

## ENGEL v. VITALE

370 U.S. 421 (1962)

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 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 granted broad powers over the State's public school system. 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. The New York Court of Appeals sustained an order of the lower courts which had upheld the power of New York to use the Regents' prayer so long as the schools did not compel any pupil to join in the prayer over his or his parents' objection. We review this important decision.

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 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 petitioners contend 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 approved by Acts of Parliament in 1548 and 1549, 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. The controversies over the Book and what should be its content repeatedly threatened to disrupt the peace of that country. 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. Other groups, lacking the political power to influence the Government, decided to leave England and seek freedom in America.

It is an unfortunate fact of history that when some of the very groups which had most strenuously opposed the 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. 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.<sup>1</sup> But the successful Revolution against English domination was shortly followed by intense opposition to the practice of establishing religion by law. This opposition crystallized 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 a minority. In 1785-1786, those opposed to the established Church, led by Madison and Jefferson, obtained the enactment of the "Virginia Bill for Religious Liberty" by which all religious groups were placed on an equal footing so far as the State was concerned. Similar though less far-reaching legislation was passed in other States.

By the time of the adoption of the Constitution, 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. The Constitution was intended to avert a part of this danger by leaving the government in the hands of the people rather than in the hands of any monarch. But this safeguard was not enough. 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. Under that Amendment's prohibition against governmental establishment of religion, as reinforced by the Fourteenth Amendment, government in this

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<sup>1</sup> 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. 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. In Rhode Island all Protestants enjoyed equal privileges but it is not clear whether Catholics were allowed to vote.

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 "non-denominational" and the fact that the program 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 is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause. 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. 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. 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. 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. 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. And they knew that similar persecutions had received the sanction of law in several of the colonies soon after the establishment of official religions in those colonies. It was in large part to get 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 governmental establishment of religion.

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. 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. And there were men of this same faith in the power of prayer who led the fight for adoption of our Constitution and our Bill of Rights. 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 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 antireligious 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.<sup>2</sup>

It is true that New York's establishment of its Regents' prayer does not amount to a total establishment of one particular religious sect. To those who subscribe to the view that because the Regents' prayer is so brief and general there can be no danger to religious freedom, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment:

"It 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?"

MR. JUSTICE DOUGLAS, concurring.

The point for decision is whether the Government can constitutionally finance a religious exercise. Our system is presently honeycombed with such financing. Nevertheless, I think it is an unconstitutional undertaking whatever form it takes.

First, a word as to what this case does not involve. Plainly, our Bill of Rights would not permit a State or the Federal Government to adopt an official prayer and penalize anyone who would not utter it. This, however, is not that case, for there is no element of compulsion or coercion in New York's regulation. The respondents have adopted a regulation which provides

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<sup>2</sup> There is nothing in the decision reached here that is inconsistent with the fact that school children 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.

that "Neither teachers nor any school authority shall comment on participation or non-participation . . . nor suggest or request that any posture or language be used or dress be worn or be not used or not worn." Provision is also made for excusing children, upon written request of a parent or guardian, from the saying of the prayer or from the room in which the prayer is said. In short, the only one who need utter the prayer is the teacher; and no teacher is complaining of it.

The question presented by this case is therefore an extremely narrow one. It is whether New York oversteps the bounds when it finances a religious exercise. What New York does on the opening of its public schools is what we do when we open court. Our Crier has from the beginning announced the convening of the Court and then added "God save the United States and this Honorable Court." That utterance is a supplication, a prayer in which we, the judges, are free to join, but which we need not recite any more than the students need recite the New York prayer. What New York does on the opening of its public schools is what each House of Congress does at the opening of each day's business.

