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Religion in Schools

An Inquiry Pack to Accompany LegalTimelines.org

Inquiry Question: How do the Free Exercise Clause and Establishment Clause interact in public school settings?

Developed by

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Introduction: Free Exercise Clause and Establishment Clause

The First Amendment to the Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."

The Establishment Clause portion of the First Amendment prohibits (forbids) the federal (national) or state governments from endorsing (supporting) religion by setting up churches, passing laws that help one or all religions, or favoring one religion over another. The Establishment Clause is said by some to create a "wall of separation between church and state." But those words are not written in the Constitution, and there is debate about how much separation the Constitution requires between religion and government. For example, religious institutions are aided by the government in many ways, including fire and police protection and an exemption from paying taxes.

Certain references to religion have traditionally been a part of political and civic life in America. For instance, "In God We Trust" is printed on currency. Congress opens each session with a prayer. Before testifying in court, citizens typically pledge an oath to God that they will tell the truth. Traditionally, presidents are sworn in by placing their hand on a Bible. Supreme Court sessions are opened with the invocation "God save the United States and this Honorable Court." Courts have upheld (allowed) these references to religion largely because of tradition and the view that it makes the occasion more serious, formal, and dignified.

The First Amendment's Free Exercise Clause protects religious expression and practice. However, there are certain exceptions to this protection. This included when the religious practice breaks a law that applies to all Americans. For instance, laws making polygamy (having more than one spouse) illegal may restrict some people's freedom to exercise religion, but generally apply to all people and do not target a specific religion.

Taken together, the First Amendment prohibits governmental support for or favoritism toward religion (Establishment Clause) and protects against government's interference with religious beliefs and practices (Free Exercise Clause). Courts are sometimes asked to resolve cases where there is a conflict between these two religion clauses. Here is a classic case that is not from a school setting: Many places used to have what were called "blue laws." These laws required certain stores to be closed on Sunday to encourage church attendance because people would not have to miss work to attend church. Some might see blue laws as supporting Free Exercise rights because they allow people to attend church. However, some might see it as establishing religion because Sunday is not the primary worship day for all religions and so blue laws may appear to favor Christianity. Therefore, some might see blue laws as the government weighing in favor of some religions at the possible expense of others. This is one of many examples of how a government action might appear to support one religion clause but violate the other one. Sometimes people say there is a tension between the two clauses: government attempts to protect one clause might appear as a violation of (failure to follow) the other clause.

At times there is a conflict about the role that religion plays in public schools. Public schools are important institutions of U.S. democracy, where teaching citizenship, rights, and freedoms is essential. Therefore, it is important that students learn and practice their First Amendment rights and that schools protect those rights. In a public-school setting, for example, the First Amendment protects students' right to private prayer (Free Exercise). But it also prevents the government from requiring students to participate in teacher-led prayer (Establishment Clause). While students have the right to pray in schools, they also have the right not to be coerced (feel intimidated or forced) to participate in school-sponsored (supported) prayer. In some cases, it can be difficult to determine the line between student prayer, which is allowed and protected by the

Free Exercise clause, and school-sponsored prayer, which is prohibited as a violation of the Establishment Clause.

Before the 1960s, the Supreme Court decided only a handful of cases dealing with the religion clauses. Then, during the 1960s, it started deciding many of these cases. Some of the cases were from public school settings. During the second half of the 20th century, the Court tended to be particularly concerned about preventing violations of the Establishment Clause. In recent years, the Supreme Court has generally changed course. It is now particularly protective of Free Exercise claims. In the past, the Supreme Court approached cases by trying to determine how much entanglement (involvement) existed between the government and religion. However, today the Court is more and more trying to determine whether a particular law restricts the Free Exercise Clause purely because of the religious nature of the person being impacted by the law's activities.

Teacher-Led Prayer in Schools

In New York public schools, students and teachers started the day by reciting a prayer drafted by the New York State Board of Regents, which is the part of government that oversees education. The prayer was said aloud in the presence of a teacher, who either led the prayer or selected a student to do so. Students were not required to say this prayer out loud; they could choose to remain silent. Two Jewish families (including Steven Engel), along with a member of the American Ethical Union, a Unitarian, and a non-religious person sued their local school board. The families argued that reciting the daily prayer at the opening of the school day in a public school violated the First Amendment's Establishment Clause.

