

■ *Engel v. Vitale*

Date: June 25, 1962

Author: U.S. Supreme Court; Justice Hugo Black

Genre: court opinion

Summary Overview

Engel v. Vitale is a landmark Supreme Court case that addressed the issue of religion and government in public schools. The Court ruled that school-sponsored prayer, even if voluntary and non-denominational, violated the First Amendment's Establishment Clause, which prohibits government endorsement of religion.

The legal debate over the appropriateness of prayer in U.S. public schools came to a head in the 1962 case of *Engel v. Vitale*. The New York State Board of Regents had established a policy whereby each school day would begin with a short, voluntary prayer. ("Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.") During this prayer, students had the right to leave the room or remain silent without penalty. However, a group of parents objected to the recitation of a prayer in school and sued the local school board. After a state appeals court upheld the prayer, they took their objection all the way to the Supreme Court, arguing that government-sponsored prayer in schools was a violation of the Establishment Clause of the U.S. Constitution. Writing for the majority in this landmark decision, Supreme Court justice Hugo Black agreed with the parents that the government was prohibited from promoting religious activity in a public establishment, even if participation in the religious activity was optional. This case entranced the nation and unleashed widespread protests. The American Civil Liberties Union, the American Ethical Union, and the American Jewish Committee all supported the plaintiffs. The attorneys general of twenty-two states supported the defendants, asking the Supreme Court to uphold the New York appeals court decision in favor of the prayer. *Engel v. Vitale* set an important precedent for future "school prayer" cases.

Defining Moment

At the heart of the *Engel v. Vitale* case is the Establishment Clause of the First Amendment of the U.S. Constitution, which prohibits the government from making laws "respecting an establishment of religion." This clause has been a difficult one to interpret over time, and it was widely debated during the nineteenth century as an influx of Catholic immigrants challenged the role of religious education in public schools. A landmark event in this debate was the so-called Cincinnati Bible War of 1869–73, which brought the question of public religious observance to a national audience. By the 1860s, Cincinnati, Ohio, was a diverse urban center with a mix of Catholic and Protestant populations. The Protestant King James Bible was widely read in Cincinnati's public schools (and in public schools across the nation), and the city's Catholics argued that this was discriminatory, as

it was not an accepted text of their faith. In order to avoid an ongoing conflict, and to attract more Catholic students from parochial schools, the Cincinnati School Board decided to ban the institutionalized reading of the King James Bible and the singing of hymns. Widespread protests broke out in the city, with thousands gathering at Pike's Music Hall, and signatures were gathered from over ten thousand residents opposed to the ban. The ban was briefly overturned, and the King James Bible reinstated, but in 1872, the Ohio Supreme Court upheld the ban.

Another groundbreaking case originated in 1947 in New Jersey. The Supreme Court case of *Everson v. Board of Education* challenged a state law that reimbursed parents for the cost of public transportation to both public and parochial (church-run) schools. The case was brought by a taxpayer who argued that reimbursing parents with public money for any

aspect of religious education, including transportation, violated the Establishment Clause. In this case, the Supreme Court found in favor of the state, saying that the state was serving a public purpose in ensuring that its students were transported safely to schools. They argued that this service was not unlike the provision of police or municipal water services to a church. However, though the court found in favor of the state, it was more important for being the first case in which the Supreme Court applied the Establishment Clause—previously regarded as binding only on the federal government—to state law. Justice Black, who wrote the majority opinion in this case as well as in *Engel v. Vitale*, emphasized in *Everson* the need to maintain what Thomas Jefferson had described as “a wall of separation between church and state.” Where and how this wall should be erected continued to be debated in the courts after *Everson*, through several high-profile decisions in which religion in schools played a key role. In 1948’s *McCullum v. Board of Education*, the Supreme Court ruled that school time could not be taken for voluntary religious instruction. In 1952, in *Zorach v. Clauson*, however, the Supreme Court ruled that students could leave public school during part of the day for religious instruction. Thus, *Engel v. Vitale*

was not the first challenge to religion in public schools to be heard before the Supreme Court, and it would not be the last.

