

Mueller v. Allen

Learner Outcomes

Students will:

1. Understand the First Amendment’s Establishment Clause and distinguish it from the Free Exercise Clause.
2. Learn and apply the three-pronged establishment test to related cases.
3. Explore constitutional issues concerning public tax support for religious schools.
4. Understand arguments for and against financial assistance for non-public schools.

Grade level: Grades 9-12

Time needed: 1-2 class periods

Materials needed: Copies of **CASE SUMMARY: *Mueller v. Allen***
Student Handout: MUELLER v. ALLEN
BACKGROUND READING (Optional)

Procedure:

1. Ask students to read the First Amendment to the U.S. Constitution and to discuss the meaning of the phrase “Congress shall make no law respecting the establishment of religion. . . .”
 - a. What would religion established by government be?
 - b. Are there countries where such religion exists?
 - c. What happens to persons who do not believe in the government’s religion.
 - d. Why would the framer’s insist on this constitutional provision?
2. Provide students with the information contained in the **BACKGROUND READING**.
3. Have students read the **CASE SUMMARY: *Mueller v. Allen*** concerning tax deductions for education expenses. Using the **Case Study Activity** from the introductory materials, have students consider whether they would vote with the majority or the dissent.
4. Working individually or as small groups, have students complete the **Student Handout: MUELLER V. ALLEN** activity applying the three-pronged test. Discuss.
5. Inform the students that the Minnesota Statute challenged in the *Mueller* case was repealed by the Minnesota Legislature in 1987 in an effort to conform Minnesota tax laws (specifically deductions) to federal tax laws.

Student Handout: *MUELLER v. ALLEN*

The First Amendment to the U.S. Constitution provides two protections for religious freedom. First, the federal government and the states (through the 14th Amendment that extends the First Amendment to the states) may not pass laws that are intended to regulate religious beliefs or conduct. People are free to practice their religion of choice. Second, state and federal government may not act in a way that establishes a religion. This restricts government's ability to support religious activities.

What constitutes support? The U.S. Supreme Court has consistently rejected arguments that any program which in some manner aids an institution with a religious connection violates the Establishment Clause of the First Amendment. Instead, the court has applied a three-pronged test to determine if the government action is helping to establish a religion.

- (1) Is the purpose of the government action secular (non-religious) in nature?
- (2) Is the law's primary effect advancing religious goals?
- (3) Does the government's action require its excessive entanglement in the religion?

Applying this test, do you think the following actions violate the First Amendment?

YES	NO
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- 1. THE STATE REIMBURSES PARENTS FOR THE EXPENSES OF TRANSPORTING THEIR CHILDREN TO A RELIGIOUS SCHOOL.**

Student Handout: *MUELLER v. ALLEN* cont.

2. THE STATE REIMBURSES NONPUBLIC SCHOOLS FOR THE COST OF TEACHERS' SALARIES.

3. THE STATE LOANS INSTRUCTIONAL MATERIALS TO NONPUBLIC SCHOOLS (INSTEAD OF TO CHILDREN).

4. THE STATE LOANS TEXTBOOKS (NON-RELIGIOUS) TO ALL SCHOOL CHILDREN.

5. THE STATE GRANTS TAX DEDUCTIONS TO PARENTS FOR RENTAL FEES PAID TO THE SCHOOL FOR MUSICAL INSTRUMENTS.

6. THE STATE PROVIDES FUNDS FOR THE MAINTENANCE AND REPAIR OF PRIVATE SCHOOLS.

Student Handout: *MUELLER v. ALLEN* cont.

7. THE STATE GIVES TUITION GRANTS TO PARENTS OF CHILDREN ATTENDING PRIVATE SCHOOLS.

8. THE SCHOOL ENDS CLASSES ONE HOUR EARLY ONE DAY EACH WEEK SO THAT RELIGIOUS INSTRUCTION CAN BE GIVEN IN THE SCHOOL.

9. THE PUBLIC SCHOOL BEGINS EACH MORNING WITH A PRAYER.

10. A STATE ALLOWS PUBLIC SCHOOL TEACHERS TO START THE DAY WITH A PERIOD OF SILENCE FOR “MEDITATION OR VOLUNTARY PRAYER.”



