Government-Sponsored Prayer in the Classroom

Robert E. Riggs

During its 1984 session the United States Senate fell eleven votes short of the two-thirds majority required to endorse a constitutional amendment allowing government-sponsored prayers in public schools (S. J. Res. 1983). This was the strongest support yet accorded to one of numerous such attempts to amend the Constitution since the Supreme Court first banned a state-composed school prayer in 1962. Religious proponents have vowed to continue the fight for the amendment (Cornell 1984), and politicians are unlikely to drop the subject with polls showing 80 percent public approval of prayer in the schools (Gallup 1982, 1983). Prayer amendments have been reintroduced in the 1985 session of Congress. At the state and local level, many school districts continue to permit school-organized prayer, regardless of its constitutionality and, in some instances, in disregard of minority objections. The school prayer issue varies in intensity from time to time and from one locality to another, but, somehow, it will not go away.

School prayer has intrinsic importance for many people, but the persisting vitality of the issue springs from much broader concerns. It is rooted in pervasive frustration with a wide range of social evils that seem attributable, at least in part, to the growing secularization of American society. The challenge of traditional religious values is real enough, as are accompanying signs of social disintegration. Drug abuse, crime, alcoholism, commercialized obscenity, illegitimacy, broken marriages, fraud and corruption in business and government, heavy dependence upon government welfare — the evidence is all around us. Although causes may be complex and cures elusive, no one with a strong religious commitment is likely to doubt that things would be better if people moved closer to God. Hence the strong appeal of school prayer as both a symbol of the needed spiritual renaissance and an apparent practical step in that direction.

Mormons have not been immune to these influences. Available evidence indicates that vocal prayer in the public school classroom — generally con-

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ducted on the initiative of the teacher rather than as a matter of school district policy — is common in Utah (Provo *Herald* 1983). The Utah State Superintendent of Public Instruction, at the prodding of the American Civil Liberties Union, circulated a letter to all Utah school district superintendents in the fall of 1983 urging its discontinuance (Burningham 1983). This in turn provoked a memorandum to school superintendents from the state attorney general, insisting that the state superintendent had gone too far in proscribing prayers at graduation ceremonies and banning school facilities for any student religious activities (Wilkinson 1984). On the national level, Utah Senator Orrin G. Hatch has sponsored a constitutional amendment to authorize school-sponsored silent prayer and meditation (S.J. Res. 1984).

The issues raised by this controversy are complex and by no means one-sided in their moral, constitutional, or policy implications. I share some of the ultimate objectives of proponents of school prayer and have little doubt that the world would be better if people moved closer to God. Nevertheless, I am convinced that the school prayer movement is misconceived. Government-sponsored prayer in the classroom is unlikely either to promote spirituality or to ameliorate contemporary social problems.

This essay will examine school prayer as a constitutional problem, then confront policy issues more directly by considering what is lost or gained by promoting school-sponsored prayer. In evaluating these arguments, the reader should be aware of one thing that is *not* at issue: the right of individual school children to pray wherever they wish in any way that does not disrupt classroom order or invoke affirmative government support. No court has suggested that such individual worship and supplication are unlawful. The issue, rather, is government sponsorship of religious observance.

SCHOOL PRAYER AND CHURCH-STATE SEPARATION

Court Interpretations of the Establishment Clause

The constitutional basis for limiting government-sponsored prayer is found in the First Amendment to the Constitution, adopted in 1789 as part of the Bill of Rights. The amendment does not use the expression "separation of church and state." It simply states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Commentators usually designate the two parts of this statement as the "establishment clause" and the "free exercise" clause although, grammatically, the entire First Amendment contains only a single clause. The mention of Congress is significant because the amendment, indeed the whole Bill of Rights, was originally intended to limit the national government, not states. The statement was carefully worded to bar not only any congressional attempt to establish a national church but also any congressional interference with government-supported churches which still existed in several of the states.[1]

[1] Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, and South Carolina all gave legal preference to one religion over another, generally including support from tax revenues (Kruse 1962).

The First Amendment and other Bill of Rights guarantees have since become applicable to the states by virtue of the Fourteenth Amendment due process clause as interpreted by the U.S. Supreme Court. The Fourteenth Amendment was enacted to protect the rights of recently freed slaves by making them citizens and shielding them against repressive and discriminatory state legislation. The sweep of its language was much broader than that, however, forbidding states to "deprive any person of life, liberty, or property without due process of law" or to "deny any person within its jurisdiction the equal protection of the laws." Since the 1920s, the Supreme Court has progressively interpreted "due process" to include nearly all of the rights set forth in the Bill of Rights, thus prohibiting their infringement by states as well as the national government. The establishment clause was not specifically incorporated into the Fourteenth Amendment until the 1940s, when *Cantwell v. Connecticut*, (310 U.S. 296, 1940) (a free-exercise case) and *Everson v. Board of Education* (330 U.S. 1, 1947) confirmed that the establishment clause also applied to the states. Critics have charged that the post-Civil War amendments were never intended to affect the establishment clause, and it is true that the evidence is far from conclusive (Cord 1982, 85–101). However, its application to the states is now firmly established in Supreme Court jurisprudence and is unlikely to be dislodged by anything short of formal constitutional amendment. In addition, nearly all states have similar prohibitions in their own constitutions. The Utah Constitution, Article I, Sec. 4, uses identical constitutional language: "The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

Under present law, neither a state nor the federal government may enact legislation "respecting an establishment of religion." What that means is not totally clear. The relevant judicial decisions are all a product of the past four decades. In *Everson v. Board of Education* (330 U.S. 1, 1947)[2] the Court for the first time applied the establishment clause to action by a state and upheld a New Jersey law authorizing local school boards to pay bus fares for children attending parochial (as well as public) schools. Although no constitutional violation was found, the Court gave an expansive interpretation of establish-