The Pledge of Allegiance, like the prayer, recognizes the existence of a Supreme Being. Since 1954 it has contained the words "one Nation *under God*, indivisible, with liberty and justice for all." The House Report recommending the addition of the words "under God" stated that those words in no way run contrary to the First Amendment but recognize "only the guidance of God in our national affairs." The Act of March 3, 1865 authorized the phrase "In God We Trust" to be placed on coins. The use of the motto on all currency and coins was directed by the Act of July 11, 1955. Moreover, by the Joint Resolution of July 30, 1956, our national motto was declared to be "In God We Trust."

In New York the teacher who leads in prayer is on the public payroll; and the time she takes seems minuscule as compared with the salaries appropriated by state legislatures and Congress for chaplains to conduct prayers in the legislative halls. Only a fraction of the teacher's time is given to reciting this 22-word prayer. Yet for me the principle is the same, no matter how briefly the prayer is said, for in each of the instances given the person praying is a public official on the public payroll, performing a religious exercise in a governmental institution. It is said that the element of coercion is inherent in the giving of this prayer. If that is true here, it is also true of the prayer with which this Court is convened, and of those that open the Congress. Few adults, let alone children, would leave while those prayers are being given. Every such audience is in a sense a "captive" audience.

At the same time I cannot say that to authorize this prayer is to establish a religion in the strictly historic meaning of those words. Yet once government finances a religious exercise it inserts a divisive influence into our communities. The New York Court said that the prayer given does not conform to all of the tenets of the Jewish, Unitarian, and Ethical Culture groups. One of the petitioners is an agnostic.

"We are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313. Under our Bill of Rights free play is given for making religion an active force in our lives. But "if a religious heaven is to be worked into the affairs of our people, it is to be done by individuals and groups, not by the Government." By reason of the First Amendment government is commanded "to have no interest in theology or ritual," for on those

matters "government must be neutral." The First Amendment leaves the Government in a position not of hostility to religion but of neutrality. The philosophy is that if government interferes in matters spiritual, it will be a divisive force. The First Amendment teaches that a government neutral in the field of religion better serves all religious interests.

My problem today would be uncomplicated but for *Everson v. Board of Education*. Mr. Justice Rutledge stated in dissent what I think is durable First Amendment philosophy:

Public money devoted to payment of religious costs brings the quest for more. It brings too the struggle of sect against sect for the larger share or for any. That is precisely the history of societies which have had an established religion and dissident groups. It is the very thing Jefferson and Madison experienced and sought to guard against. The end of such strife cannot be other than to destroy the cherished liberty. I therefore join the Court in reversing the judgment below.

MR. JUSTICE STEWART, dissenting.

The Court does not hold that New York has interfered with the free exercise of religion. For the state courts have made clear that those who object to reciting the prayer must be entirely free of any compulsion to do so. But the Court says that in permitting school children to say this prayer, the New York authorities have established "an official religion." I cannot see how an "official religion" is established by letting those who want to say a prayer say it.

The Court's historical review throws no light for me on the issue before us. Moreover, I think that the Court's task is not aided by the uncritical invocation of metaphors like the "wall of separation." What is relevant to the issue here is the history of the religious traditions of our people, reflected in countless practices of the institutions and officials of our government.

At the opening of each day's Session of this Court we stand, while one of our officials invokes the protection of God. Both the Senate and the House of Representatives open their daily Sessions with prayer. Each of our Presidents has upon assuming his Office asked the protection and help of God. In 1954 Congress added a phrase to the Pledge of Allegiance to the Flag so that it now contains the words "one Nation *under God*." In 1952 Congress enacted legislation calling upon the President each year to proclaim a National Day of Prayer. Since 1865 the words "IN GOD WE TRUST" have been impressed on our coins.

Countless similar examples could be listed, but there is no need to belabor the obvious. It was all summed up just ten years ago in a single sentence: "We are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*.

I do not believe that this Court, or the Congress, or the President has by the actions and practices I have mentioned established an "official religion" in violation of the Constitution. And I do not believe the State of New York has done so in this case. What each has done has been to recognize and to follow the deeply entrenched and highly cherished spiritual traditions of our Nation.