Deciding these cases is very difficult. The U.S. Supreme Court has said “we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law.”

ANSWER KEY: *Mueller v. Allen*

Applying this test, do you think the following actions violate the First Amendment?

YES

NO



1. THE STATE REIMBURSES PARENTS FOR THE EXPENSES OF TRANSPORTING THEIR CHILDREN TO A RELIGIOUS SCHOOL.

ANSWER: No. *Everson v. Board of Education*, 330 U.S. 1 (1947). Government programs providing bus transportation to and from school to all students, including parochial school students, do not violate the establishment clause because their purpose and effect is secular. However, state payment for field trips is invalid. *Wolman v. Walter*, 433 U.S. 229 (1977).

2. THE STATE REIMBURSES NONPUBLIC SCHOOLS FOR THE COST OF TEACHERS' SALARIES.

ANSWER: Yes. *Lemon v. Kurtzman*, 403 U.S. 602 (1971). This action involves the risk of excessive government entanglement with religion.

3. THE STATE LOANS INSTRUCTIONAL MATERIALS TO NONPUBLIC SCHOOLS (INSTEAD OF TO CHILDREN).

ANSWER: Yes. *Meek v. Pittenger*, 421 U.S. 349 (1975).

4. THE STATE LOANS TEXTBOOKS (NON-RELIGIOUS) TO ALL SCHOOL CHILDREN.

ANSWER: No. *Board of Education v. Allen*, 392 U.S. 236 (1968). The purpose and effect of the action is secular.

5. THE STATE GRANTS TAX DEDUCTIONS TO PARENTS FOR RENTAL FEES PAID TO THE SCHOOL FOR MUSICAL INSTRUMENTS.

ANSWER: No. *Mueller v. Allen*, 463 U.S. 387 (1983).

6. THE STATE PROVIDES FUNDS FOR THE MAINTENANCE AND REPAIR OF PRIVATE SCHOOLS.

ANSWER: Yes. *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973). This action results in excessive involvement in religion.

ANSWER KEY: *Mueller v. Allen cont.*

7. THE STATE GIVES TUITION GRANTS TO PARENTS OF CHILDREN ATTENDING PRIVATE SCHOOLS.

ANSWER: Yes. *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973). A state may not use a system of grants, tax credits, or tax deductions to reimburse parents or students only for tuition paid to religious schools. However, the Court has allowed tax deductions for all students and parents based upon actual expenses for attending public or private schools (for example, costs of tennis shoes and sweatsuits for physical education). A valid tax deduction must (1) be available for public and private school expenses and (2) include expenses in addition to tuition (so that public school parents may also benefit from the deduction).

8. THE SCHOOL ENDS CLASSES ONE HOUR EARLY ONE DAY EACH WEEK SO THAT RELIGIOUS INSTRUCTION CAN BE GIVEN IN THE SCHOOL.

ANSWER: Yes. *McCollum v. Board of Education*, 333 U.S. 203 (1948). Action does not have secular purpose.

9. THE PUBLIC SCHOOL BEGINS EACH MORNING WITH A PRAYER.

ANSWER: Yes. *Abington School District v. Schempp*, 374 U.S. 203 (1963).

10. A STATE ALLOWS PUBLIC SCHOOL TEACHERS TO START THE DAY WITH A PERIOD OF SILENCE FOR “MEDITATION OR VOLUNTARY PRAYER.”

ANSWER: Yes. *Wallace v. Jaffree*, 472 U.S. 38 (1985). The court found that the only purpose for the action was to promote religion.



Deciding these cases is very difficult. The U.S. Supreme Court has said “we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law.”

CASE SUMMARY: *Mueller v. Allen*

463 U.S. 387 (1983)

Minnesota allows taxpayers, in computing their state income tax, to deduct certain expenses incurred in providing for the education of their children. The deduction is limited to actual expenses incurred for the “tuition, textbooks, and transportation” of dependents attending elementary or secondary schools, up to a maximum amount allowed. (Minn.Stat. 290.09)

Mueller and other Minnesota taxpayers sued Clyde Allen, Jr., the Commissioner of the Department of Revenue (in 1983), claiming that the law violated the First Amendment’s prohibition on actions that establish religion. The district court disagreed with the taxpayers stating that the statute was “neutral on its face and in its application and does not have a primary effect of either advancing or inhibiting religion.” The Federal District Court of Appeals agreed, concluding that the law substantially benefitted a “broad class of Minnesota citizens.” The taxpayers appealed to the U.S. Supreme Court.