The case, *Engel v. Vitale,* was ultimately heard by the U.S. Supreme Court. On June 25, 1962, the decision was announced finding for (agreeing with) the families and ruling that the school-sponsored prayer was unconstitutional (went against the constitution) because it violated the Establishment Clause.

Source A: Photograph of "Texan School Class in Prayer" (June 27, 1962)[1]

Source A Information: This photo shows students praying in a classroom in San Antonio, TX, on June 27, 1962. (Source: Bettmann via Getty Images)

Questions to Consider for Source A:

1. **Observe:** What is the setting in this picture? What else do you notice?
2. **Reflect:** What is happening in this image? What is significant about the date this photo was taken? Consider the religious beliefs of those who sued the school board. How does this source relate to the Free Exercise and Establishment Clauses?
3. **Question:** Write at least one question you still wonder about this source.

Bible Reading in Schools

A Pennsylvania law required Bible reading in public schools. Edward Schempp, on behalf of his children, sued to stop enforcement of the law. Schempp argued that the law violated the First Amendment's Establishment Clause.

The case, *Abington School District v. Schempp* (1963), made its way to the U.S. Supreme Court. There, it was joined with a case from Maryland in which a city rule required students to read the Bible and say the Lord's Prayer (a Christian prayer) in a public school.

The Supreme Court ruled that conducting Bible readings and reciting the Lord's Prayer in public schools violated the Establishment Clause.

Source B: "8-to-1 Decision Bans Forced Bible Reading," *The Evening Star*[2]

8-to-1 Decision Bans Forced Bible Reading

Justices Agree Study of Religion Is Constitutional

By DANA BULLEN
Star Staff Writer

The Supreme Court ruled today that required use of the Bible and the Lord's Prayer in public schools was an unconstitutional breach in the wall separating church and state.

Justice Clark, who delivered the 8-1 decision, said such religious practices violate a constitutional requirement that the state be completely "neutral" in its approach to religious matters.

He said the Bible "is worthy of study for its literary and historic qualities" and study of the Bible or of religion, when presented objectively in a secular educational program may be done without violating the First Amendment.

Justice Stewart, who filed the only dissenting opinion, said he could not agree that on the basis of the records in the cases that the clause of the First Amendment prohibiting the establishment of religion "has necessarily been violated." He said the cases should be returned to lower courts for taking of additional evidence.

Concurring Opinions

Justices Douglas, Goldberg and Brennan each filed separate opinions agreeing with the majority ruling. Justice Black, who wrote last June's opinion striking down the use of a State-composed prayer in New York, made no individual statement today.

The court's action today reversed a Maryland court that upheld school Bible reading and recitation of the Lord's Prayer. It affirmed a ruling of a Federal court in Pennsylvania barring similar religious exercises.

Writing for the court, Justice Clark said the history of the First Amendment and Supreme Court decisions interpreting it required a ruling that the practices in today's cases "and the laws requiring them" are unconstitutional under the establishment clause, as applied to States through the Fourteenth Amendment.

Source B Information: This news article, written by Dana Bullen, appeared in the *Evening Star on* June 17, 1963, after the Court announced its decision in *Abington School District v. Schempp.* The *Star* was a Washington, DC-based daily newspaper that ran from 1852 until 1981. (See source at Library of Congress.)

Glossary of key terms from the source:

- *affirmed:* confirmed that the decision of the lower court was correct
- *breach:* break
- *concurring opinion:* written explanation of a decision when a justice agrees with the result of a case, but for a different reason than the majority
- *dissenting opinion:* written explanation of a decision by the justices who disagree with the majority's decision
- *justices:* the name for judges who sit on the Supreme Court
- *neutral: n*ot on one side or another
- *objectively:* in a neutral way
- *ruled:* decided, issued a ruling or decision
- *secular:* not religious
- *upheld:* confirmed

Questions to Consider for Source B:

1. **Observe:** What two important facts do you learn about the decision in the title and subtitle? What else do you notice about the article?
2. **Reflect:** What was the Supreme Court's ruling? Do you think the author of this article has an opinion about the case? Explain why or why not. What issues do Justices Clark and Stewart disagree about? How does this source relate to the Free Exercise Clause and/or Establishment Clause?
3. **Question:** Write at least one question you still wonder about this source.

