INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION



Work Session: XI. First Amendment Issues

Title: Creche Me Again!
First Amendment Religious Rights and Governmental Policies

by

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CRECHE ME AGAIN!

FIRST AMENDMENT RELIGIOUS RIGHTS AND GOVERNMENTAL POLICIES

International Municipal Lawyers Association

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I. Introduction.

A. Topic Areas.

1. Free Exercise Clause Basics.
2. Establishment Clause Rules.
3. Holiday Displays.
4. Religious Use of Public Facilities.
5. Secular Holidays.
6. Other Fun Stuff.

B. Not a Comprehensive Review.

1. Cases are illustrative, not necessarily the latest word.
2. Some areas (education, prisons) have myriad cases.

II. The First Amendment.

A. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

B. Amendment is applicable to the states through the 14th Amendment. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

C. Two Clauses on Religion

1. The Free Exercise Clause.
2. The Establishment Clause.

D. Some cases may involve both issues, e.g., conducting bible sessions in a state-owned dormitory.

E. Review Your State Constitutions and case law; there may be more stringent establishment rules. For example, the Wisconsin Constitution, Article 1, Section 18, contains a clause that "...nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries." Many states interpret the state constitution to follow federal precedent, see, e.g., J*ackson v. Benson*, 218 Wis. 2d 835, 876-77 (1998). But some state courts are more open to the "New Federalism" where state courts apply different standards under the state constitution, see, *e.g., State v. Knapp*, 2005 WI 127, 285 Wis. 2d 86 (2005).

III. Historical Antecedents and Philosophical Debates.

A. The purpose of the First Amendment's religion clauses was to enshrine toleration and a separation of church and state, for the protection of both.

B. Compare Jefferson's Virginia Statute of Religious Freedom:

1. After a long preamble on the rationale for separation of church and state, the enacting clause states:

"Be it therefore enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in nowise diminish, enlarge, or affect their civil capacities." (1786)

2. See *Rosenberger v. University of Virginia,* 515 U. S. 819 (1995), overturning Jefferson's University's refusal to fund a student group because they wished to espouse religious views.

3. Compare Steven Carter's "The Culture of Disbelief" (1991):

"In contemporary American culture, the religions are more and more treated as just passing beliefs – almost as fads, older, stuffier, less liberal versions of so-called New Age – rather than as the fundaments upon which the devout build their lives. ... And if religions *are* fundamental, well, too bad – at least if they're the *wrong* fundaments – if they're

inconvenient, give them up! ... If you can't take your exam because of a Holy Day, get a new Holy Day! If the government decides to destroy your sacred lands, just make some other lands sacred! If you must go to work on your Sabbath, it's no big deal! It's just a day off! Pick a different one! ... And through all of this trivializing rhetoric runs the subtle but unmistakable message: pray if you like, worship if you must, but whatever you do, do not on any account take your religion seriously." (At pages 14-15).

IV. Free Exercise Basics.

A. *Hobbie v. Unemployment Appeals Com'n of Florida*, 480 U.S. 136 (1987).

1. Employee joined a new church and could no longer work on the Sabbath, Friday night – Saturday. She was discharged.

2. Her claim for unemployment compensation was denied for "misconduct."

3. Held: Refusal to award benefits violated Free Exercise clause.

4. Test: Where State conditions receipt of an important benefit on proscribed religious conduct, or denies a benefit for mandated religious conduct, Free Exercise clause is violated.

5. *Hobbie* may not be the leading case, but it cites other important cases and reiterates the traditional "strict scrutiny" test: religious belief is a fundamental right which the government may only infringe in any substantial manner for compelling governmental interests, in a narrowly tailored manner.

B. *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

1. State rule required salute of the US flag in schools.

2. Rule was challenged by Jehovah's witnesses as violating religious belief not to pay homage to idols.

3. Held: Regulation is invalid as infringing both Free Speech and Free Exercise Clauses.

4. Justice Jackson's famous and oft-quoted language: (319 U.S. at 642):

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not occur to us."

5. Note the time of the decision, during the height of the Second World War.

C. *Torasco v. Watkins*, 367 U.S. 488 (1961).

1. Maryland statute required a notary to profess a belief in God held unconstitutional.

2. The irony of Lord Baltimore's State action.

D. Compare *Oregon v. Smith*, 494 U.S. 872 (1990).

1. Employees at drug rehab center fired for using peyote at a ceremony of the Native American Church. UC denied for misconduct.