The U.S. Supreme Court applied the three-pronged test developed in the case *Lemon v. Kurtzman*: “First, the statute must have a secular legislative purpose; second, its principle or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster an excessive government entanglement with religion.”

In looking at the statute’s purpose, the court said “little time need be spent on the question of whether the Minnesota tax deduction has a secular purpose.” If there is a reasonable secular purpose for the State’s law, which is clear by the words of the statute, the U.S. Supreme Court is reluctant to find that the state has unconstitutional motives. “A state’s decision to defray the cost of educational expenses incurred by parents--regardless of the type of schools their children attend--evidences a purpose that is both secular and understandable.” The court continued “An educated populace is essential to the political and economic health of any community, and a State’s efforts to assist parents in meeting the rising cost of educational expenses plainly serves this secular purpose of ensuring that the State’s citizenry is well educated.”

In addressing the second part of the test, the court said that it found several features of the Minnesota law that supported the position that the legislation did not advance or inhibit religion. First, the fact that the law is only one among many deductions available under Minnesota tax law; second, the fact that the deduction is available for educational expenses for all parents regardless of the kind of school their children attend; and third, the fact that the financial assistance given through the tax deduction is given directly to the parents, rather than to the school, supports the neutrality of the law.

Turning to the third part of the test, the court found no difficulty in concluding that the Minnesota statute does not excessively entangle the state in religion. Because the statute does not provide that funds be paid directly to religious schools, the only possibility for excessive involvement lies in the determination of the validity of the deductions.

CASE SUMMARY: *Mueller v. Allen* cont.

The U.S. Supreme Court affirmed the decision of the Court of Appeals.

However, the case was decided with a five-four vote. Justice Thurgood Marshall, writing for the dissent, said “the Establishment Clause of the First Amendment prohibits a State from subsidizing religious education, whether it does so directly or indirectly.” The dissent asserted that any aid to the educational function of a religious school results in aid to religion because the very purpose of the school is to provide an integrated secular and religious instructional program. To find that the action does not have the primary effect of promoting religion, the aid would need to be restricted to ensure that it would not be used to further the religious mission of the schools. The dissent noted that services such as police and fire protection, sewage disposal, highways, and sidewalks may be provided because this type of assistance is clearly “marked off from the religious functions of those schools.”

The dissent continued. “By ensuring that parents will be reimbursed for tuition payments they make, the Minnesota statute requires that taxpayers in general pay for the cost of parochial education and extends a financial incentive to parents to send their children to sectarian schools.” The dissent argued that it did not matter that the parents rather than the school receives the financial assistance. “What is controlling significance is not the form but the substantive impact of the financial aid. Insofar as such benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions.”

The dissent concluded by citing from *Lemon v. Kurtzman*. “The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction. . . . The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn.”

BACKGROUND READING

RELIGIOUS INTOLERANCE AND PERSECUTION IN THE EARLY AMERICAN COLONIES

The degree of religious freedom that you have today did not exist in Europe, the colonies, or the states formed after the Revolutionary War. Often only one official or “established” religious group was allowed to practice its beliefs. Every subject had to attend its church, obey its requirements, and pay taxes to support it.

Few of the earliest English colonies in North America allowed religious freedom. In fact, in several colonies, especially those in New England, a dominant and intolerant religious group insisted on strict conformity to its own ideas of proper belief and worship.

Dissenters were persecuted. In the early days, some dissenters simply went off into the wilderness and began new colonies of their own. For example, the Reverend Thomas Hooker disagreed with the religious beliefs in Massachusetts. He and his followers left the colony and settled Connecticut. However, their new colony soon became as intolerant in its own way as Massachusetts. The only colonies that tolerated a relatively free expression of religious beliefs and practices were Pennsylvania, Rhode Island, Delaware, and New Jersey.