[2] Legal cases are cited in the text as *Cantwell v. Connecticut* (310 U.S. 296, 1940). This refers to *Cantwell v. Connecticut* published in *United States Reports*, 310, beginning on p. 296. This series is arranged in all law libraries by year of publication, in this case 1940. S.Ct. instead of U.S. refers to *Supreme Court Reporter*. (Both series report U.S. Supreme Court decisions, but U.S. is the "official" report.) F 2nd refers to *Federal Reporter*, Second Series. This set of volumes reports decisions of United States Courts of Appeals for all eleven judicial circuits. Federal District Court decisions appear in *Federal Supplement* (F.Supp.). State court decisions like 102 Wis. 177, 44 N.W. 967 (1890) means volume 102 and page 177 of *Wisconsin Reports*, which would also be reported in its regional summary, volume 44, page 967 of *North Western Reporter*, published in 1890. There are seven judicial regions in the United States for these reporting purposes, each with its geographically designated volumes: *Atlantic Reporter* (A.), *North Eastern Reporter* (N.E.), *North Western Reporter* (N.W.), *Pacific Reporter* (P), *South Eastern Reporter* (S.E.), *Southern Reporter* (So.), and *South Western Reporter* (S.W.). Each is now into its second series, so that current cases would appear in volumes designated A.2d, N.E.2d, etc.

ment that would spell trouble for future state and local government efforts to aid religious causes:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and state." (1947, 15–16)

As the law subsequently developed,[3] the establishment clause was found to bar released time for religious instruction in public school classrooms during school hours, but not to prohibit released time for off-campus religious instruction. The Court has approved Sunday closing laws, tax exemptions for church property, prayer by a paid chaplain in a state legislature, and display of a city-sponsored Nativity scene at Christmas time along with other Christmas symbols. On the other hand, the court has invalidated laws permitting the classroom recitation of state-composed prayers, requiring verses from the Bible to be read at the opening of each public school day, requiring a copy of the Ten Commandments to be posted on public classroom walls, forbidding the teaching of humankind's evolution from lower animals, and allowing church-governing bodies to veto applications for liquor licenses within 500 feet of a church.

Parochial school financial aid cases have been particularly troublesome — in fact, almost incomprehensible — as the Court has struggled to find a constitutionally permissible accommodation of government and religion. In one such case, Justice Byron White frankly admitted that establishment clause cases had sacrificed "clarity and predictability for flexibility" (*Committee for Public Education v. Regan*, 444 U.S. 662, 1980). Thus, the Court has upheld laws[4] providing for payment of bus fares and loan of textbooks to students attending

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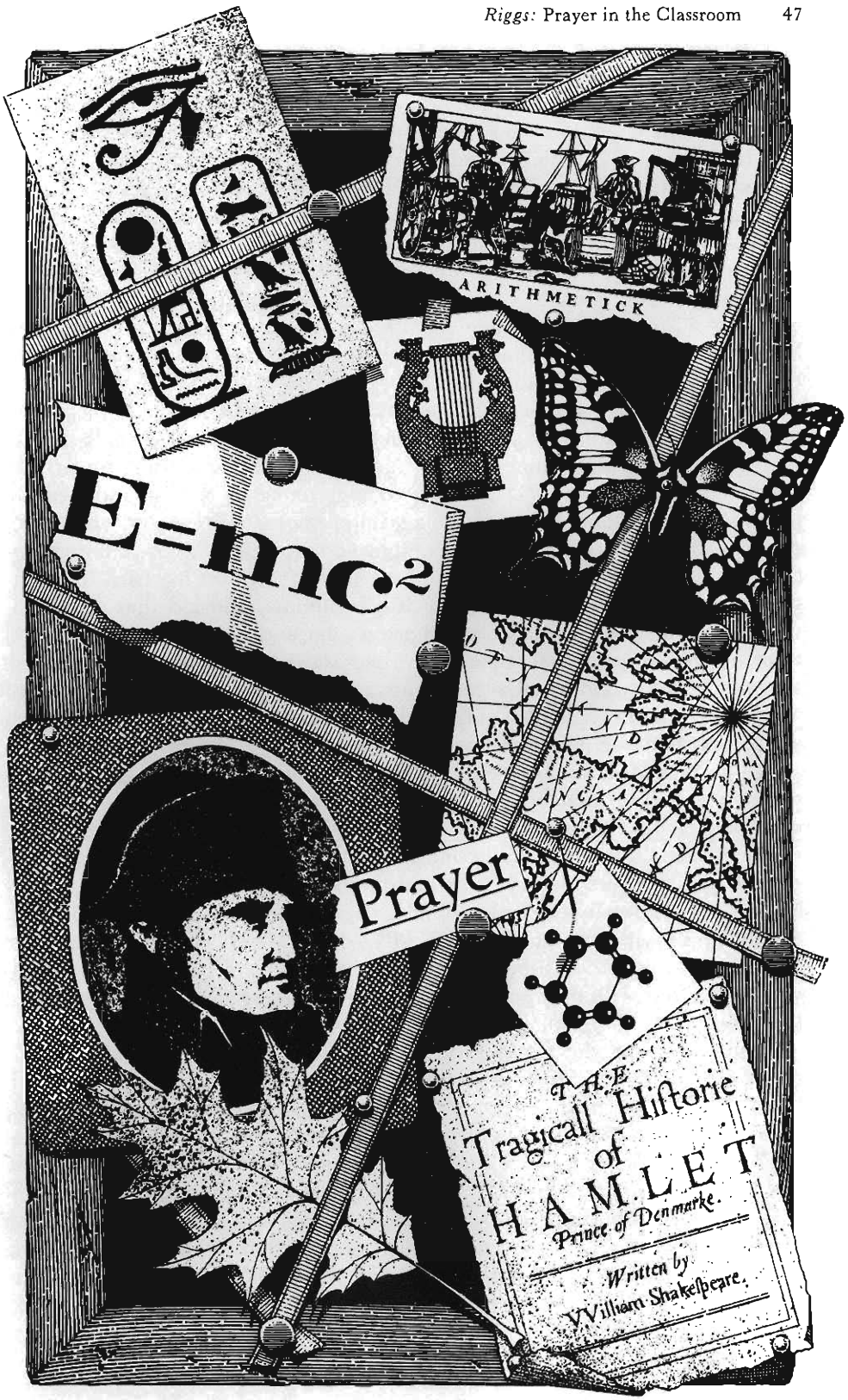
[3] *McCollum v. Board of Education*, 333 U.S. 203 (1948); *Zorach v. Clauson*, 343 U.S. 306 (1952); *McGowan v. Maryland*, 366 U.S. 420 (1961); *Walz v. Tax Commission*, 397 U.S. 664 (1970); *Marsh v. Chambers*, 103 S.Ct. 3330 (1983); *Lynch v. Donnelly*, 104 S.Ct. 1355 (1984); *Engel v. Vitale*, 370 U.S. 421 (1962); *Abington School District v. Schempp*, 374 U.S. 203 (1963); *Stone v. Graham*, 449 U.S. 39 (1980); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Larkin v. Grendel's Den, Inc.*, 454 U.S. 116 (1982).

