

Ever since the establishment Clause <sup>1</sup> was incorporated against the states<sup>2</sup>, courts have relied on it too find a

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<sup>1</sup> U.S. Const. amend. I ("Congress shall not make any law respecting an establishment of religion.")

<sup>2</sup> See *Everson vs. Board of Education*, 330 U.S. 1, 5 (1947) (the Establishment Clause applies to the states, as well as to the federal government). Some people think such incorporation was incorrect.

See, e.g., Michael W. McConnell, **The Origins and Historical Understanding of Free Exercise of Religion**, 103 *Harvard Law Review* 1409 at 1484 (May 1990) (observing that Madison did not suggest that the Establishment Clause apply to the states); Linda Greenhouse, "The Current Court," *N.Y. Times*, February 21, 2005, A1 (she explains the belief of Judge Clarence Thomas that, though incorporation of the Free Exercise Clause may be proper, incorporation of the Establishment

range of state conduct un-constitutional.<sup>3</sup>

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Clause is not). But see Steven Bryce, **Basics of Constitutional Law** 496,

496 (2003) ("The vast majority of legal thinkers...agree with the

Court's incorporation of the Establishment Clause").

<sup>3</sup> See, *E.g.*, *Drinker v. Flagstaff School District*, 120 P.2nd 231, 236

(Ariz.Ct.App. 1995) (holding that "Supplementing parochial school

teachers' salaries with public dollars is inconsistent with the

Establishment Clause"); *ACLU v. Rollins*, 212 F. 2d 434, 447-9 (2nd

Circ. 1984) (the court held that a New York statute calling for a

moment of silence for voluntary prayer at the beginning of the public

school day violated the Establishment Clause). Cf *Sherman v. Nettles*,

145 N. W. 2d 32, at 41 (Michigan 1982) (finding that state funded

scholarships for seminary students violates a Michigan Constitutional

provisional identical to the U.S. Constitution's Establishment Clause).