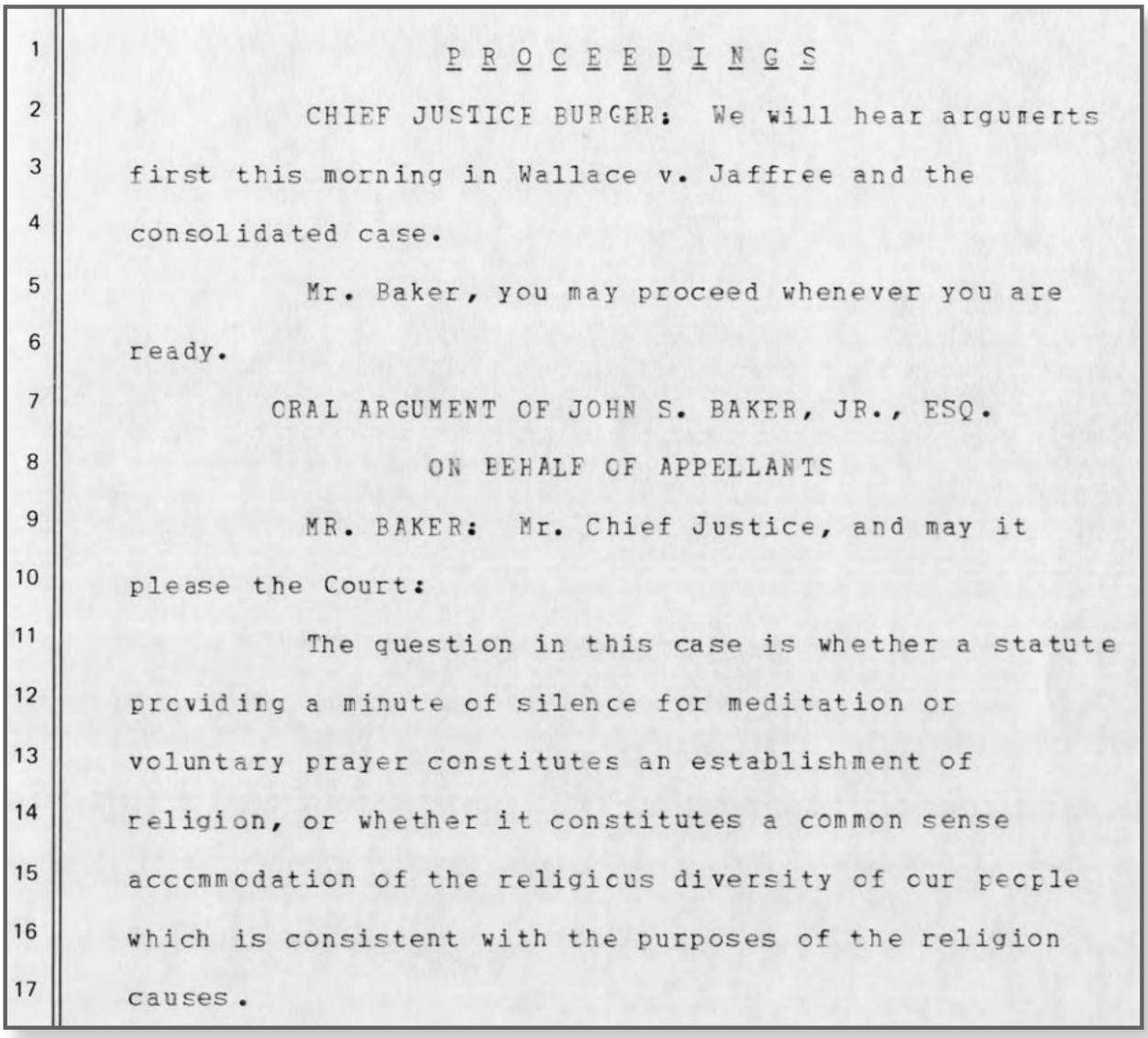
Moments of Silence

Alabama enacted a law that mandated (required) schools to observe a daily moment of silence that students could choose to use for meditation or voluntary prayer.