2. Oregon Supreme Court held a violation of the Free Exercise clause. See *Hobbie*, above.

3. U.S. Supreme Court reverses (6-3).

4. Reasoning: (5 justices) Neutral criminal law need only show reasonable relationship to legitimate governmental purpose.

5. O'Connor: Can reach same result with standard compelling governmental interest test." 3 dissenters.

E. *Gonzales v. O Centro Espirita*, 546 U.S. 418 (2006).

1. Interesting view of Roberts as Chief Justice.

2. Small sect (UDV) used a controlled substance, *hoasca*, as part of their religious exercises.

3. In response to *Oregon v. Smith*, above, Congress in 1993 passed the Religious Freedom Restoration Act (RFRA), 42 USC sec. 2000bb, et seq., re-imposing by statute the compelling interest test.

4. Now, the Attorney General wants to prosecute for a controlled substance violation.

5. The Court (9-0) takes Congress at its word. Justice Roberts tweaked the Attorney General (126 S. Ct. at 1223):

> " The Government's argument echoes the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions. But RFRA operates by mandating consideration, under the compelling interest test, of exceptions ...."

V. Fun Stuff.

A. *U.S. v. Turnbull*, 888 F. 2d 636 (9th Cir. 1989), c*ert. den*., 498 U.S. 825 (1990), and *Lindstrom v. State of Illinois*, 632 F. Supp 1535 (N.D. III., 1986), App. Dismissed, 828 F. 2d 21 (7th Cir. 1987).

1. Underlying tax evasion and zoning regulation cases.

2. Religious belief that one is not to associate with lawyers does not overcome the state's compelling interest in having only licensed attorneys represent persons in court proceedings.

B. *Crain v. Bd. of Police & Fire Comm. of East St. Louis*, 920 F. 2d 1402 (8th Cir. 1990).

1. Police regulation that an officer taking sick leave must be at home unless traveling for medical treatment. Officer caught out and about on sick leave, and claims he was on his way to church.

2. Held: No Free Exercise violation.

VI. Other Free Exercise.

A. Many prisoner cases, see, *e.g.*, just one decision in *Gonzalez v. Litscher*, 230 F. Supp. 2d 950 (W.D. Wis. 2002), applying the "legitimate penological interests" test from *O'Lone v. Estate of Shabazz*, 482 U.S. 382 (1987).

B. Government action: *EEOC v. Townley Engineering & Manufacturing Co.*, 859 F. 2d 610 (9th Cir. 1988), *Cert. Den.*, 489 U.S. 1077 (1989). Employer's First Amendment rights not violated by order finding that compelled prayer services violates Title VII.

VII. RLUIPA.

A. Religious Land Use and Institutionalized Person Act, 42 USC secs. 2000cc, *et seq*.

B. Act codified certain protections in land use and institutions.

C. See, *e.g., Lindell v. Casperson*, 360 F. Supp. 2d 932 (W.D. Wis. 2005).

VIII. Establishment Clause.

A. *Lemon v. Kurtzman*, 403 U.S. 602 (1971). State payments to church-supported schools and teachers.

1. Supreme Court overturned the programs, finding they violated the establishment clause, and setting up the so-called "Lemon" test.

2. The Lemon Test.

(a) Does the governmental policy have a secular purpose?
(b) Is its principal or primary effect one that neither advances nor inhibits religion?
(c) Does it foster an excessive government entanglement with religion?

3. Lemon's Warning (403 U.S. at 612):

"Candor compels acknowledgement, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law. The language of the Religion Clauses of the First Amendment is at best opaque . . .."

B. Holiday Crèches.

1. Two key US Supreme Court cases show the difficulty of applying the Lemon test. *Lynch v. Donnelly*, 465 U.S. 668 (1984), and *County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

2. Donnelly Case.

(a) Pawtucket's Christmas display included the nativity scene, Santa Claus, carolers, "Season's Greetings!"
(b) Located in a private park.
(c) Held: the display does not have the purpose or effect of advancing religion, nor is there an excessive entanglement.

3. Allegheny Case.

(a) Two separate displays. A nativity scene in the central staircase at the County Courthouse, and a menorah placed next to the lighted Christmas tree, with a sign saluting "liberty," outside the City Hall a block away.
(b) Held: Crèche violates the establishment clause; menorah does not.
(c) The context of the display is critical in determining whether the average person would see it as an endorsement.