[4] *Everson v. Board of Education*, 330 U.S. 1 (1947); *Board of Education v. Allen*, 392 U.S. 236 (1968); *Wolman v. Walter*, 433 U.S. 299 (1977); *Committee for Public Education v. Regan*, 444 U.S. 646 (1980); *Mueller v. Allen*, 103 S.Ct. 3062 (1983); *Tilton v. Richardson*, 403 U.S. 672 (1971); *Hunt v. McNair*, 413 U.S. 734 (1973); *Roemer v. Maryland Public Works Board*, 426 U.S. 736 (1980); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Levitt v. Committee for Public Education*, 413 U.S. 472 (1973); *Committee for Public Education v. Nyquist*, 413 U.S. 756 (1973); *Sloan v. Lemon*, 413 U.S. 825 (1973); *Meek v. Pittenger*, 421 U.S. 349 (1975).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parochial schools; speech and hearing diagnostic services delivered in nonpublic schools, and therapeutic, guidance, and remedial services rendered off the premises of the nonpublic schools; cash reimbursements to parochial schools for administering and grading standardized tests (but not parochial teacher-prepared tests); and tax deductions for tuition, text books, and transportation expenses incurred by parents in sending their children to (public or private) elementary and secondary schools. For church-related colleges, the Court has approved federal construction grants to finance facilities used for "secular purposes only," state issuance of revenue bonds for similar purposes, and state grants-in-aid for a variety of nonreligious educational activities. On the other hand, the Court has disallowed state supplementation of parochial school teacher salaries; reimbursement for the costs of tests mandated by the state but prepared by parochial school personnel; partial tuition reimbursement and parental tax deductions for private school expenses, and direct grants to private schools for maintenance and repair of facilities; and state funding for private school auxiliary services (counseling, testing, remedial speech and hearing therapy), instructional materials (magazines, photographs, maps, charts, recordings, films), and instructional equipment (projectors, records, lab equipment). In thus sorting the sheep from the goats, the Court has tried to distinguish between aid to education, which is legitimate, and aid that might advance religion, which is forbidden. Since secular and religious education tend to be mingled in parochial schools, such line-drawing is bound to be an uncertain process. Any aid at all arguably advances both religion and the cause of secular education. The school-aid decisions epitomize the judicial morass which establishment clause jurisprudence has become.

In dealing with establishment clause cases the Court has developed a three-part test of constitutionality. To pass muster the challenged law must survive each part of the test. As crystalized in a 1971 case, *Lemon v. Kurtzman*, the test demands: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion' " (403 US 612–13). Members of the Court have periodically voiced dissatisfaction with the test, as have students of constitutional law. But with only occasional exceptions, the *Lemon* test has been used in establishment-clause analyses for more than a decade.

Quite recently, the Court propounded a new and stricter establishment clause test for laws granting a denominational preference, as contrasted with laws affording benefit to religion in general. Laws preferring a particular religion or religions can survive only if "justified by a compelling governmental interest" and "closely fitted to further that interest." In the 1982 case, *Larson v. Valente* (456 U.S. 246–47), the Court found a Minnesota charitable contributions regulation to be just such a preference because it exempted churches receiving more than 50 percent of their contributions from members. The Supreme Court has not yet applied this rule to any other case. It is not likely to have frequent application because governments generally avoid giving express sectarian preferences. Some members of the Court did not think that

even the Minnesota law fit that description. Conceivably the new rule would apply if a state or school board prescribed a prayer taken from the liturgy of a particular denomination. Such a governmental action would, however, be unconstitutional under either test.

The School Prayer Cases

The present prayer controversy stems from the 1962 Supreme Court decision in *Engel v. Vitale* (370 U.S. 421, 1962) which banned classroom recitation of a twenty-two-word prayer composed by the New York State Board of Regents for optional use in the schools of the state. The prayer was doctrinally innocuous, with no special literary grace. It read: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country." The prayer had been composed in 1951, and not more than 10 percent of the school districts of the state ever adopted it as part of their morning exercises. *Christian Century* magazine predicted in 1952 that the prayer would "deteriorate quickly into an empty formality with little, if any, spiritual significance" ("Prayers" 1952, 35; Buzzard 1982).

Engel v. Vitale arose in Union Free District No. 9 in New Hyde Park, a New York City suburb that had adopted the regents' prayer. The Engels were among five sets of parents who objected to the prayer and eventually became plaintiffs in the case, with legal representation supplied by the American Civil Liberties Union. Vitale was the school board president. Of the five families that objected, two were Jewish, one Unitarian, one a member of the Ethical Culture Society, and one of no religious faith. The lawsuit was not popular locally, nor was it successful in the New York state courts which were concerned only that no student be compelled to participate. In the United States Supreme Court, however, a different view prevailed: the school district's early morning recitation of the regents' prayer was declared a clear violation of the establishment clause. The Court was emphatic that "it is no part of the business of government to compose official prayers for any group of the American people to recite as part of a religious program carried on by the government" (370 U.S. 425).