By the end of the colonial period, people had become more tolerant of religious differences. Many different religious groups existed together in the same communities and people became used to living and working with others who held different beliefs. In some of the colonies, most notably in New England, many people had become less strict about their own religious beliefs and were more willing to accept different points of view. Consequently, with an increased tolerance of religious differences there came greater demands for genuine religious freedom, which were increasingly made by Quakers, Baptists, Catholics, and others.

There was also widespread opposition to the establishment of one church as the official national church. By the time of the ratification of the Constitution and the Bill of Rights, there was a widely held belief that the federal government should not be allowed to establish an official church for the nation. Many agreed that an established church was harmful to religion and bad for the nation.

Finally, some leaders, notably Thomas Jefferson and James Madison, were greatly concerned about the dangers of religious intolerance. They were well aware that throughout history, religious intolerance had often led to conflict rather than cooperation and to a violation of the basic rights of individuals.

BACKGROUND READING cont.

**THE ESTABLISHMENT OF RELIGION IN THE
STATE GOVERNMENTS**

Even though many of the Founders believed strongly in religious tolerance, a number of the state constitutions deprived members of some religious groups of the rights people who were members of other religious groups had. For example, some states did not allow Catholics or Jews to vote or hold public office. In Massachusetts and Maryland, no one but a Christian was allowed to become governor. For many years, New Hampshire, New Jersey, Massachusetts, and North Carolina required that office holders be Protestants. Even Pennsylvania, which had a bill of rights protecting the “inalienable right of all men to worship God according to the dictates of their own conscience,” still disqualified Jews and non-Christians from public office. New York and Virginia were the only states that did not have any restrictions on religious beliefs for persons serving in their state governments.

However, soon after 1776, important changes began to be made in those states in which religion had been established as an official part of the government. Between 1776 and 1789, New York, Virginia, and North Carolina eliminated state-established religion. Massachusetts, Connecticut, and New Hampshire decided to allow Anglicans and other Protestants to join Congregationalists as a part of the established church. In Maryland, the Constitution written in 1776 gave the legislature the right to tax citizens to support the Christian religion. However, each person was free to decide which denomination should receive his tax money.

The constitution of South Carolina, written in 1778, said that the Protestant Christian religion was to be the established religion of the state and all Protestant groups would have equal rights and privileges including financial support from tax funds.

These changes meant that in some states there was still an established religion, but it was not just one church or denomination. The established religion, however, was Protestant Christianity. Catholics, Jews, and members of other religions were not entitled to tax support. It was not until 1833 when Massachusetts changed its constitution to separate church and state that the last established religion in the states was eliminated.

BACKGROUND READING cont.

**THE FOUNDERS' RELIGIOUS BELIEFS
PROMOTE FREEDOM OF RELIGION**

Most of the Founders were religious people. Despite the history of intolerance, the influence of some of their religious beliefs resulted in promoting the freedom of religion which we have today.

The Founders believed that you have certain natural rights simply because you are a human being. This belief developed in part out of the Puritan idea that God has given you a moral sense and the ability to reason which enables you to tell the difference between what is right and wrong. Philosophers such as John Locke argued that society should allow you to live the way your moral sense, guided by the Bible, tells you is right. The best government, therefore, they believed, is the one that interferes as little as possible with your beliefs, including religious belief, although many did not support tolerance for you if you did not believe in God.

The founders, it is important to remember, believed that religion is extremely important in developing the kind of character citizens of a free society needed to have in order to remain free. For example, George Washington said in his farewell address that virtue and morality are necessary for a government run by the people. He also believed that morality could not be maintained without religion. At the same time, he joined Thomas Jefferson and James Madison in opposing a bill introduced into the Virginia legislature which would have used tax money to pay for religion teachers.

Madison had been the author of the parts of the Virginia Declaration of Rights, passed in 1776, that provided for freedom of religion. Religion, he insisted, "can be directed only by reason and conviction." Jefferson later wrote the Act for Establishing Religious Freedom which led to the end of an established church in Virginia. Both were acting on the basis of their belief that our right to liberty includes the liberty to believe as our conscience and reason direct. Established churches, they insisted, violate this basic right.

It is clear that the Founders thought religion was an important part of the society. At the same time, they believed strongly that each person has a natural right to his or her own religious beliefs. The separation of the church and state required by the First Amendment is an expression of this belief.

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