Author Biography

Hugo Lafayette Black was born on February 17, 1886, near Ashland, Alabama. He was the eighth child of a rural farm family and attended local schools. He attended Ashland College, which was both a high school and junior college, and enrolled in Birmingham Medical College in 1903. After a year, he switched to the University of Alabama School of Law. He was admitted to the Alabama bar in 1906. Black practiced law, both in private practice and as a public prosecutor, until 1917, when he volunteered to serve in World War I. He returned to private practice at the end of a year of service. To gain political advantage in interwar Alabama, Black joined the Ku Klux Klan in 1923, resigning two years later when he successfully ran for the U.S. Senate. In 1937, Black was appointed by President Franklin D. Roosevelt to the U.S. Supreme Court, where he served until his retirement in 1971. He died on September 25, 1971, eight days after leaving the court. He is buried at the Arlington National Cemetery in Virginia.



Historical Document

Engel v. Vitale

MR. JUSTICE BLACK delivered the opinion of the Court.

The respondent Board of Education of Union Free School District No. 9, New Hyde Park, New York, acting in its official capacity under state law, directed the School District's principal to cause the following prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day:

Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.

This daily procedure was adopted on the recommendation of the State Board of Regents, a governmental agency created by the State Constitution to which the New York Legislature has granted broad supervisory, executive, and legislative powers over the State's public school system. [n1] These state officials composed the prayer which they recommended and published as a part of their "Statement on Moral and Spiritual Training in the Schools," saying:

We believe that this Statement will be subscribed to by all men and women of good will, and we call upon all of them to aid in giving life to our program.

Shortly after the practice of reciting the Regents' prayer was adopted by the School District, the parents of ten pupils brought this action in a New York State Court insisting that use of this official prayer in the public schools was contrary to the beliefs, religions, or religious practices of both themselves and their children. Among other things, these parents challenged the constitutionality of both the state law authorizing the School District to direct the use of prayer in public schools and the School District's regulation ordering the recitation of this particular prayer on the ground that these actions of official governmental agencies violate that part of the First Amendment of the Federal Constitution which commands that "Congress shall make no law respecting an establishment of religion"—a command which was "made applicable to the State of New York by the Fourteenth Amendment of the said Constitution." The New York Court of Appeals, over the dissents of Judges Dye and Fuld, sustained an order of the lower state courts which had upheld the power of New York to use the Regents' prayer as a part of the daily procedures of its public schools so long as the schools did not compel any pupil to join in the prayer over his or his parents' objection. [n2] We granted certiorari to review

this important decision involving rights protected by the First and Fourteenth Amendments. [n3]

We think that, by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious, none of the respondents has denied this, and the trial court expressly so found:

The religious nature of prayer was recognized by Jefferson, and has been concurred in by theological writers, the United States Supreme Court, and State courts and administrative officials, including New York's Commissioner of Education. A committee of the New York Legislature has agreed.

The Board of Regents as *amicus curiae*, the respondents, and intervenors all concede the religious nature of prayer, but seek to distinguish this prayer because it is based on our spiritual heritage. . . . [n4]

The petitioners contend, among other things, that the state laws requiring or permitting use of the Regents' prayer must be struck down as a violation of the Establishment Clause because that prayer was composed by governmental officials as a part of a governmental program to further religious beliefs. For this reason, petitioners argue, the State's use of the Regents' prayer in its public school system breaches the constitutional wall of separation between Church and State. We agree with that contention, since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that, in this country, it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America. The Book of Common Prayer, which was created under governmental direction and which was approved by Acts of Parliament in 1548 and 1549, [n5] set out in minute detail the accepted form and content of prayer and other religious ceremonies to be used in the established, tax supported Church of England. [n6] The controversies over the Book and what should be its content repeatedly threatened to disrupt the peace of that country as the accepted forms of prayer in the established church changed with the views of the particular ruler that happened to be in control at the time. [n7] Powerful groups representing some of the varying religious views of the people struggled among themselves to impress their particular views upon the

Government and obtain amendments of the Book more suitable to their respective notions of how religious services should be conducted in order that the official religious establishment would advance their particular religious beliefs. [n8] Other groups, lacking the necessary political power to influence the Government on the matter, decided to leave England and its established church and seek freedom in America from England's governmentally ordained and supported religion.

