You may want to use Oyez to look up the relevant cases to help you in your task.

AID TO RELIGIOUS INSTITUTIONS

In your own words, identify the big question of this debate.

What are the arguments on each side of this debate?

Argument A

Argument B

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In recent years, how has the Supreme Court generally ruled in this debate?

GOVERNMENT SPONSORED PRAYER

In your own words, identify the big question of this debate.

What are the arguments on each side of this debate?

Argument A

Argument B

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In recent years, how has the Supreme Court generally ruled in this debate?

ESTABLISHMENT CLAUSE DEBATES GRAPHIC ORGANIZER (CONTINUED)

ACCOMMODATION OF RELIGION

In your own words, identify the big question of this debate.

What are the arguments on each side of this debate?

Argument A

Argument B

In recent years, how has the Supreme Court generally ruled in this debate?

GOVERNMENT SPONSORED RELIGIOUS SYMBOLS

In your own words, identify the big question of this debate.

What are the arguments on each side of this debate?

Argument A

Argument B

In recent years, how has the Supreme Court generally ruled in this debate?

EXIT TICKET

Read your scenario again. Into which category of establishment clause issues does your scenario fit? What facts in your scenario make you think this? How do you think the Supreme Court might have ruled based on what you have learned?

SCENARIO # _____

Into which category of establishment clause issues does your scenario fit?

List your reasons for your choice.

SCENARIO

- | | |
|---|--|
| 1 | A football coach at a public high school was put on paid administrative leave and was not allowed to coach the football team after leading students in voluntary prayers before and after games. Does a public high school coach leading voluntary prayers violate the establishment clause? |
| 2 | A state constitution prohibits the state's funding of religious institutions. A religiously operated school applies to receive funding to pay for materials made from used tires for a playground, arguing that the specific benefit has no relation to religion. Is a state's funding playground equipment a violation of the establishment clause? |
| 3 | A county courthouse has a nativity scene (Jesus, Mary, Joseph, sheep, and manger) in its entryway. The same display has been used since the courthouse opened more than 100 years ago. Recently, Bible verses have been added to the display. Does this violate the establishment clause? |
| 4 | A school requires that no students wear hats during the school day. The principal allows an Islamic female student to wear her head covering. Another student protests, saying that this favors one religion over other religions. Is this principal violating the establishment clause? |

VIDEO QUESTIONS 3-2-1

Name three religious groups that controlled colonial governments.

1.

2.

3.

Name two things that these church-controlled governments made people do.

1.

2.

What is one way the First Amendment's stance on religious freedom has been changed by later amendments?

1.

HOMEWORK

TWEET IT OUT

In no fewer than three sentences, compose a tweet describing the establishment clause. You may create up to three hashtags to go with it.

_____ # _____ # _____