Ishmael Jaffree, the father of three children who attended public schools in Alabama, challenged the law, citing that it violated the First Amendment's Establishment Clause.

The case, *Wallace v. Jaffree* (1985), went to the U.S. Supreme Court. The Court ruled that the Alabama law lacked any non-religious purpose and was enacted as a way of establishing and endorsing (supporting) religion in public schools. The majority explained that since voluntary prayer was stated specifically in the law as a possible use of the time, it was clear that law was an effort to restore prayer in public schools. Therefore, the law violated the First Amendment's Establishment Clause.

Source C: Official transcript of oral argument in *Wallace v. Jaffree* (1985)[3]



P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments first this morning in Wallace v. Jaffree and the consolidated case.

Mr. Baker, you may proceed whenever you are ready.

ORAL ARGUMENT OF JOHN S. BAKER, JR., ESQ.

ON BEHALF OF APPELLANTS

MR. BAKER: Mr. Chief Justice, and may it please the Court:

The question in this case is whether a statute providing a minute of silence for meditation or voluntary prayer constitutes an establishment of religion, or whether it constitutes a common sense accommodation of the religious diversity of our people which is consistent with the purposes of the religion causes.

Source C Information: This source is excerpted from the original, official transcript of "*George C. Wallace, Governor of Alabama, et al., appellants v. Ishmael Jaffree, et. al.; and Douglas T. Smith, et al., appellants v. Ishmael Jaffree, et al.*" It is dated December 4, 1984 and was kept in the library of the Supreme Court of the United States before being digitized. (See source at U.S. Supreme Court.)

Glossary of key terms from the source:

- *Appellant:* a person who asks the court to reverse the decision of a lower court
- *Consolidated:* combined
- *Religion clauses:* the Establishment and Free Exercise Clauses
- *Statute:* law

Questions to Consider for Source C:

1. **Observe:** What do you notice first about the transcript (written version) of the oral argument? Why might the transcript be formatted in this way?
2. **Reflect:** How do you think Mr. Baker, the attorney for Wallace representing the school board and school officials, would answer his own question (lines 11–17 of the source)? How do you think the attorney for Jaffree (representing the students and parents), would answer this question (lines 11–17 of the source)? How does Mr. Baker's question capture the tension between the Free Exercise and Establishment Clauses?
3. **Question:** If you were a justice, what question would you ask Mr. Baker? Write at least one question you still wonder about this source.

Religious Clubs in Schools

A group of public high school students sought permission to form an extracurricular (outside of school hours) Christian club. The school's administration refused because of the First Amendment's Establishment Clause and the club's lack of a faculty sponsor. The school feared allowing the club would be seen as an endorsement of religion. The students' families sued the school for violating the Equal Access Act. This act prohibits (forbids) schools from denying students the ability to meet due to a club's religious, political, or philosophical content or speech.

The case, *Westside Community Schools v. Mergens* (1990), was decided by the U.S. Supreme Court, which ruled in favor of the students. Therefore, the school must abide by the Equal Access Act even though the club's discussions would be about religious topics.

Source D: Majority opinion in *Westside Community Schools v. Mergens* (1990)[4]

> (d) Westside's denial of respondents' request to form a religious group constitutes a denial of "equal access" to the school's limited open forum. Although the school apparently permits respondents to meet informally after school, they seek equal access in the form of official recognition, which allows clubs to be part of the student activities program and carries with it access to the school newspaper, bulletin boards, public address system, and annual Club Fair. Since denial of such recognition is based on the religious content of the meetings respondents wish to conduct within the school's limited open forum, it violates the Act.

Source D Information: This source is an excerpt from the majority opinion in *Westside Community Schools v. Mergens* (1990), written for the Court by Justice Sandra Day O'Connor. (See source at Library of Congress.)