Less than a year later in 1963, the Court had occasion to rule on two Bible reading cases. One of the lawsuits was brought by Mr. and Mrs. Edward Schempp, Unitarian parents of a child in Philadelphia's Abington School District; the second case arose in Baltimore at the instigation of atheist Madalyn Murray O'Hair. Deciding both in a single opinion, the Court held that regular reading of verses from the Bible as a classroom exercise, like recitation of the regents' prayer, was a violation of the Constitution (374 U.S. 203).

The Supreme Court did not issue another opinion on school prayer for twenty-two years. In one intervening decision rendered in 1982, the Court struck down a state law authorizing voluntary vocal prayer by students, but the decision shed little new light because it was without benefit of oral argument, written briefs on the merits, or even a written opinion of the Court (*Karen B. v. Treen*, 102 S. Ct. 1267). On related matters the Court held that Kentucky

could not require the posting of the Ten Commandments on the wall of each public school classroom, but that Nebraska might constitutionally employ a chaplain to open each legislative day with prayer (*Stone v. Graham*, 449 U.S. 39, 1980; *Marsh v. Chambers*, 103 S. Ct. 3330, 1983).

In 1985 the Supreme Court spoke once again on school prayer, this time in response to an Alabama law prescribing a one-minute period of silence in public schools "for meditation or voluntary prayer." The law was found to violate the first prong of the *Lemon* test because it had no secular purpose (*Wallace v. Jaffree*, 105 S. Ct. 2479, 1985).[5] Three justices dissented, however, and two others who voted with the majority indicated that moment-of-silence statutes in other states might be constitutional if they did not mention prayer or convey an endorsement of prayer as the preferred alternative.

If the Supreme Court has said little on the subject since 1963, the lower courts have said a great deal, not all of it consistent.[6] Vocal prayer as part of a regular classroom exercise has at least twice been held to violate the Establishment Clause. A student-initiated prayer at the beginning of a high school assembly in Chandler, Arizona, recently failed the *Lemon* test, and a federal court in Texas found an establishment violation in the singing of a school song at athletic events and pep rallies because the words of the song constituted a supplication to Deity. Opinion on prescribed moments of silent prayer and meditation in the classroom is divided, although the trend is running strongly

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[5] *Jaffree v. Board of School Comm'rs of Mobile County*, 554 F. Supp. (Federal Supplement) 1104 (S.D. Ala. 1983), *stay granted* 103 S.Ct. 842 (1983), reviewed *sub nom.* [under the name] *Jaffree v. Wallace*, 705 F.2d 1526 (11th Cir. 1983), *rehearing denied*, 713 F.2d 614 (11th Cir. 1983), *certiorari granted*, 104 S.Ct. 1704 (1984).

[6] *Jaffree v. Wallace*, 705 F.2nd 1526 (11th Cir. 1983), *rehearing denied*, 713 F.2d 614 (11th Cir. 1983); *Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981). The federal district court in *Jaffree* found the state law upholding vocal prayer constitutional, *Jaffree v. Board of School Commissioners of Mobile County*, 554 F. Supp. 1104 (U.S. District Court, Southern District Alabama 1983), but was reversed on appeal. The same was true of *Karen B. v. Treen*. *Collins v. Chandler Unified School District*, 644 F.2d 759 (9th Cir. 1981), involved vocal prayer in a high school assembly. *Doe v. Aldine Independent School District*, 563 F. Supp. 883, 884 (S.D. Tex. 1982) forbade the singing of "Dear God, please bless our school and all it stands for. Help keep us free from sin, honest and true, courage and faith to make our school the victor. In Jesus' name we pray, Amen." *Gaines v. Anderson*, 421 F. Supp. 337 (D.C. Mass 1976) upheld the silent prayer practice. See also, Opinion of the Justices, 113 N.H. 297, 307, A.2d 558 (1973). More recent decisions ruling against silent prayer are *Jaffree v. Wallace*, 705 F.2d 1526 (11th Cir. 1983), overruling a district court decision upholding the state law; *May v. Cooperman*, 572 F.Supp. 1561 (U.S. District Court, New Jersey 1983); *Duffy v. Las Cruces Public Schools*, 557 F.Supp. 1013 (U.S. District Court, New Mexico 1983); *Beck v. McElrath*, 548 F.Supp. 1161 (U.S. District Court, Middle District Tennessee 1982). *Bennett v. Livermore Unified School District*, No. H-91312-6 (Cal. Super. Ct., Alameda County, 9 June 1983), granted a preliminary injunction prohibiting prayer at a high school graduation, but other courts have found no violation. See *Grossberg v. Deusebio*, 380 F. Supp. 285 (U.S. District Court, Eastern District Virginia 1974); *Wood v. Mt. Lebanon Township School District*, 342 F.Supp. 1293 (U.S. District Court, Western District Pennsylvania 1974); *Wiest v. Mt. Lebanon School District*, 320 A.2d 362 (Pa. 1974). *Stein v. Oshinsky*, 348 F.2d 999 (2d Cir.), *certiori denied*, 382 U.S. 957 (1965), outlawed school-sponsored prayer at lunch. The Seventh Circuit Court of Appeals, in *DeSpain v. DeKalb County Community School District*, 384 F.2d 836 (7th Cir. 1967), found a constitutional violation in the compulsory recitation of the following verse before a kindergarten morning snack: "We thank you for the flowers so sweet; We thank you for the food we eat; We thank you for the birds that sing; We thank you for everything."

against its constitutionality. Lower court opinion is likewise divided on the constitutionality of prayer at high school graduation ceremonies and use of school facilities for student religious activities conducted on private initiative without school sponsorship. School-sponsored recitation of grace before school lunch has been held a violation in the one case dealing directly with the issue. Lower courts thus have dealt with a wide range of prayer-related issues, creating rules of law for their respective geographical areas until the U.S. Supreme Court chooses to speak.[7]

Approaches to the School Prayer Problem

Many people believe that more school prayer is desirable, and one obvious way to get it is to amend the Constitution. During its 1984 session the U.S. Senate considered a number of different amendments. Senate Joint Resolution 73, which finally came to a vote, with the vigorous support of President Reagan, read: "Nothing in this Constitution shall be construed to prohibit individual or group prayer in public schools or other public institutions. No person shall be required by the United States or by any State to participate in prayer" (S.J. Res. 73). The proposed amendment received majority support on a vote of fifty-six to forty-four but failed for lack of the necessary two-thirds majority.