4. Wisconsin's King Case.

(a) *King v. Village of Waunakee*, 185 Wis. 2d 25, 517 N.W.2d 671 (1994).
(b) Original display was just a crèche. Village added decorated trees, colored lights on poles, a star and a "liberty" sign.
(c) Held: Display does not violate establishment clause.

C. The Ten Commandments Cases.

1. *McCreary County v. ACLU,* 545 U.S. 844, 125 S. Ct. 2722 (2005).

   (a) A series of three displays:
      (i) The Ten Commandments (King James)
      (ii) Pursuant to a resolution, Commandments with other religious-related texts.
      (iii) After an injunction, Commandments with Magna Carta, Declaration, etc.
   (b) Resolution explicitly stated the Commandments were Kentucky's "precedent legal code."
   (c) Held: Violates the "purpose" clause of the Lemon test. O'Connor's concurrence again important.
   (d) Classic Scalia dissent (545 U.S. at 885): "I shall discuss first, why the Court's oft repeated assertion that the government cannot favor religious practice is false; second, why today's opinion extends the scope of that falsehood even beyond prior cases; and third, why even on the basis of the Court's false assumptions the judgment here is wrong."

2. Van Orden Case.

   (a) *Van Orden v. Perry*, 545 U.S. 677, 125 S. Ct 2854 (2005).
   (b) A six foot monolith with the Ten Commandments on the Texas Capitol ground.
   (c) It is one of 17 different monuments.
   (d) Donated by the Eagles Club.
   (e) Held: Monument does not violate the establishment clause.
   (f) 4 justices would not apply the Lemon text.
   (g) Breyer, concurring, said it met the Lemon test.
   (h) 4 justices dissent.

D. Conclusions on Public Displays.

1. Two very different views: Cultural Deism v. Favoring and Honoring Religion. O'Connor v. Scalia.

2. Government may display religious material so long as it muddles the message and purpose with non-religious matters. Be sure to add a sign espousing "Liberty!"

3. New Supreme Court?

4. See partial list of cases from various states in Appendix to this outline.

E. Reverse Establishment Claims: *Vasquez v. Los Angeles County*, 487 F. 3d 1246 (9th Cir. 2007).

1. County Seal has a Latin cross. County removes to avoid establishment claims.

2. *Vasquez* sues as demonstrating hostility to Christian religion.

3. County wins.

F. Access to Public Facilities.

1. Often in the context of free speech rights v. establishment claims.

2. *Good News Club v. Milford Central School*, 533 U.S. 98 (2001).

(a) School had a policy on use of rooms by student groups after school, allowing use for educational purposes.
(b) Christian study group was denied use.
(c) Held: Action violated free speech rights, and was not an establishment of religion.
(d) Cannot discriminate on the content of the speech, even if religious, once you establish a limited public forum.

3. *Widmar v. Vincent*, 454 U.S. 263 (1981) (university); *DeBoer v. Village of Oak Park*, 267 F. 3d 558 (7th Cir. 2001) (city hall).

4. Some Madison examples: Church ad on public overpass; meditation class offered in public building.

G. Secular Holidays.

1. Christmas, Thanksgiving, Good Friday, as holidays. See, *Bridgenbaugh v. O'Bannon*, 185 F. 3d 796 (7th Cir. 1999), *cert. denied*, 529 U.S. 1003 (2000); *Koenick v. Felton*, 190 F. 3d 259 (4th Cir. 1999).

2. City policy to avoid meetings at Passover and Yom Kippur.

3. What about Ramadan? Halloween? Ash Wednesday?

4. Applying the *Lemon* test.

   (a) Secular purpose: greater public participation and fewer chances to not make quorum.
   (b) Little entanglement.
   (c) Discrimination?

H. Fun Stuff on Establishment Claims:

1. Religious proselytizers outside city hall.

2. Public school teachers to parochial schools for remedial education.

3. Release of students from public school for religious instruction elsewhere.

4. Religious teachers come to public school for religious instruction.

5. Chaplains and prayers at start of legislative sessions.

6. Studying the Bible in public schools.

7. Prayer in public schools.

8. Pledge of Allegiance.

9. Private prayer groups in state university dorms.

10. Email solicitation of Salvation Army bell ringers.

IX. CONCLUSIONS.

A. Free Exercise Clause:

1. Does Government deny or condition a benefit that violates religious obligation?

2. Does government compel a practice that violates a religious obligation?

3. Is there a compelling state interest? Or something less for prisoners?

B. Establishment Clause:

1. The Lemon Test: purpose, effect, entanglement.

2. Displays must be muddled. ("Liberty!")
3. Neutral use of public buildings compelled by Free Speech issues.

C. Makeup of current Supreme Court is likely to be much more friendly to relationships between government and religion, especially Judeo-Christian religions.