Glossary of key terms from the source:

- *Westside:* the school board
- *respondents:* the person or group who won in the lower courts, in this case Mergens/the students
- *open forum:* government property that is open to the public for expression of ideas
- *The Act:* the Equal Access Act

Questions to Consider for Source D:

1. **Observe:** What do you notice first about the majority opinion?
2. **Reflect:** What were the students seeking in this case? What reasoning does the majority opinion give for the Court's decision? What impact might this decision have on other groups seeking to form at public schools? Do you think there are some clubs that should not be able to form at public schools? Why?
3. **Question:** Write at least one question you still wonder about this source.

Prayers at School Graduations

A principal in Providence, Rhode Island, invited a rabbi to deliver prayers at the middle-school graduation. The principal advised the rabbi that both the opening and closing prayers should be nonsectarian (no related to any particular religious group). However, the rabbi repeatedly thanked "God" and concluded as follows: "We give thanks to You, Lord, for keeping us alive, sustaining us and allowing us to reach this special, happy occasion." The parents of student Deborah Weisman sued the school for violating the First Amendment's Establishment Clause.

The case, *Lee v. Weisman* (1992), was decided by the U.S. Supreme Court, which ruled for Weisman agreeing that the school's role in planning the prayer violated the Establishment Clause. The Court explained that the school's control over the ceremonies placed both public and peer pressure on students to stand or remain silent during the prayer.

Source E: Majority opinion in *Lee v. Weisman* (1992)[5]

Our society would be less than true to its heritage if it lacked abiding concern for the values of its young people, and we acknowledge the profound belief of adherents to many faiths that there must be a place in the student's life for precepts of a morality higher even than the law we today enforce. We express no hostility to those aspirations, nor would our oath permit us to do so. A relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution. See *School Dist. of Abington, supra,* at 306 (Goldberg, J., concurring). We recognize that, at graduation time and throughout the course of the educational process, there will be instances when religious values, religious practices, and religious persons will have some interaction with the public schools and their students. See *Board of Ed. of Westside Community Schools (Dist. 66)* v. *Mergens,* 496 U. S. 226 (1990). But these matters, often questions of accommodation of religion, are not before us. The sole question presented is whether a religious exercise may be conducted at a graduation ceremony in circumstances where, as we have found, young graduates who object are induced to conform. No holding by this Court suggests that a school can persuade or compel a student to participate in a religious exercise. That is being done here, and it is forbidden by the Establishment Clause of the First Amendment.

For the reasons we have stated, the judgment of the Court of Appeals is

Affirmed.

Source E Information: This source is an excerpt from the majority opinion in *Lee v. Weisman* (1992) written for the Court by Justice Anthony Kennedy. (See source at Library of Congress.)

Glossary of key terms from the source:

- *abiding:* lasting, enduring
- *accommodation of:* making arrangements or adaptations for
- *adherents:* people who follow or support a particular person, party, religion, or set of ideas
- *affirmed:* confirmed that the decision of the lower court was correct
- *aspirations:* hopes
- *compel:* force
- *hostility:* dislike, anger, or opposition
- *induced:* persuaded, influenced
- *morality:* principles of right and wrong
- *pervasive:* widespread
- *precepts:* rules

Questions to Consider for Source E:

1. **Observe:** What do you notice first about the majority opinion?
2. **Reflect:** How does this opinion use the majority opinion in *Abington School District v. Schempp* (Source B) to help guide their decision? How are the facts in Lee v. Weisman similar to the facts in *Abington School District v. Schempp?* How are they different? How does this opinion use the majority opinion in *Westside Community Schools v. Mergens* (Source D) to help guide their decision? How are the facts in *Lee v. Weisman* similar to the facts in *Westside Community Schools v. Mergens?* How are they different?
3. **Question:** Write at least one question you still wonder about this source.

Prayers at School Events

In 1995, the Santa Fe Independent School District established a policy that would allow students to give pre-game prayers over the public address system at high school football games. Two families sued the school district, claiming that the policy violated the First Amendment's Establishment Clause. The school district claimed the prayers were students' private speech, not the school's public speech.