It is an unfortunate fact of history that, when some of the very groups which had most strenuously opposed the established Church of England found themselves sufficiently in control of colonial governments in this country to write their own prayers into law, they passed laws making their own religion the official religion of their respective colonies.[n9] Indeed, as late as the time of the Revolutionary War, there were established churches in at least eight of the thirteen former colonies and established religions in at least four of the other five. [n10] But the successful Revolution against English political domination was shortly followed by intense opposition to the practice of establishing religion by law. This opposition crystallized rapidly into an effective political force in Virginia, where the minority religious groups such as Presbyterians, Lutherans, Quakers and Baptists had gained such strength that the adherents to the established Episcopal Church were actually a minority themselves. In 1785-1786, those opposed to the established Church, led by James Madison and Thomas Jefferson, who, though themselves not members of any of these dissenting religious groups, opposed all religious establishments by law on grounds of principle, obtained the enactment of the famous "Virginia Bill for Religious Liberty" by which all religious groups were placed on an equal footing so far as the State was concerned. [n11] Similar though less far-reaching legislation was being considered and passed in other states. [n12]

By the time of the adoption of the Constitution, our history shows that there was a widespread awareness among many Americans of the dangers of a union of Church and State. These people knew, some of them from bitter personal experience, that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services. They knew the anguish, hardship and bitter strife that could come when zealous religious groups struggled with one another to obtain the Government's stamp of approval from each King, Queen, or Protector that came to temporary power. The Constitution was intended to avert a part of this danger by leaving the government of this country in the hands of the people, rather than in the hands of any monarch. But this safeguard was not enough. Our Founders were no more willing to let the content of their prayers and their privilege of praying whenever they pleased be influenced by the ballot box than they were to let these vital matters of personal conscience depend upon the succession of monarchs. The First Amendment was added

to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say—that the people’s religions must not be subjected to the pressures of government for change each time a new political administration is elected to office. Under that Amendment’s prohibition against governmental establishment of religion, as reinforced by the provisions of the Fourteenth Amendment, government in this country, be it state or federal, is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity.

There can be no doubt that New York’s state prayer program officially establishes the religious beliefs embodied in the Regents’ prayer. The respondents’ argument to the contrary, which is largely based upon the contention that the Regents’ prayer is “nondenominational” and the fact that the program, as modified and approved by state courts, does not require all pupils to recite the prayer, but permits those who wish to do so to remain silent or be excused from the room, ignores the essential nature of the program’s constitutional defects. Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. Although these two clauses may, in certain instances, overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. [n13] That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith. [n14] The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its “unhallowed perversion” by a civil magistrate. [n15] Another purpose of the

Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand. [n16] The Founders knew that, only a few years after the Book of Common Prayer became the only accepted form of religious services in the established Church of England, an Act of Uniformity was passed to compel all Englishmen to attend those services and to make it a criminal offense to conduct or attend religious gatherings of any other kind [n17]—a law which was consistently flouted by dissenting religious groups in England and which contributed to widespread persecutions of people like John Bunyan who persisted in holding “unlawful [religious] meetings . . . to the great disturbance and distraction of the good subjects of this kingdom. . . .” [n18] And they knew that similar persecutions had received the sanction of law in several of the colonies in this country soon after the establishment of official religions in those colonies. [n19] It was in large part to get completely away from this sort of systematic religious persecution that the Founders brought into being our Nation, our Constitution, and our Bill of Rights, with its prohibition against any governmental establishment of religion. The New York laws officially prescribing the Regents’ prayer are inconsistent both with the purposes of the Establishment Clause and with the Establishment Clause itself.