D. *Hein v. Freedom From Religion Foundation*, ___ U.S. ___, 127 S. Ct. 2553 (June 25, 2007).

1. Challenge to President's "faith-based initiatives" programs.

2. Traditional rules of standing relaxed for establishment clause cases pursuant to *Flast v. Cohen*, 392 U.S. 83 (1968).

3. Held: No standing.

4. 3 justices say *Flast* only applies to Congressional authorizations, not executive programs.

5. 6 justices say this decision cannot be reconciled with *Flast.* Two (Scalia and Thomas) would overrule *Flast*; 4 would apply it and find standing here.

APPENDIX CONTAINING PARTIAL LISTING OF STATE BY STATE DECSIONS ON RELIGIOUS MONUMENTS AND ESTABLISHMENT CLAUSE CHALLENGES

APPENDIX TO PAPER:

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I would like to thank Lydia Thompson-Salzieder, a summer intern at the Office of the City Attorney, Madison, Wisconsin, for her assistance in gathering these cases.

Alabama

In re State of Alabama ex rel. Fob James v. ACLU of Alabama, 711 So.2d 952 (Ala. 1998)

Judge Roy Moore and the Ten Commandments.

Glassroth v. Moore, 335 F.3d 1282 (11th Cir. 2003)

Judge Roy Moore and Ten Commandments in courthouse violates establishment clause.

California

Okrand v. City of Los Angeles, 254 Cal. Rptr. 913 (Cal. Ct. App. 1989)

Display of menorah in city hall does not violate establishment clause.

Hewitt v. Joyner, 940 F.2d 1561 (9th Cir. 1991)

Religious statues in public park does violate establishment clause.

Kreisner v. City of San Diego, 1 F.3d 775 (9th Cir.1993)

Religious statues in public park does not violate establishment clause because in public forum; opposite result of Hewitt.

American Jewish Congress v. City of Beverly Hills, 90 F.3d 379 (9th Cir. 1996)

Display of menorah violated establishment clause due to religious favoritism.

Vasquez v. Los Angeles County, 487 F.3d 1246 (9th Cir. 2007)

Removal of cross from county seal does not violate establishment clause as a disparagement of religion.

Colorado

Citizens Concerned for Separation of Church and State v. City and County of Denver, 628 F.2d 1289 (10th Cir. 1980)

Crèche as part of holiday larger display does not violate establishment clause.

Citizens Concerned for Separation of Church and State v. City and County of Denver, 526 F. Supp. 1310 (D. Colo. 1981)

Crèche as part of holiday larger display does not violate establishment clause.

State v. Freedom From Religion Foundation, Inc., 898 P.2d 1013 (Colo. 1995)

Ten Commandments display upheld as among several other more prominent monuments.

Wells v. City and County of Denver, 257 F.3d 1132 (10th Cir. 2001)

Holiday display; government not required to display "Winter Solstice" sign.

Connecticut

Libin v. Town of Greenwich, 625 F. Supp. 393 (D. Conn. 1985)

Display of cross as part of holiday display found to violate establishment clause.

Florida

Mendelson v. City of St. Cloud, 719 F. Supp. 1065 (M.D. Fla. 1989)

Display of cross found violative of establishment clause.

Snowden v. Town of Bay Harbor Islands, Florida, 358 F. Supp. 2d 1178 (S.D. Fla. 2004)

Menorah alone is a violation of establishment clause; OK when other holiday symbols added.

American Atheists, Inc. v. City of Starke, Florida, No. 3:05-CV-977-J-16MMH, 2007 WL 842673 (M.D. Fla. Mar 20, 2007)

Cross on water tower found to violate establishment clause.

Georgia

Chabad-Lubavitch of Georgia v. Miller, 5 F.3d 1383 (11th Cir. 1993)

Display of menorah in rotunda of state capital does not violate establishment clause; rotunda found to be public forum.

