Case A: Religious Speech by Government

The Constitution says that Congress “shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” The Supreme Court has decided several cases that examine whether prayer in government is an “establishment” of religion. Public schools are parts of the government, so prayer in public schools is subject to this requirement. Moreover, courts have recognized that school children are likely to feel pressure from leaders and peers to conform.

In two cases, the Supreme Court has said:

* A prayer delivered by a rabbi at a middle-school graduation ceremony violates the Establishment Clause. Since the school controlled the ceremony, a government body was involved in the religious exercise. The school’s control placed both public and peer pressure on students to participate. (*Lee v. Weisman*)
* A school’s policy of student-led prayer over the loudspeaker at high-school football games violates the Establishment Clause. While students voted on whether to have the prayer and actually said the words, the school controlled the event, facility, and microphone. Therefore, it was government-endorsed and could pressure student attendees to participate. (*Santa Fe v. Doe*)

***Now imagine you are on the Court and a new case has just been accepted for review.***

For years, the basketball coach at Local High School led all the players in prayer in the locker room before every game. The coach called on God and Jesus Christ to bless the game, keep the players safe, and inspire them to strive for excellence. The principal of the school heard about this practice and told the coach to stop having the prayers because they might violate the Constitution. The coach stopped leading prayers, but in her place the senior captains of the team continued to gather the players in the locker room and recite the same prayer the coach had for years. One of the ninth graders on the team challenged this prayer, saying that it violated the Establishment Clause.

**Examine the Court’s earlier decisions and compare them to this new case.**

How is each earlier decision similar to this new case? How are they different?

Do you think that the earlier decisions point to a particular outcome in this case? If so, what?

How would you decide this case? Why?

Case B: Government Funding for Religion

The Constitution says that Congress “shall make no law respecting an establishment of religion.” There is widespread agreement that the government cannot fund churches’ religious services and activities. What about government funding for nonreligious activities provided by religious organizations? The Supreme Court has decided several cases that examine this issue.

In two cases, the Supreme Court has said:

* The government may pay for educational materials and computer software and hardware at private, religious elementary and secondary schools, as long as it is used to implement secular, neutral, and non-ideological programs. The aid must be equally available to nonreligious organizations or schools as well. (*Mitchell v. Helms*)
* The government may provide tuition vouchers for low-income families to use to send their children to the participating school of their choice, even if the school receiving the government-funded voucher is religious. Since individual families are choosing where to send their children, there is no perceived endorsement of religion by the government. (*Zelman v. Simmons-Harris*)

***Now imagine you are on the Court and a new case has just been accepted for review.***

Homelessness is a problem in Big City. The city government decides to contract with an outside organization to provide services to the homeless population, including providing shelter and food. The organization that won the bid for this contract is a religious organization that is loosely affiliated with a local church. The organization uses the public funding to operate its overnight shelter, job-counseling program, and soup kitchen. Every evening at the shelter and the soup kitchen, the workers lead a prayer and Bible reading for all guests. Religious literature is distributed with every meal. The city is sued over this program, with the assertion that it violates the Establishment Clause.

**Examine the Court’s earlier decisions and compare them to this new case.**

How is each earlier decision similar to this new case? How are they different?

Do you think that the earlier decisions point to a particular outcome in this case? If so, what?

How would you decide this case? Why?

Case C: Government Regulation of Religious Practice

The Constitution says “Congress shall make no law … prohibiting the free exercise” of religion. Generally, that means that people may practice their religion in any way they choose. When is it Constitutional for a regulation to interfere with a person’s exercise of his religion?

In two cases, the Supreme Court has said:

* A state government cannot force Amish families to keep their children in school past eighth grade. The Court ruled that the families’ religious beliefs and practices outweighed the State’s interests in making the children attend school beyond the eighth grade. The Court said that an additional one or two years of high school (until the required age of 16) would not produce enough educational benefits to be a “compelling government interest.” (*Wisconsin v. Yoder)*
* The Free Exercise clause does not excuse an individual from compliance with a valid criminal law. The Supreme Court upheld Oregon’s drug law, which prohibited the consumption of illegal drugs—even for sacramental religious uses—over the objection of Native Americans who wanted to use peyote in religious ceremonies. If such a law applies equally to everyone, and was not intended to burden religious beliefs, it does not violate the U.S. Constitution. However, several states enacted laws to further protect religious practices. (*Employment Division v. Smith*)

***Now imagine you are on the Court and a new case has just been accepted for review.***

Kansasippi has a state law that prohibits child neglect—defined as the failure of a parent to provide needed food, clothing, shelter, medical care, or supervision to the degree that the child’s health or safety are threatened with harm. Elisa’s parents belong to a religion that sincerely believes in healing only through prayer and refuses medical treatment. Elisa contracts a serious, but non-fatal, disease. Her parents refuse treatment or medication and instead hold prayer vigils with their church. While the disease is not fatal, it can result in muscle degeneration, which could lead to difficulty speaking and walking. The state charges Elisa’s parents with child neglect and removes her from their care. Elisa’s parents argue that the child neglect law violates their religious-freedom rights.

**Examine the Court’s earlier decisions and compare them to this new case.**

How is each earlier decision similar to this new case? How are they different?

Do you think that the earlier decisions point to a particular outcome in this case? If so, what?

How would you decide this case? Why?