It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course, could be more wrong. The history of man is inseparable from the history of religion. And perhaps it is not too much to say that, since the beginning of that history, many people have devoutly believed that “More things are wrought by prayer than this world dreams of.” It was doubtless largely due to men who believed this that there grew up a sentiment that caused men to leave the cross-currents of officially established state religions and religious persecution in Europe and come to this country filled with the hope that they could find a place in which they could pray when they pleased to the God of their faith in the language they chose. [n20] And there were men of this same faith in the power of prayer who led the fight for adoption of our Constitution and also for our Bill of Rights with the very guarantees of religious freedom that forbid the sort of governmental activity which New York has attempted here. These men knew that the First Amendment, which tried to put an end to governmental control of religion and of prayer, was not written to destroy either. They knew, rather, that it was written to quiet well justified fears which nearly all of them felt arising out of an awareness that governments of the past had shackled men’s tongues to make them speak only the religious thoughts that government wanted them to speak and to pray only to the God that government wanted them to pray to. It is neither sacrilegious nor anti-religious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance. [n21]

It is true that New York's establishment of its Regents' prayer as an officially approved religious doctrine of that State does not amount to a total establishment of one particular religious sect to the exclusion of all others—that, indeed, the governmental endorsement of that prayer seems relatively insignificant when compared to the governmental encroachments upon religion which were commonplace 200 years ago. To those who may subscribe to the view that, because the Regents' official prayer is so brief and general there can be no danger to religious freedom in its governmental establishment, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment:

[I]t is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment may force him to conform to any other establishment in all cases whatsoever? [n22]

The judgment of the Court of Appeals of New York is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

1. See New York Constitution, Art. V, § 4; New York Education Law, §§ 101, 120 et seq., 202, 214-219, 224, 245 et seq., 704, and 801 et seq.

2. 10 N.Y.2d 174, 176 N.E.2d 579. The trial court's opinion, which is reported at 18 Misc.2d 659, 191 N.Y.S.2d 453, had made it clear that the Board of Education must set up some sort of procedures to protect those who objected to reciting the prayer:

This is not to say that the rights accorded petitioners and their children under the "free exercise" clause do not mandate safeguards against such embarrassments and pressures. It is enough on this score, however, that regulations, such as were adopted by New York City's Board of Education in connection with its released time program, be adopted, making clear that neither teachers nor any other school authority may comment on participation or nonparticipation in the exercise nor suggest or require that any posture or language be used or dress be worn or be not used or not worn. Nonparticipation may take the form either of remaining silent during the exercise, or, if the parent or child so desires, of being excused entirely from the exercise. Such regulations must also make provision for those nonparticipants who are to be excused from the prayer exercise. The exact provision to be made is a matter for decision by the board, rather than the court, within the framework of constitutional requirements. Within that framework would fall a provision that

prayer participants proceed to a common assembly while nonparticipants attend other rooms, or that nonparticipants be permitted to arrive at school a few minutes late or to attend separate opening exercises, or any other method which treats with equality both participants and nonparticipants.

18 Misc.2d at 696, 191 N.Y.S.2d at 492-493. See also the opinion of the Appellate Division affirming that of the trial court, reported at 11 App.Div.2d 340, 206 N.Y.S.2d 183.

3. 368 U.S. 924.

4. 18 Misc. 2d at 671-672, 191 N.Y.S.2d at 468-469.

5. 2 & 3 Edward VI, c. 1, entitled "An Act for Uniformity of Service and Administration of the Sacraments throughout the Realm"; 3 & 4 Edward VI, c. 10, entitled "An Act for the abolishing and putting away of divers Books and Images."

6. The provisions of the various versions of the Book of Common Prayer are set out in broad outline in the *Encyclopaedia Britannica*, Vol. 18 (1957 ed.), pp. 420-423. For a more complete description, see Pullan, *The History of the Book of Common Prayer* (1900).