Other proposed amendments dealing with silent prayer, equal access to school facilities, and prayer in public buildings were considered by the Senate Judiciary Committee but did not come to a vote. If any of these amendments were to be adopted, state-sponsored prayer would undoubtedly become more common in the schools of the country. Lawsuits would not necessarily be eliminated, however, since the courts would still be entitled to interpret the new amendments.

A second approach is through legislation by Congress rather than amendment, comparatively a much easier process than formal constitutional amendment. The disadvantage is that the legislation would be subject to establishment clause limitations currently imposed by the courts. A statute would nevertheless add something important to the equation. If constitutional it would provide a uniform rule throughout the country; and if a lower federal court found it unconstitutional, the U.S. Supreme Court would almost certainly review it. During its 1984 session Congress took this approach by requiring public secondary schools receiving federal funds to permit student religious groups to meet on school premises during noninstructional time, on an equal basis with other non-curriculum-related student groups (Public Law 98–377).

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[7] Comment, "The Supreme Court, the First Amendment, and Religion in the Public Schools," *Columbia Law Review*, 63 (Jan. 1963): 73–97. Examples of court decisions are *People ex rel. Ring v. Board of Education*, 245 Ill. 334, 92 N.E. 251 (1910); *Herold Parish Board of School Directors*, 136 La. 1034, 68 So. 116 (1915); *State ex rel. Freeman v. Scheve*, 65 Neb. 853, 91 N.W. 846 (1902), *affirmed on rehearing*, 65 Neb. 876, 93 N.W. 169 (1903); *State ex rel. Finger v. Weedman*, 55 S.D. 343, 226 N.W. 348 (1929); *State ex rel. Dearle v. Frazier*, 102 Wash. 369, 173 P. 35 (1918); *State ex rel. Weiss v. District Bd.*, 76 Wis. 177, 44 N.W. 967 (1890). See Boles 1965, 108–32; Harrison 1962, 386–89).

A variant of the legislative approach is Senator Jesse Helms's 1983 proposal to eliminate federal court jurisdiction in school prayer cases (S. 784, 98th Cong., 1st Sess.). Article III gives Congress discretion to create lower federal courts and makes the appellate jurisdiction of the Supreme Court subject to "such Exceptions, and . . . such Regulations as the Congress shall make." Authorities are divided whether Article III permits withdrawing a whole subject area from judicial review; and the Supreme Court could, of course, determine the constitutionality of such legislation. Two previous challenges to congressional limitations upon the Court's appellate jurisdiction arose from Civil War reconstruction problems. The Court ruled once in favor of the legislation (*Ex Parte McCardle*, 7 Wall. 506, 1869), and once against (*United States v. Klein*, 13 Wall. 128, 1872).

A third approach, one apparently used widely throughout the United States, is to ignore Supreme Court decisions and have school prayer anyway. While this procedure can hardly be recommended as a matter of policy, the law is ambiguous. The Supreme Court has not ruled on whether an individual teacher may initiate prayer in the classroom, and the Court's 1982 ruling against state-authorized voluntary prayer was reached by a summary procedure which lacks the precedential weight of a fully considered opinion. Probably the outcome would be the same with a fully briefed and argued case, whether the prayer was initiated by the state, the school district, or the teacher. Still, the uncertainty of the law dilutes the taint of illegality that might otherwise attach to outright defiance of the law by public employees.

SCHOOL PRAYER AND LATTER-DAY SAINTS

President Kimball once observed that some political issues are "of such a nature that the Church should take an official position concerning them" (1982, 407). The Equal Rights Amendment and liquor by the drink in Utah come to mind as examples. On most political questions, however, the Church avoids institutional involvement out of the concern expressed by President Kimball "that the result would be to divert the Church from its basic mission of teaching the restored gospel of the Lord to the world." School prayer apparently falls in this second category. I was unable to find any statement of official Church policy on the subject, and a telephone call to the Church Public Communications Department, 25 September 1984, elicited the affirmation that the First Presidency has taken no position in the current school prayer controversy.

Church leaders have spoken to the subject on a few occasions, usually, however, in opposition to the school prayer decisions. In an address to Relief Society conference, October 1962, President David O. McKay declared that the U.S. Supreme Court [in *Engel v. Vitale*] had severed "the connecting cord between the public schools of the United States and the source of divine intelligence, the Creator himself" (1962, 878). Although his disapproval of the decision was obvious, his major emphasis was the responsibility of parents to train their children in the ways of truth as a shield against secular environ-

mental forces rather than attempting to reverse the Supreme Court decision. "The real tragedy in America," he said, "is not that we have permitted the Bible to slip out of our public schools, but that we have so openly neglected to teach it in either the home or the church" (1962, 879).

When the Supreme Court banned compulsory Bible reading the following June in the *Schempp* case, President McKay again expressed his disapproval:

> For a hundred years boys and girls born in America, and they who later obtained citizenship in this great country, have felt that they are "endowed by their Creator, with certain inalienable rights; that among these are: life, liberty, and the pursuit of happiness," and that these *rights are endowed by our Creator.*
>
> Recent rulings of the Supreme Court would have all reference to a Creator eliminated from our public schools and public offices.
>
> It is a sad day when the Supreme Court of the United States would discourage all reference in our schools to the influence of the phrase "divine providence" as used by our founders of the Declaration of Independence.
>
> Evidently the Supreme Court misinterprets the true meaning of the First Amendment, and are now leading a Christian nation down the road to atheism. ("President McKay," 1963)

This statement, released to the *Church News* immediately following the announcement of the decision, contained no further explanatory comment.

