THE COURT, THE PUBLIC, AND SCHOOL PRAYER

Editor's Note: In a key, direction-changing ruling, the US Supreme Court decided in 1962 that the "Establishment Clause" of the First Amendment, made applicable to the states by the Fourteenth Amendment, categorically prohibited prayer in public schools. A large majority of Americans disagreed with this decision (*Engel v. Vitale* 370 US 421) when it was handed down, and a clear majority rejects it still. Now in 1992, the Court will issue a new ruling in *Lee v. Weisman*, a case which poses the immediate issue of whether the First Amendment prohibits prayer at public school graduation ceremonies. Some observers expect the Court will significantly modify *Engel* and grant greater scope for non-compulsory religious expression in public institutions and facilities.

In the pages which follow, Public Perspective prints an excerpt from the *Engel* ruling and a critical assessment of the ruling by Gary Bauer. And, in six pages here and in the Public Opinion Report, we review three decades of poll findings on the public's judgments.

ENGEL v VITALE (1962) WHAT THE COURT SAID

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. 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 shools so long as the schools did not compel any pupil to join the prayer over his or his parents' objection.

* * * *

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 Regent's 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, 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...."

WHY *ENGEL* SHOULD BE OVERTURNED

By Gary L. Bauer

When the Supreme Court decided on June 25, 1962 to strike down a New York Board of Regents prayer as unconstitutional, it set in motion a long march through major American institutions, a march that would leave many casualties along the way as it sought to extirpate not only religious expression, but in many cases, the values that derive from religious belief.

Justice Potter Stewart was the lone dissenter from the Court's opinion in *Engel v. Vitale*. He wrote that "the Court has misapplied a great constitutional principle. I cannot see how an 'official religion' is established by letting those who want to say a prayer say it. On the contrary I think that to deny the wish of these school children to join in reciting this prayer is to deny them the opportunity of sharing in the spritual heritage of our Nation." Justice Stewart was to point out that we do not approach "neutrality" toward religion when we teach nothing about it. We teach most eloquently that it is not important, that it has no meaningful role in deciding many of life's most pressing dilemmas.

While the Court has claimed that neutrality is its goal, there has been no neutrality. Instead, we have seen a "Thirty Years' War" to drive religion out of schools and textbooks. Time reported last fall that this wave of intolerance has led to scores of incidents in our public schools, which communicate to impressionable children—most of them *compelled by law* to be in the classroom—a fastidious disdain for religion.[1] In a second grade class in the Midwest, Time reported, one teacher actually ordered her pupils to strike out the world "God" in their textbook, explaining to them that referring to God in public schools was illegal.[2] Public school teachers have been ordered *not* to read the Bible in school, even when they did so only as supervisors of study halls. Can anyone imagine the reaction of the self-described defenders of civil liberties if a school teacher were ordered not to read *Satanic Verses*, *American Psycho*, or one of Stephen King's novels?

> *"Judge Francis J. Boyle, the Federal District Court judge in Rhode Island who ruled in* Weisman v. Lee *(728 F. Supp 68) in 1990, wrote in his decision that 'God has been ruled out of public education as an instrument of inspiration or consolation....Those who are anti-prayer have thus been deemed the victors.'"*

Paul Vitz, a professor of psychology at NYU, has done an extensive survey of the textbooks most widely used in American public schools. He found that American and world history textbooks had "washed out" references to religion for long periods of American history. Modern Protestantism, especially Evangelical Christianity, was virtually unmentioned.[3] Only limited references to Catholicism and Judaism appeared. Religion, when covered at all, tends to be described in foreign countries, even though Americans have historically had higher levels of religious affiliation and participation than many of the nations depicted in the texts. The young person reading these texts would be hard-pressed to know why St. Paul, St. Louis, Sacramento, Santa Fe, and Providence received their names.

In basal readers, Vitz found this washing out of religious references to be especially pronounced. Pilgrims were described in one story as "people who go on trips." They were shown giving "thanks," but no child would learn from the texts that they gave thanks to God. In a famous story by Nobel Prize-winner Isaac Bashevis Singer, a young Jewish boy in Poland gave thanks to God when he survived a blizzard. But in a reader, God was edited out. The boy thanked "goodness."

Family Research Council has been particularly concerned that the Supreme Court's 1962 ruling, as erroneous as we think it is, has been used as the pretext by militant secularists for going much farther than the Court ever intended. It has spawned a number of precedents that indicate a pervasive hostility to the religious beliefs of the American people. Even as it moved against religious free expression, the Supreme Court felt compelled to