7. The first major revision of the Book of Common Prayer was made in 1552, during the reign of Edward VI. 5 & 6 Edward VI, c. 1. In 1553, Edward VI died and was succeeded by Mary, who abolished the Book of Common Prayer entirely. 1 Mary, c. 2. But upon the accession of Elizabeth in 1558, the Book was restored with important alterations from the form it had been given by Edward VI. 1 Elizabeth, c. 2. The resentment to this amended form of the Book was kept firmly under control during the reign of Elizabeth, but, upon her death in 1603, a petition signed by more than 1,000 Puritan ministers was presented to King James I asking for further alterations in the Book. Some alterations were made, and the Book retained substantially this form until it was completely suppressed again in 1645 as a result of the successful Puritan Revolution. Shortly after the restoration in 1660 of Charles II, the Book was again reintroduced, 13 & 14 Charles II, c. 4, and again with alterations. Rather than accept this form of the Book, some 2,000 Puritan ministers vacated their benefices. See generally Pullan, *The History of the Book of Common Prayer* (1900), pp. vii-xvi; *Encyclopaedia Britannica* (1957 ed.), Vol. 1, pp. 421-422.

8. For example, the Puritans twice attempted to modify the Book of Common Prayer, and once attempted to destroy it. The story of their struggle to modify the Book in the reign of Charles I is vividly summarized in Pullan, *History of the Book of Common Prayer*, at p. xiii:

The King actively supported those members of the Church of England who were anxious to vindicate its Catholic character and maintain the ceremonial which Elizabeth had approved. Laud, Archbishop of Canterbury, was the leader of this school. Equally resolute in his opposition to the distinctive tenets of Rome and of Geneva, he enjoyed the hatred of both Jesuit and Calvinist. He helped the Scottish bishops, who had made large concessions to the uncouth habits of Presbyterian worship, to draw up a Book of Common Prayer for Scotland. It contained a Communion Office resembling that of the book of 1549. It came into use in 1637, and met with a bitter and barbarous opposition. The vigour of the Scottish Protestants strengthened the hands of their English sympathisers. Laud and Charles were executed, Episcopacy was abolished, the use of the Book of Common Prayer was prohibited.

9. For a description of some of the laws enacted by early theocratic governments in New England, see Parrington, *Main Currents in American Thought* (1930), Vol. 1, pp. 5-50; Whipple, *Our Ancient Liberties* (1927), pp. 63-78; Wertenbaker, *The Puritan Oligarchy* (1947).

10. The Church of England was the established church of at least five colonies: Maryland, Virginia, North Carolina, South Carolina and Georgia. There seems to be some controversy as to whether that church was officially established in New York and New Jersey, but there is no doubt that it received substantial support from those States. See Cobb, *The Rise of Religious Liberty in America* (1902), pp. 338, 408. In Massachusetts, New Hampshire and Connecticut, the Congregationalist Church was officially established. In Pennsylvania and Delaware, all Christian sects were treated equally in most situations, but Catholics were discriminated against in some respects. See generally Cobb, *The Rise of Religious Liberty in America* (1902). In Rhode Island, all Protestants enjoyed equal privileges, but it is not clear whether Catholics were allowed to vote. Compare Fiske, *The Critical Period in American History* (1899), p. 76, with Cobb, *The Rise of Religious Liberty in America* (1902), pp. 437-438.

11. 12 Hening, *Statutes of Virginia* (1823), 84, entitled "An act for establishing religious freedom." The story of the events surrounding the enactment of this law was reviewed in *Everson v. Board of Education*, 330 U.S. 1, both by the Court, at pp. 11-13, and in the dissenting opinion of Mr. Justice Rutledge, at pp. 33-42. See also Fiske, *The Critical Period in American History* (1899), pp. 78-82; James, *The Struggle for Religious Liberty in Virginia* (1900); Thom, *The Struggle for Religious Freedom in Virginia: The Baptists* (1900); Cobb, *The Rise of Religious Liberty in America* (1902), pp. 74-115, 482-499.

