

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 govern-

ment 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 spiritual 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 word "God" in their textbook, explaining to them that referring to God in

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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?

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

acknowledge the truth that Americans are "a religious people whose institutions presuppose a Supreme Being." But the effect of their rulings has been to expel God from the classroom. 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." He more accurately described the current state of administrative practice in American public education.

Many education reformers have noted the loss of a sense of teaching mission in our schools. But, while American students lag behind their Asian and European counterparts in their knowledge of science, literature, mathematics, and history, administrators hasten to take over core functions of the family. Child care, sex education, death and dying courses, even courses in values clarification are offered by the public schools. The case is repeatedly made by administrators that parents, churches and synagogues are failing to instruct the children in these matters and the schools therefore have no choice but to intervene.

"Intervention," in fact, is one of the key buzzwords in education circles today. And whole conferences of professional educators are routinely given over to "intervention strategies." Where some advocate "parents as teachers," the reality begins to look more like "teachers as parents." Americans have long recognized that these key questions of life and death have an inescapably religious component. It is hazardous in the extreme to openly discuss suicide, for example, in a classroom filled with impressionable teens without references to Judaism and Christianity's historic condemnation of this act. It unnecessarily deprives young people of vital information. And my former boss, Education Secretary Bill Bennett, noted, how much more meaningful it would have been to allow America's stunned and frightened schoolchildren a moment to pray when they saw the horrible explosion of the Challenger space shuttle rather than to descend upon

them with armies of psychologists and therapists.

Sandra Hanson, David Myers, and Alan Ginsburg have demonstrated that students with strong religious values are less likely to get pregnant out of wedlock and less likely to use illegal drugs.⁴ NIH psychiatrist David Larson and his colleagues have summarized research which confirms that suicide and alcohol abuse are also less likely among the religiously observant.⁵

Common sense knows what research shows: The state may have no secular interest in advancing religion, but it certainly has a vital interest in combatting various unhealthy behaviors. It is illogical, therefore, when we know that religious belief and practice can significantly reduce the public costs and private griefs of millions of young people, for the government to actively discourage and disparage religion in American life.

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Family Research Council has submitted amicus curiae briefs to the US Supreme Court in *Lee v. Weisman*. In that case, a Rhode Island school district was sued for allowing local clergymen to offer prayers of benediction at a public middle school graduation. In this instance, it is instructive to note that Rhode Island has the highest percentage of Roman Catholics of any state, yet the school district made a good faith effort to invite a diverse group of clergy to participate. In *Lee*, secularists challenged even the non-denominational prayer of a community rabbi. It is no wonder that so many young Americans perceive that their beliefs and values are being held up to public scorn. One high school student testified before the

Senate Judiciary Committee in 1984: "We have been taught that the Constitution guarantees us freedom of speech. But we feel that here we have been discriminated against, because we can picket, we can demonstrate, we can curse, we can take God's name in vain, but we cannot voluntarily get together and talk about God on any part of our campus, inside or out of school."⁶

Eight years later, even after the important passage of the Equal Access Law, students frequently find it difficult to meet on school property to pray, to offer fellowship and support to fellow believers. How much better a country this would be if would-be drug pushers and violent criminals found our schools hostile territory.

Happily, the rule of *Engel v. Vitale* and the unworkable *Lemon v. Kurtzman* [403 U.S. 602 (1971)] may be about to end. Strong indications are that the Supreme Court will attempt a greater accommodation of religious free expression when it decides *Lee v. Weisman* later this year. If the Court does restore essential elements of our religious liberty, it will be following not only a better line of constitutional interpretation, it will be listening to what Lincoln called "the better angels of our nature."

As usual, the American people are way ahead of their leaders. Americans have never taken the rule of *Engel* to heart. For three decades, Americans have supported the right of religious free expression in our schools. This remarkable strength and continuity suggests powerfully that it is not in institutions, or even in constitutions, that our liberties are most secure. Rather, as Jefferson said, "it is in the manners and spirit of the people that a republic is preserved in vigor."

Americans, in their commonsense fashion, have noted that the same authorities who insisted on banishing prayer and expelling the Ten Commandments from our classrooms now find it necessary to install metal detectors in junior high schools. Those who shielded students from the words "Thou shalt not murder" and "Thou shalt not commit adultery"

now find it difficult to protect them from drive-by shootings and AIDS. Americans want reform of an education establishment that can offer students New Wave and New Age, but strenuously objects to their learning anything about the New Testament.

