The Town Tea Leaves – Holiday Displays on Municipal Property

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Link to Video: https://us02web.zoom.us/rec/play/ssDdH2xIH7dR5zy6qvins0hNmVY88yHCnu0xAKD4Yz7EJi6RLJ2X_vxfjdaHP6kduXln07Op0GskHqzHvLwmsHpaJlnVESwp?continueMode=true&x_zm_rtaid=dHLGbkCvSBKurPnWx5kNjg.1638545345522.ce377874955155f0930e963730fa1287&x_zm_rhtaid=856

- Establishment Clause – “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”
  - First Amendment of the United States Constitution
  - Does not prohibit government from recognizing its citizens’ religious practices but instead prohibits laws that establish religion
- Supreme Court Cases:
  - Lemon v Kurtzman (1971) – evaluates the government providing funding to struggling religious schools, which ultimately resulted in the Lemon test
    1) Is the primary purpose of the display secular?
    2) Is the primary effect neither promoting nor inhibiting religion? And
    3) Is there any excessive entanglement between government and religion?
  - Lynch v Donnelly (1984) – upheld municipality’s display of a nativity scene in annual Christmas display, as the municipality had a secular, non-religious purpose (celebrating Christmas) behind the display and did not create an excessive entanglement between government and religion
  - County of Allegheny v ACLU (1989) – fractured court used Lemon test to find that a nativity scene endorsed a patently Christian message, while a display of a menorah did not have a primarily religious purpose (dissent would have allowed for both)
  - Van Orden v Perry (2005) – upheld the display of Ten Commandments monument on the grounds of the Texas State Capitol
    - Legal Judgment test – not a personal judgment but rather look to the underlying purpose of the Establishment Clause
    - In this case, the display had a primarily non-religious purpose
    - As a practical matter, the monument is unlikely to be divisive
  - Town of Greece v Galloway (2014) – court found that established practice of opening board meeting with a benediction from designated clergy did not violate the Establishment Clause
American Legion v American Humanist Assn (2019) – the government may employ religious symbols and accommodate religious holidays consistent with long-standing tradition

- Issue in this case was a WWI memorial in the shape of a cross and the display of the cross on public property
- Seasonal decorations in federal building is in line with this tradition and is thus entitled to a strong presumption of constitutionality
- Declined to apply Lemon test to the memorial yet did not provide any clarification regarding as to the standards to apply

- Why are you discussing these cases?
  - Inconsistent finds over the years
  - No clear path to follow

- Town purposes:
  - Cannot evince an actual tendency to establish religion
  - Allow individuals to engage in religious expression in forums that have been created for speech (not all town forums are created equal)
  - Well-established traditions that also have a secular purpose will likely withstand constitutional scrutiny

- Seasonal Displays – Ask yourself:
  - Is it consistent with history and tradition?
  - Is this non-discriminatory?
  - Is there any secular purpose?
  - Is the town establishing religion?