Harvey v. Cobb County, 811 F. Supp. 669, (N.D. Ga. 1993), *aff'd* 15 F.3d 1097 (11th Cir. 1994)

Display of Ten Commandments and sayings of Jesus at county courthouse does violate establishment clause.

Turner v. Habersham County, Georgia, 290 F. Supp. 2d 1362 (N.D. Ga. 2003)

Display of Ten Commandments in county courthouse does violate establishment clause.

King v. Richmond County, 331 F.3d 1271 (11th Cir.2003)

Use of seal with tablets like Ten Commandments does not violate establishment clause.

Illinois

ACLU of Illinois v. City of St. Charles, 794 F.2d 265 (7th Cir. 1986)

Display of cross as part of holiday display violates establishment clause.

American Jewish Congress v. City of Chicago, 827 F.2d 120 (7th Cir. 1987)

Display of crèche at city hall violates establishment clause.

Mather v. Village of Mundelein, 864 F.2d 1291 (7th Cir. 1989)

Crèche as part of larger holiday display does not violate establishment clause.

Harris v. City of Zion, Lake County, Ill., 927 F.2d 1401, 1412 (7th Cir. 1991)

Cross on City's seals found a violation of establishment clause.

Indiana

Gonzales v. North Township of Lake County, Ind., 4 F.3d 1412 (7th Cir. 1993)

Crucifix in public park does violate establishment clause.

Kimbley v. Lawrence County, Ind., 119 F.Supp.2d 856 (S.D. Ind. 2000)

Ten Commandments on county courthouse lawn violates establishment clause.

Indiana Civil Liberties Union v. O'Bannon, 259 F.3d 766 (7th Cir. 2001)

Ten Commandments on statehouse grounds violates establishment clause.

Iowa

Lubavitch of Iowa v. Walters, 873 F.2d 1161 (8th Cir. 1989)

No violation of establishment clause to not display menorah on state capitol grounds.

Kansas

O'Connor v. Washburn University, 416 F.3d 1216 (10th Cir. 2005)

Disparagement of religion case; no violation of establishment clause found.

Kentucky

Stone v. Graham, 449 U.S. 39 (1980)

Ten commandments in the classroom violates the establishment clause.

ACLU of Kentucky v. Wilkinson, 895 F.2d 1098 (6th Cir. 1990)

Stable without figurines on public forum subject only to reasonable restrictions.

Adland v. Russ, 307 F.3d 471 (6th Cir. 2002)

Ten commandments on public property does violate establishment clause.

(Many more Kentucky cases).

Maryland

Chambers v. City of Frederick, 373 F.Supp.2d 567 (D. Md. 2005)

City's sale of Ten Commandments monument and land underneath to private organization did not violate establishment clause.

Massachusetts

Amancio v. Town of Somerset, 28 F. Supp. 2d 677 (D. Mass. 1998)

Crèche on public property violates establishment clause because focal point of display.

Knights of Columbus, Council No. 94 v. Town of Lexington, 272 F.3d 25 (1st Cir. 2001)

Limitations on displays at battlefield does not limit First Amendment rights.

Michigan

American Civil Liberties Union v. City of Birmingham,791 F.2d 1561 (6th Cir. 1986)

Display of crèche, alone on city hall lawn violates establishment clause.

Doe v. City of Clawson, 915 F.2d 244 (6th Cir. 1990)

Display of crèche with other secular symbols does not violate establishment clause.

Americans United For Separation of Church and State v. City Of Grand Rapids, Michigan, 980 F.2d 1538 (6th Cir. 1992)

Display of menorah in what is found to be a traditional public forum does not violate establishment clause.

Jocham v. Tuscola County, 239 F.Supp.2d 714 (E.D. Mich. 2003)

Crèche at city hall lawn does not violate establishment clause because placed in a public forum.

Mississippi

ACLU of Mississippi v. Mississippi State General Services Admin., 652 F. Supp. 380 (S.D. Miss. 1987)

Lighted cross on state office building does violate establishment clause.

Missouri

American Civil Liberties Union v. City of Florissant, 186 F.3d 1095 (8th Cir. 1999)

Crèche as part of larger holiday display does not violate establishment clause.

New Hampshire

Burelle v. City of Nashua, 599 F. Supp. 792 (D. N.H. 1984)

Crèche standing alone is a violation.

New Jersey

ACLU of New Jersey ex rel. Lander v. Schundler, 168 F.3d 92 (3d Cir. 1999)

Original violation now ok with addition of Frosty the Snowman, sled, Santa Claus and Kwanzaa symbols.