President McKay's remarks reflect obvious unhappiness with the school prayer and Bible-reading decisions but were not an attempt to restore government-prescribed prayer to public schools. Neither statement suggested political action, and two articles in *The Improvement Era* presented another side to the subject.

In the first, published in the September 1962 issue of the *Era*, G. Homer Durham, then president of Arizona State University, noted that "the country and the people generally seemed to judge the Supreme Court and its decision before either reading the opinion or getting the facts." He agreed with Justice Black's comment that " 'it is no part of the business of government to compose *official* prayers for any group of Americans to recite,' " but suggested that future developments which threatened the right of groups and individuals to exercise their religion freely would arouse "deeper concerns" (1962, 622).

The second article appeared in the December 1963 issue of the *Era*, some six months after President McKay's second statement. It was written by Dallin H. Oaks, then a law professor at the University of Chicago. While explicitly refusing to "debate the wisdom" of the school prayer and the Bible-reading cases, he termed them a reasonable derivation from accepted doctrines of church-state separation embodied in the First Amendment to the Constitution. The Court, as he emphasized, was not being hostile to prayer or religion but only to state-required and state-authored prayer, and to government sponsorship of religion (1963: 1048–50, 1134–36).

Church periodical indexes revealed no subsequent statement on the subject by President McKay, but a 1967 issue of the *Era* presented the views of Latter-day Saint members of Congress on the question, "How do you feel about the Supreme Court decisions on school prayer?" Of the five who responded, four spoke with approval and one was critical ("Era Asks," 1967, 24–29). One

further reference to school prayer in a Church publication was Elder Ezra Taft Benson's address to the October 1970 General Conference, which referred to the Supreme Court's "tragic prayer decision" and quoted President McKay's earlier critical comments on it (1970, 49).

A brief allusion to school prayer by President Kimball was also found. It appeared in a public address to a meeting in San Diego, 2 December 1978, held in connection with Brigham Young University's participation in the first Holiday Bowl football game. As reported in *The Teachings of Spencer W. Kimball*, he said,

> It is a real travesty today when we hear the voices of the Godless, and the anti-Christ who would deny us the right of public expression of our worship of the Master. First they moved against the long-established institution of prayer in our public schools. They would remove any vestige of Christianity or worship of the Savior of mankind in our public gatherings; they would remove the long-established tradition of prayer in our Congress, remove the "In God We Trust" insignia from our nation's emblems and seals and from our national coins. (1982, 411–12)

This passage was a small excerpt from a talk entitled, "Putting Christ Back into Christmas" and, like the earlier pronouncements by President McKay, seemed more a warning of evil forces in society than a call to political action. The *Church News*, 30 December 1978, p. 5, reported President Kimball's talk but did not mention school prayer.

Taken as a whole, do these statements by Church leaders constitute a Mormon position on school prayer? In a broad sense, they probably suggest that Church members should be concerned about influences in our society and schools that threaten religious values. They also suggest that prayer can have a legitimate place in public schools. But they do not suggest what that place may be or what should be done about it. Church authorities have never addressed the relative merits of vocal prayer or silent prayer in school classrooms, prayer by individuals or groups, voluntary prayer or prayer mandated by government, or the efficacy of reciting prayers composed by the state, the school board, the teacher or the individual student. They have not urged any particular course of legal or political action, nor have they in any significant way participated in the public debate on specific issues raised by school prayer. This, presumably, reflects a Church policy of leaving members to make such judgments for themselves, consistent with gospel principles and individual appraisal of the facts. Reasonable people, including reasonable Latter-day Saints, may arrive at different positions on school prayer, but that in itself seems consistent with the statements that Church leaders have made — and perhaps of equal significance — have not made.

SCHOOL PRAYER: AN APPRAISAL

The desirability of more school prayer may well depend on what we are talking about. Different issues are raised by the different types of proposals that have been before Congress — state-sponsored vocal prayer, state-sponsored silent prayer and meditation, and equal rights of student religious groups to use school facilities. A sensible analysis requires that each be treated separately.

State-Sponsored Vocal Prayer

Vocal prayer as a regular religious observance in public school classrooms is the alternative supported by President Reagan and preferred by most of the groups urging adoption of a school-prayer amendment to the Constitution. History is an important part of their argument. In the President's words, the amendment is intended to "restore the simple freedom of our citizens to offer prayer in our public schools and institutions." In a similar vein, Edward C. Schmults, U.S. Deputy Attorney General, told a Senate committee that the amendment would "restore prayer to a place in public life consistent with the the Nation's heritage and . . . accurately reflect the historical background of the Establishment Clause" (Department of Justice, 3–5). He also thought the amendment necessary to avoid conveying to students "the misguided message that religion is not of high importance in our society," to vindicate the free exercise rights of those who wish to have prayer, and to allow "decisions of essentially local concern to be made by states and localities rather than the federal judiciary."

In earlier Senate hearings, Rabbi Seymour Siegel of the Jewish Theological Seminary of America argued that schools should teach prayer, just as they teach any other useful subject. If schools teach driver education, sex education, physical education, and family education, they "should also be concerned with the skill so indispensable to human growth — the art and power of prayer" (Senate 1982, 68). Others expressed concern that school prayer is needed as an antidote to "secular humanism" in the public schools (Senate 1982, 72).

Many people in these same hearings expressed convictions that state-sponsored school prayer can promote constructive moral and social values and instill a love of God in school children (Senate 1982, 103, 157–58). Nearly all supporters of school prayer insist that no dissenter's rights would be infringed since no one would be required to participate, and objecting students could be excused from the prayer exercise (Department of Justice 1983, 5).

Primary support for the prayer amendment has come from fundamentalist Protestant groups, and from conservative political organizations such as the Moral Majority (Rev. Jerry Falwell), the Conservative Caucus (Howard Phillips), and the Eagle Forum (Phyllis Schlafly). Most mainline Protestant churches, most Jewish groups, the major national organizations of school teachers and administrators, and the American Civil Liberties Union and various other liberal groups are opposed. The sides are by no means cleanly divided along conservative-liberal lines, however (Thompson 1983, 679–82). Some religious leaders of impeccably conservative credentials have expressed strong reservations about officially endorsed school prayer (Buzzard 1982, 130).

