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O'Connor: Separation of church, state cases toughest

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By BRUCE SMITH — [The Associated Press](#)

CHARLESTON — Issues dealing with church and state will always be among the toughest the nation's courts deal with and there's no easy test for deciding them, former U.S. Supreme Court Justice Sandra Day O'Connor said Monday.

"Religious pluralism lies at the very heart of the American political tradition and I think it remains a major concern as our country becomes ever more the home of larger and larger communities of people from widely different ethnic and religious backgrounds," the first woman appointed to the high court told a legal symposium focusing on a constitutional test she proposed in a high court ruling almost 30 years ago.

The symposium at the Charleston School of Law was sponsored by the Charleston Law Review and the Riley Institute at Furman University.

O'Connor's endorsement test proposed that a government action can violate the First Amendment's separation of church and state if a reasonable observer sees that action as either endorsing or disapproving religion. But O'Connor, who is 83 and who retired from the court in 2006, said that there is no grand unified theory for applying to such cases.

Over the years the Supreme Court has made seemingly contradictory decisions.

"While moments of silence and invocations to divine providence are ubiquitous in public settings, a law providing school children a moment of silence for personal meditation or prayer goes too far," she said. "A display on public property of a Christmas tree and a menorah is permissible but a creche standing alone violates the Constitution. State and local municipalities can erect a monument displaying the Ten Commandments – except sometimes they can't."

O'Connor, who said she would not comment on recent decisions or cases currently before the court, added the court will always have to wrestle with individual cases.

"It's going to remain one of the most difficult areas of the law and grand theories are always going to be eroded by tests of time and experience," she said. "The role of the judge is to do the best she can and do the right thing in the case that's before us - and to try to explain what we're doing in a way that teaches something for the case that is going to come next."

Earlier Monday, the board of directors of Justice At Stake based in Washington, D.C., announced that O'Connor has been named the group's honorary chairwoman. The organization describes itself as an advocacy group for fair and impartial courts.

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