ACLU-NJ v. Township of Wall, 246 F.3d 258 (3d Cir. 2001)

Modified holiday display is allowed.

New Mexico

Friedman v. Board of County Com'rs of Bernalillo County, 781 F.2d 777 (10th Cir. N.M. 1985)

Latin Cross on County seal found to be a violation of establishment clause.

Weinbaum v. Las Cruces Public Schools, 465 F. Supp. 2d 1182 (D. N.M. 2006)

Use of crosses by Las Cruces ("The Crosses") not found to be a violation.

New York

Flamer v. City of White Plains, N.Y., 841 F. Supp. 1365 (S.D. N.Y. 1993)

City park found to be a public forum thus menorah allowed.

Elewski v. City of Syracuse, 123 F.3d 51 (2d Cir. 1997)

Crèche at public park not violative of establishment clause; court found secular purpose in promoting retail businesses.

Ritell v. Village of Briarcliff Manor, 466 F. Supp. 2d 514 (S.D. N.Y. 2006)

Menorah display at public park means a crèche cannot be denied.

Skoros v. City of New York, 437 F.3d 1 (2d Cir. 2006)

Court upholds policy allowing display of menorah, crescent and star, but not the crèche.

North Carolina

Lambeth v. Board of Com'rs of Davidson County, N.C., 321 F. Supp. 2d 688 (M.D. N.C. 2004)

"In God We Trust" appearing on county building does not violate establishment clause.

North Dakota

Ring v. Grand Forks Public School District Number 1, 483 F.Supp. 272 (D. N.D. 1980)

State law requiring display of Ten Commandments in every classroom violates establishment clause.

Twombly v. City of Fargo, 388 F.Supp.2d 983 (D. N.D. 2005)

Ten commandments not violative of establishment clause in public forum.

Ohio

ACLU of Ohio Foundation, Inc. v. Ashbrook, 375 F.3d 484 (6th Cir. 2004)

Judge's Ten Commandments display in courtroom violates establishment clause.

American Civil Liberties Union of Ohio Foundation, Inc. v. Board of Com'rs of Lucas County, Ohio, 444 F.Supp.2d 805 (N.D. Ohio 2006)

Ten Commandments on public property held to have secular purpose in fighting juvenile delinquency.

Oklahoma

Eugene Sand & Gravel, Inc. v. City of Eugene, 558 P.2d 338 (Or. 1976)

Court reverses course and says large cross previously violative of establishment clause is OK since it is a veterans' memorial.

Green v. Board of County Com'rs of County of Haskell, 450 F.Supp.2d 1273 (E.D. Okla. 2006)

Ten commandments allowed as part of larger display of monuments.

Oregon

Separation of Church and State Committee v. City of Eugene of Lane County, State of Or., 93 F.3d 617 (9th Cir. 1996)

51-foot cross in public park violates establishment clause.

Pennsylvania

Modrovich v. Allegheny County, Pa., 385 F.3d 397 (3d Cir. 2004)

Ten commandments allowed as part of larger display.

Tennessee

Brooks v. City of Oak Ridge, 222 F.3d 259 (6th Cir. 2000)
Bell from Japan and supposedly of significance in Buddhist religion found not to violate establishment clause.
American Civil Liberties Union of Tennessee v. Hamilton County, Tennessee, 202 F.Supp.2d 757 (E.D. Tenn. 2002)

Ten commandments found violative of establishment clause.

Texas

Staley v. Harris County, Texas, 461 F.3d 504 (5th Cir. 2006)

Display of open bible on monument outside courthouse found to violate establishment clause.

Utah

Summum v. Pleasant Grove City, 483 F.3d 1044 (10th Cir. 2007)

Park found to be public forum; second group could erect display next to Ten Commandments.

Vermont

Chabad-Lubavitch of Vermont v. City of Burlington, 936 F.2d 109 (2d Cir. 1991)

Menorah display would violate establishment clause.

Virginia

Smith v. Lindstrom, 699 F. Supp. 549 (W.D. Va. 1988)

Crèche at city hall violates establishment clause.

Smith v. County of Albemarle, Va., 895 F.2d 953 (4th Cir. 1990)

Same.

Washington

Card v. City of Everett, 386 F.Supp.2d 1171 (W.D. Wash. 2005)

Ten Commandments monument on city hall lawn does not violate establishment clause.