After the families won in the court of appeals, the school district appealed to the U.S. Supreme Court. the Supreme Court ruled that the public-school policy permitting student-led prayers at football games violated the Establishment Clause. The Court explained that because the prayers were public speech, students in attendance would perceive (view) the prayer as having the endorsement (support) of the school.

Source F: Majority opinion in *Sante Fe Independent School District v. Doe* (2000)[6]

> *Held:* The District's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause. Pp. 301–317.
>
> (a) The Court's analysis is guided by the principles endorsed in *Lee* v. *Weisman*, 505 U. S. 577. There, in concluding that a prayer delivered by a rabbi at a graduation ceremony violated the Establishment Clause, the Court held that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way that establishes a state religion or religious faith, or tends to do so, *id.*, at 587. The District argues unpersuasively that these principles are inapplicable because the policy's messages are private student speech, not public speech. The delivery of a message such as the invocation here—on school property, at school-sponsored events, over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer—is not properly characterized as "private" speech.

Source F Information: This source is an excerpt from the majority opinion in *Sante Fe Independent School District v. Doe* (2000) written for the Court by Justice David Souter. (See source at Library of Congress.)

Glossary of key terms from the source:

- *coerce:* persuade someone to do something by force or threat
- *invocation:* opening prayer
- *explicitly:* clearly spelled out
- *inapplicable:* not relevant or appropriate
- *implicitly:* without saying so directly, implied
- *pursuant to:* following, in keeping with
- *The District:* the Santa Fe Independent School District

Questions to Consider for Source F:

1. **Observe:** What do you notice first about the majority opinion?
2. **Reflect:** How does this opinion use the majority opinion in *Lee v. Weisman* (Source E) to help guide their decision? How are the facts in *Sante Fe Independent School District v. Doe* similar to the facts in *Lee v. Weisman?* How are they different? What reasoning does the majority opinion give for the Court's decision? Would you have reached the same decision the Supreme Court reached in *Sante Fe Independent School District v. Doe?* Why or why not?
3. **Question:** Write at least one question you still wonder about this source.

Inquiry Question

How do the Free Exercise Clause and Establishment Clause interact in public school settings?

Extension Inquiry Question

How should schools balance students' Free Exercise and Establishment Clause rights?

You may wish to consider the sources below:

- "First Amendment: Religion Clauses," Video, National Constitution Center
- "Relationship Between the Establishment and Free Exercise Clauses," Constitution Annotated
- "First Amendment and Public Schools," The Five Freedoms Project
- "Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools," U.S. Department of Education

Notes

[1] Texan School Class in Prayer, 6/27/1962, San Antonio, TX (Bettmann via Getty Images)

[2] Dana Bullen, "8-to-1 Decision Bans Forced Bible Reading," *The Evening Star* (Washington, DC), June 17, 1963. From Library of Congress Chronicling America, https://chroniclingamerica.loc.gov/lccn/sn83045462/1963-06-17/ed-1/seq-1/.

[3] "Official Transcript Proceedings Before the Supreme Court of the United States: *George C. Wallace, Governor of Alabama, et al., appellants v. Ishmael Jaffree, et. al.; and Douglas T. Smith, et al., appellants v. Ishmael Jaffree, et. al.,*" December 4, 1984, https://www.supremecourt.gov/pdfs/transcripts/1984/83-812_83-929_12-04-1984.pdf.

[4] *Westside Community Bd. of Ed. v. Mergens,* 496 U.S. 226 (1990). From Library of Congress U.S. Reports, https://tile.loc.gov/storage-services/service/ll/usrep/usrep496/usrep496226/usrep496226.pdf.

[5] *Lee v. Weisman,* 505 U.S. 577 (1992). From Library of Congress U.S. Reports, https://www.loc.gov/item/usrep505577/.

[6] *Santa Fe Independent School District v. Doe,* 530 U.S. 290 (2000). From Library of Congress U.S. Reports, https://tile.loc.gov/storage-services/service/ll/usrep/usrep530/usrep530290/usrep530290.pdf.