There is obviously more to the issue than a clear-cut struggle between good and evil, or between religion and the forces of anti-religion. Perhaps the opposition of atheist Madalyn Murray O'Hair can be explained by President Reagan's broad-brush reference to those who would "expel God from our children's class rooms" (*Weekly Compilation* 1982, 1178). But certainly it cannot account for the many thoughtful, deeply religious people who oppose

government-sponsored prayer in the schools. When the issue is scrutinized closely the case for school prayer becomes far from self-evident.

The historical argument for prayer in the schools is perhaps easiest to support. Yet even here, the record is mixed both as to historical practice and the intent of the Constitution's framers. Prior to the 1962 Supreme Court decision banning the Regents' Prayer, vocal prayer or Bible reading in public schools was widely but by no means universally practiced. Twenty-two states had statutes or judicial decisions officially sanctioning school prayer, but several state courts had outlawed school prayer by construing establishment clauses in state constitutions. According to a 1962 survey fewer than half the school systems in the country conducted regular Bible readings, and only about one-third required prayers to begin the school day (Laubach 1969, 32–33).

Public school religious exercises may have been satisfactory in many communities, at least to the majority, but the historical experience has not all been happy. In 1866 the Massachusetts Supreme Court approved the expulsion of a girl who refused to bow her head during school devotional exercises; Iowa witnessed a similar event in 1884, and Kansas in 1904.[8] Probably the most tragic conflict over public school religious exercises occurred in Massachusetts in 1843–44 when months of controversy over use of the Catholic version of the Bible by Catholic students in public schools erupted in rioting and violence, leaving two Catholic churches burned, several homes destroyed, and a number of persons dead (Pfeffer 1967, 436–44). More recently, Samuel Shaffer, a columnist for the *Washington Post* has recalled student taunts and occasional fist fights resulting from the refusal of Catholic students in his District of Columbia public school to recite certain portions of the Lord's Prayer, King James version (S.J.C. 1983, 293).

The framers' intent is even more ambiguous. The intent of the first Congress which drew up the Bill of Rights was to limit federal powers, not those of the states; but in that respect their intent has been superseded by that of the framers of the Fourteenth Amendment which now makes the religion clauses applicable to the states. Beyond that, it is impossible to ascertain specific intent about prayer in public schools, if only because there was no system of public education at the time. Education, as the framers knew it, was almost exclusively private.

Evidence of contemporaneous prayer is of course abundant. The Philadelphia convention of 1787 did not have public prayer during its sessions, despite Benjamin Franklin's well-known plea; but this was, as one delegate explained, because the convention had no money to pay a chaplain (Tansill 1927, 295–96). The first Congress hired a chaplain, as had the Continental Congresses before it. That same Congress also called upon President Washington to proclaim a day of public thanksgiving and prayer, and he complied (Gales 1:914–15; Cord 1982, 27–29, 241, 49–82).

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[8] *Spiller v. Inhabitants of Woburn*, 94 Mass. (12 Allen) 127 (1866); *Moore v. Monroe*, 64 Iowa 367, 20 N.W. 475 (1884); *Billard v. Board of Education*, 69 Kan. 53, 76 P. 422 (1904).

From this evidence one might extrapolate that the framers surely would have permitted state-sponsored prayer in public schools if there had been public schools. But such a conclusion does not necessarily follow. The modern Supreme Court has found prayer permissible in legislative gatherings and has not banned Thanksgiving proclamations. Even if the framers had approved public school prayer in 1789, there is no reason to assume they would approve it in the educational environment of today's pluralistic society. As one commentator has remarked, "We may well be truer to the intent of the framers if we look not to their specific intent based on their immediate circumstances but to whether, in the light of changed circumstances, a challenged practice tends to promote the type of interdependence of religion and state that the first amendment was designed to prevent" (Stone 1983, 883). And the fact remains that no specific intent to permit state-conducted religious exercises in public schools can be found in the historical record.

This brief discussion of history and framers' intent reveals that enforced devotions in public school have resulted in something less than unalloyed sweetness and light. The principal arguments against school prayer, however, are not constitutional or historical but rather moral, religious, and political. They can be subsumed under two propositions. First, it is bad public policy for schools to coerce religious observance. Second, state-sponsored, routinized school prayer is more likely to demean and trivialize religion than to promote genuine religious experience.

Even proponents of school prayer agree that no one should be coerced to participate in a religious observance. The Reagan-backed amendment specifically provides that "no person shall be required by the United States or by any State to participate in prayer." But the matter is not that simple. Legal rules with government-enforced penalties are only one form of coercion. Social pressure is another, and in some instances, it can be severe. Should a child submit to a state-imposed ritual to which he or his parents object, or should he leave the classroom and risk the stigma often applied to those who are different? In the words of one state court, "The exclusion of a pupil from [religious] exercises in which the rest of the school joins, separates him from his fellows, puts him in a class by himself, deprives him of his equality with the other pupils, subjects him to a religious stigma and places him at a disadvantage in the school" (*People ex rel. Ring v. Board of Education*, 245 Ill. 351, 92 N.E. 256, 1910). Writer Richard Cohen states the problem more in the vernacular: "There is simply nothing voluntary about it. When you're eight years old and everyone around bows their head, you bow your head. When everyone is mumbling words, you mumble words. . . . And you do this not because you want to, but because you do not want to make a spectacle of yourself" (Buzzard 1982, 86).