12. See Cobb, *The Rise of Religious Liberty in America* (1902), pp. 482-509.

13. [A]ttempts to enforce by legal sanctions acts obnoxious to so great a proportion of Citizens tend to enervate the laws in general, and to slacken the

bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous?, and what may be the effect of so striking an example of impotency in the Government, on its general authority.

Memorial and Remonstrance against Religious Assessments, II Writings of Madison 183, 190.

14. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence and the patronage of its Author, and to foster in those who still reject it a suspicion that its friends are too conscious of its fallacies to trust it to its own merits. . . . [E]xperience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less, in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect point to the ages prior to its incorporation with Civil policy.

Id. at 187.

15. Memorial and Remonstrance against Religious Assessments, II Writings of Madison at 187.

16. [T]he proposed establishment is a departure from that generous policy which, offering an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. . . . Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last, in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions must view the Bill as a Beacon on our Coast, warning him to seek some other haven where liberty and philanthropy in their due extent may offer a more certain repose from his troubles.

Id. at 188.

17. 5 & 6 Edward VI, c. 1, entitled “An Act for the Uniformity of Service and Administration of Sacraments throughout the Realm.” This Act was repealed during the reign of Mary, but revived upon the accession of Elizabeth. See note 7, *supra*. The reasons which led to the enactment of this statute were set out in its preamble:

Where there hath been a very godly Order set forth by the Authority of Parliament for Common Prayer and Administration of the Sacraments to be used in the Mother Tongue within the Church of England, agreeable to the Word of God and the Primitive Church, very comfortable to all good People desiring to live in Christian Conversation, and most profitable to the Estate of this Realm, upon the which the Mercy, Favour and Blessing of Almighty God is in no wise so readily and plenteously poured as by Common Prayers, due using of the Sacraments, and often preaching of the Gospel, with the Devotion of the Hearers: (1) And yet this notwithstanding, a great Number of People in divers Parts of this Realm, following their own Sensuality, and living either without Knowledge or due Fear of God, do willfully and damnably before Almighty God abstain and refuse to come to their Parish Churches and other Places where Common Prayer, Administration of the Sacraments, and Preaching of the Word of God, is used upon Sundays and other Days ordained to be Holydays.

18. Bunyan's own account of his trial is set forth in *A Relation of the Imprisonment of Mr. John Bunyan*, reprinted in *Grace Abounding and The Pilgrim's Progress* (Brown ed.1907), at 103-132.

19. For a vivid account of some of these persecutions, see Wertenbaker, *The Puritan Oligarchy* (1947).

20. Perhaps the best example of the sort of men who came to this country for precisely that reason is Roger Williams, the founder of Rhode Island, who has been described as "the truest Christian amongst many who sincerely desired to be Christian." Parrington, *Main Currents in American Thought* (1930), Vol. 1, at p. 74. Williams, who was one of the earliest exponents of the doctrine of separation of church and state, believed that separation was necessary in order to protect the church from the danger of destruction which he thought inevitably flowed from control by even the best-intentioned civil authorities:

The unknowing zeale of Constantine and other Emperours did more hurt to Christ Jesus his Crowne and Kingdome then the raging fury of the most bloody Neroes. In the persecutions of the later, Christians were sweet and fragrant, like spice pounded and beaten in morters: But those good Emperours, persecuting some erroneous persons, Arrius, &c. and advancing the professours of some Truths of Christ (for there was no small number of Truths lost in those times) and maintaining their Religion by the materiall Sword, I say by this meanes Christianity was eclipsed, and the Professors of it fell asleep. . . .

Williams, *The Bloudy Tenent, of Persecution, for cause of Conscience*, discussed in *A Conference betweene Truth and Peace* (London, 1644), reprinted in *Narragansett Club Publications*, Vol. III, p. 184. To Williams, it

was no part of the business or competence of a civil magistrate to interfere in religious matters:

[W]hat imprudence and indiscretion is it in the most common affaires of Life, to conceive that Emperours, Kings and Rulers of the earth must not only be qualified with politicall and state abilities to make and execute such Civile Lawes which may concerne the common rights, peace and safety (which is worke and businesse, load and burthen enough for the ablest shoulders in the Commonweal), but also furnished with such Spirituall and heavenly abilities to governe the Spirituall and Christian Commonweale. . . .