Recently, the rule of *Engel* has been explicitly defended as the only way in which non-Christian minorities can be safe in an overwhelmingly Christian country. Alan M. Dershowitz, a Harvard law professor, has tried to alarm the American Jewish community by arguing that there is a plot afoot to have government accommodate religion generally now so that government can later establish Christianity specifically. Dershowitz writes:

It is our legal status that is once again in danger. There can be no doubt that an explicit campaign is under way, by the Christian right, to establish Christianity as the official religion of America. This time the means is far more subtle than an explicit constitutional amendment. A two-step process is envisaged: the first step is to have the government 'prefer' religion over nonreligion, without expressly preferring or establishing any particular religion. This is a seductive step, especially for religious people. After all, what's wrong with a little religion? No one has ever been hurt, former president Reagan assured us, by nondenominational prayer in school or at public gatherings....

But if history is any guide, the first seductive step will inevitably push us toward the second step. Every society that officially prefers religion over nonreligion eventually selects one religion as the true or preferred or dominant one. A government that pays the religious piper tells him which requiem to play.⁷

If there was ever a possibility of establishing Christianity as the state religion in this country, that likelihood passed with the vigorous resistance of the Evangelical community two hundred years ago. That resistance culminated in the passage of the Bill of Rights. For James Madison's Baptist neighbors were no more content to have a lowest-common-denominator established church in Virginia or in America than any of us would be today. And we have happily overcome Know Nothing agitation against Catholics, an intolerant movement which Abraham Lincoln denounced with almost as much force as he denounced slavery.

We must always be concerned for the rights of minorities, including the rights of unbelievers. Our country rightly administers no religious test for office, or for school attendance. But mutual respect does not mean the majority must accede to the minority, unless a fundamental constitutional right is involved.

We probably have in the ballparks and hockey rinks of our country a happier model for civic life than we now have in our public schools. Millions of Americans voluntarily stand for the playing of our national anthem before major sporting events. When American teams play Canadian teams, most sports fans even stand for a foreign national anthem. No one is compelled. No one has been ejected for failure to stand. No one is a second class citizen because he does not observe the tradition, but neither is the majority deprived of their tradition because of the minority.

The vast majority of Americans believe that voluntary prayer should be permitted in public schools. They know that if members of Congress are permitted to hear a chaplain's prayer, the religious free expression of students should not be infringed. We do not "establish" a religion when officers of the Supreme Court cry out "God save this honorable court," and we will not establish one when young

people are freed to begin their day with voluntary prayers. To do less is to establish religious unbelief as the state credo, something never intended by the freest thinkers among our founders.

Even before the adoption of the First Amendment, President George Washington set a high tone for the conduct of the new government in his reply to the 1790 greetings of the Newport Hebrew Congregation. President Washington wrote: "[H]apply the government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens...." Washington, who added the words "So help me God" to his presidential oath, committed himself and the new government to an America "where everyone shall sit in safety under his own vine and fig tree, and there shall be none to make him afraid." We must recommit ourselves to George Washington's enlightened vision.

Endnotes

¹ Nancy Gibbs, "America's Holy War," *Time*, December 9, 1991, pp. 60-66.

² *Ibid.*, p. 60.

³ Paul C. Vitz, "Religion and Traditional Values in Public School Textbooks," *The Public Interest*, Summer 1986, pp. 79-87.

⁴ Sandra L. Hanson, David E. Myers, and Alan L. Ginsburg, "The Role of Responsibility and Knowledge in Reducing Teenage Out-of-Wedlock Childbearing," *Journal of Marriage and the Family*, May 1987, pp. 241-256.

⁵ D. B. Larson, S. S. Larson, J. Gartner, "Families, Relationships, and Health," in D. Wedding, ed., *Behavior And Medicine* (St. Louis: Mosby-Year Book, 1990), pp. 135-147.

⁶ Senate Report No. 98-357, 98th Congress, 2nd Session.

⁷ Alan M. Dershowitz, *Chutzpah* (Boston: Little Brown & Co., 1991), p. 325.

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