

The First Amendment and Religion in Public Schools
Prof. Belle
Final Examination – August 2011
Answer Key

Question 1 -- 30 points

(key: Lemon (3 prongs) + Allegheny County (endorsement) + Everson (busing expenses); see model answer)

A closely divided state legislature passes a law to reimburse parents for K-12 school transportation expenses. To qualify for the program, students must ride public buses. Parents submit receipts for bus tickets to the state, which sends reimbursement checks to the parents. The law expressly applies to public schools, private nonreligious schools, and private schools operated by Christian and Jewish organizations. There are a few private schools operated by other religious organizations; these make up less than 2% of all private schools in the state.

The law states that its purpose is “to support and improve education.” In the debates preceding the vote, the legislative sponsor made several statements to the effect that the law is intended to support education for all students, regardless of their religious background or beliefs, and also that supporting private religious schools is a long-standing and worthy tradition in the United States. Many religious organizations lobbied hard for the law. Also, many letters to the editor appeared in newspapers, before and after the vote. Most of the letters focused on whether the law should apply to religious schools; a few argued that the law unfairly discriminates against parents who drive their children to school, or who home-school their children.

Evaluate the law objectively under (a) the *Lemon* test and (b) the endorsement test. Ignore any ramifications of whether the private schools are profit or non-profit.

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Question 2 -- 30 points

(key: Allegheny County (endorsement) + Lee (coercion) + Van Orden/McCreary (10C); see model answer)

Under a law passed in 1955, all K-12 public schools in the state are required to display a framed, black and white, 16x20-inch poster in each classroom. The poster displays the text of the Ten Commandments as excerpted from the King James Bible, numbered I through X, and shown as if inscribed on two tablets with rounded tops. There is no specific reference to the Bible, and no explanation of the source of the text. There are no other words or designs on the poster.

As of 2008, not all classrooms actually displayed the poster, for various reasons: Some schools never received the posters or didn't receive enough for all classrooms; some teachers never put the poster up; some parents objected to the poster over the years, and either individual teachers or schools took the poster down in response to the objections; some teachers took the poster down to make room for students' artwork and projects and never bothered to put the poster back up; some posters were stolen or lost and never replaced; some posters were moved for classroom remodeling or cleaning, or some other purpose unrelated to the content of the poster, and never put back up; etc.

In 2009, a group of parents sued in state court, contending that the 1955 law violated the Establishment Clause. Applying federal law, the trial court concluded that the law failed the endorsement test. The decision was affirmed by a state court of appeal, and then by the state supreme court, which ordered removal of the remaining posters by December 31, 2011.

A group called Believers and Patriots ("B&P") have recently filed suit in federal court, contending that the state court "established a religion of non-theistic belief" by ordering the removal of the posters. B&P's complaint alleges that (1) removal of the posters would constitute an impermissible endorsement of the religion of non-theistic belief, and "create hostility against the religious history and traditions of our nation, by favoring the religion of non-theistic belief over the Judeo-Christian faith"; and (2) removal of the posters would "unfairly coerce schoolchildren to submit to the tenets of the religion of non-theistic belief."

On a motion to dismiss the B&P complaint, how will the district court likely rule? Evaluate the complaint objectively under (a) the endorsement test and (b) the "coercion" test as articulated by Justice Kennedy. Ignore Justice Scalia's alternative version of the "coercion" test. Also ignore any questions about "excessive entanglement" between government and religion. Assume that B&P has standing to file the action.

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Question 3 -- 30 points

(key: *Lemon* (3 prongs) + *Allegheny County* (endorsement) + *Edwards/Kitzmiller* (ID); see model answer)

The state legislature is holding hearings on proposed changes to the K-12 science education standards. One legislator, Senator Gantry, has introduced a bill entitled the Critical Analysis and Rational Thinking Act (“CARTA”). The preamble states:

The Legislature recognizes that rigorous and critical inquiry, as well as free and open-minded exploration of the full range of scientific thought, are essential to keep our nation at the forefront of technological and scientific discovery. The purpose of this Act is to encourage students to explore all avenues of legitimate inquiry into scientific methods and theories that are subject to continuing debate and controversy among the experts in the various fields, including the sufficiency of evidence of Darwinian mechanisms for biological origins and the possibility of intelligent design, various explanations for the increasing complexity of life forms, competing theories concerning the causes and effects of climate change, and ethical and philosophical ramifications of stem-cell research. Further, and in keeping with the United States Supreme Court’s mandate that “a variety of scientific theories about the origins of humankind” be taught “with the clear secular intent of enhancing the effectiveness of scientific instruction,” the Legislature declares that the specific, secular purpose of this Act is to enhance the effectiveness of scientific instruction in this state.

Testimony has been received from K-12 educators, teacher-parent groups, professional scientific organizations, university science professors, religious leaders, and others, mostly against the bill. Opinion polls show that the public in the state is approximately evenly divided, for and against. In media interviews, Senator Gantry has insisted that he is motivated by purely secular concerns, and that critics of CARTA misunderstand its purpose. He further insists that his own religious beliefs are irrelevant, and that accusations that he is trying to subvert the study of evolution in the biology curriculum to favor his own religious view, are nothing more than *ad hominem* attacks.

The bill is set for vote on August 31, 2011. If it passes, CARTA will go into effect on January 1, 2012. The ACLU has stated publicly that if the bill passes, it (the ACLU) will immediately file a lawsuit in federal district court on behalf of a group of parents, alleging that CARTA violates the Establishment Clause, and seeking an injunction to prevent the law from taking effect.

Evaluate the bill objectively under (a) the *Lemon* test and (b) the endorsement test. Assume that the prospective plaintiffs have standing to file the threatened ACLU action. Also assume that *Kitzmiller v. Dover Area School District* is **not** controlling authority in this jurisdiction.