Id. at 366. *See also id.* at 136-137.

21. There is, of course, nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance.

22. Memorial and Remonstrance against Religious Assessments, II Writings of Madison 183, at 185-186.



Document Analysis

The majority opinion in the case of *Engel v. Vitale* begins with a description of the prayer in question and a summary of the events leading up to the case. The prayer is recognized as part of the “Statement on Moral and Spiritual Training in the Schools” of the New York State Board of Regents, the body that oversees the state’s public school system. The Board of Regents believed that the prayer (which came to be known as the “Regents’ prayer”) would be acceptable to “all men and women of good will,” and therefore should be promoted by all public schools. The parents of ten students disagreed with the practice, however, saying that the prayer was not in line with their beliefs, and that the establishment of the prayer violated the constitutional separation of church and state. New York state courts upheld the right of schools to institute the Regents’ prayer, “so long as the schools did not compel any pupil to join in the prayer.”

Black delivers the court’s majority opinion succinctly: There is no doubt that this prayer is a religious activity, and the state of New York has established the prayer, placing it in violation of the Establishment Clause. Black points out that everyone involved in this case agrees that the prayer is religious, but the defendants argue for its appropriateness based on the nation’s “spiritual heritage.” The petitioners and the court agree, however, that it is not an appropriate role for the government to “compose official prayers for any group of the American people to recite as a part of a religious program carried on by the government.”

Black explores the early history of the United States in detail in his explanation of the court’s decision. The first settlers left their homeland in England in large part because of “governmentally composed prayers for religious services,” the Book of Common Prayer. Groups that did not have the financial and legal resources to ensure that their beliefs were represented in this official text chose to leave instead. It is ironic, says Black, that these same groups then established state religious institutions and texts in the colonies. By the time of the American Revolution, however, there was enough religious diversity, at least within broadly Protestant belief, that the founders of the new nation understood the “dangers of a union of

Church and State.” The First Amendment of the Constitution was added to make sure that the government could not “control, support or influence the kinds of prayer the American people can say,” and to avoid the kind of religious conflict that had ravaged Europe for centuries. Even if the saying of a prayer is optional, it exerts “indirect coercive pressure” on religious minorities to conform.

Black closes his opinion by arguing that the court’s decision is in no way hostile to religion or belief. The decision simply upholds the constitutional right of the American people to decide how and when they pray.

Essential Themes

Engel v. Vitale energized the nationwide debate about the role of religion, particularly Christianity, in public education. The plaintiffs in the case were harassed and received death threats and hate mail because of their case. Evangelical ministers, led by the popular evangelist Billy Graham, identified the decision as an attack on religion. Other cases soon followed that also found violations of the Establishment Clause. The following year, in the cases of *Abington v. Schempp* and *Murray v. Curlett*, the court decided that the reading of the Bible in school was unconstitutional. In 1968, in *Epperson v. Arkansas*, the Supreme Court ruled that schools could not forbid the teaching of evolution on the grounds that it contradicted the Bible.

The role of religion in public education continued to be debated in the Supreme Court for decades to come. In 1985, in *Wallace v. Jaffree*, Alabama’s law permitting schools to allot time for prayer or meditation was ruled unconstitutional. Prayer at official school functions such as graduation was ruled unconstitutional in 1992, a ban that was extended to student-led prayer in 2000.

—Bethany Groff Dorau, MA

Bibliography and Additional Reading

Green, Steven K. *The Bible, the School, and the Constitution: The Clash That Shaped Modern Church-State Doctrine*. Oxford: Oxford UP, 2012.

Hamburger, Philip. *Separation of Church and State*.
Cambridge: Harvard UP, 2002.

Hudson, David. "Plaintiff in 1962 Landmark
School-Prayer Case Reflects on His Role." *First*

Amendment Center. First Amendment Center, 26
Aug. 2005.