The situation is not hypothetical. In the 1963 case striking down the Pennsylvania Bible reading statute,

> Edward Schempp, the children's father, testified that after careful consideration he had decided that he should not have Roger or Donna excused from attendance at these morning ceremonies. . . . He said that he thought his children would be

> "labeled as 'odd balls'" before their teachers and classmates every school day; that children, like Roger's and Donna's classmates, were liable "to lump all particular religious difference[s] or religious objections [together] as 'atheism'" and that today the word "atheism" is often connected with "atheistic communism," and has "very bad" connotations, such as "un-American" or "anti-Red," with overtones of possible immorality. Mr. Schempp pointed out that due to the events of the morning exercises following in rapid succession, the Bible reading, the Lord's Prayer, the Flag Salute, and the announcements, excusing his children from the Bible reading would mean that probably they would miss hearing the announcements so important to children. He testified also that if Roger and Donna were excused from Bible reading they would have to stand in the hall outside their "homeroom" and that this carried with it the imputation of punishment for bad conduct. (*Abington School District v. Schempp*, 374 U.S. 208 n. 3, 1963)

In a society where everyone shares a single religious faith, such social pressure might not be a problem. But few communities are now that homogeneous. And absence of complaints about school prayer in a given district does not necessarily mean there is no problem. It may mean only that parents or children who are offended prefer to suffer in silence rather than do something that will invite criticism or focus public attention on their differences. Often the majority who support the religious observance are not even sensitive to the practices that offend. More than one non-LDS parent in predominantly Latter-day Saint communities has been dismayed to see his or her child fold arms while praying, a practice learned in school from LDS teachers and students but not a ritual universally followed by other Christian denominations.

Perhaps the minority should not be so thin-skinned. Constitutional guarantees of religious liberty have never been thought to remove the believer's need for moral courage when faced with opposition or ridicule from those holding different beliefs. If stigma attaches to difference, this may simply be "part of the price of being a religious nonconformist . . . which all nonconformists have to bear" (Cushman 1955, 495). Such arguments are not without merit, but they are not convincing applied to school prayer. Religious minorities have difficulty enough without government adding to their problems by increasing the price paid for being nonconformist, especially when those who pay the price are children.

But what of the rights of the majority? Should the objection of one or a few persons prevent all the rest from having school prayer if they wish it? Majorities as well as minorities have First Amendment rights, including the right to free exercise of religion. The real question, of course, is what "free exercise" does and should guarantee. As generally understood, the free exercise clause protects absolutely the right to *believe* whatever one wishes. Beyond that it prevents government from laying unreasonable burdens on religious *conduct*.[9] It does not, however, give the individual or any group the right to

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[9] *Reynolds v. United States*, 98 U.S. 164 (1878), the first major free exercise decision, held that Congress might not regulate belief but was "free to reach actions which were in violation of social duties or subversive of good order." Thus religious duty was no defense against a charge of bigamy, as applied to Mormon polygamous marriages. The Federal District Court, Utah, on 9 May 1984 reaffirmed that the religion clauses did not prevent the city of Murray, Utah, from firing a policeman because of his practice of polygamy. *Potter*

have the machinery of government marshalled in support of their religious exercise. Failure to devote a portion of the class hour to a devotional exercise can scarcely constitute an unreasonable burden on religious liberty.

Different issues are raised by the person who wishes to offer prayer in school entirely on his or her own initiative. *Silent* prayer is nowhere banned and of course should not be. But *vocal* prayer could be restricted. The free exercise clause would not protect vocal prayer that disturbs patrons in a public library, that interferes with the courtroom examination of witnesses, or that drowns out a speaker in a public meeting. Vocal prayer disruptive of classroom activities would fall in the same category. Such incidental restriction on the exercise of religion is outweighed by the government interest in preserving order in libraries, courtrooms, public meetings, and schools.

Viewing the question of state-sponsored prayer in public schools in terms of "majority" and "minority" rights points out another undesirable social consequence: it subjects states and school districts to political divisions along religious lines. In some districts, a small objecting minority may be ignored without serious political repercussions. But in a heterogeneous school district, decisions about school prayer or devotionals could well evoke serious political strife. Such religious divisions are sure to arouse hard feelings within the district and make substantive educational issues more difficult to resolve.

If school prayer is bad public policy, it can also be bad for religion. The point has been made forcefully and eloquently by thoughtful persons of faith who see state sponsorship as a blight, not a boon, to religion.

Lynn R. Buzzard, a Protestant theologian and lawyer who is presently executive director of the Christian Legal Society (a national organization of Christian lawyers), has identified some of the crucial reasons why school prayer may be bad for religion:

> Official, school-organized prayer times will almost certainly fall short of a biblical vision of prayer as confession, petition, intercession, praise, and thanksgiving. Such whistlestop prayers are poor lessons for students about what prayer means. Prayer is too sacred to be secularized or used as a political tool. . . .
>
> We also run the risk that school-organized prayers will be "used" by teachers or other government entities in ways that interfere with their spiritual character. Roger Williams was right when he insisted that there is a wall placed between the church and the state to keep the wilderness of the state from invading and destroying the garden of the church. . . .
>
> Pluralism is . . . common among students. More critically, perhaps pluralism is common among many teachers and administrative personnel who would show little sympathy for and perhaps even hostility to prayer. We do not need thoroughgoing secularists running prayer times in our schools. . . .
>
> From either a religious or political viewpoint, there is little to be gained by imposing such prayer times when significant minorities find them threatening. The gains are small compared with the alienation and divisiveness that may result. (1982, 130–32)

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v. Murray City, 585 F. Supp. 1126 (D.C. Utah, 1984). The case is currently on appeal to the U.S. Court of Appeals, 10th Circuit. In recent years, the Supreme Court has held that religious conduct, as well as belief, is protected by the First Amendment and may be restricted only on a showing that the regulation "is essential to accomplish an overriding governmental interest" *U.S. v. Lee*, 455 U.S. 257 (1982).

Consider also this comment by Nathan Dershowitz, Director of the Commission on Law and Social Action of the American Jewish Congress:

> Our opposition . . . is based fundamentally on a deep commitment to religious values and to the principle that such values must be espoused freely as an act of individual conscience. To people of all faiths, the purpose of prayer is spiritual communion with God. The home, church, and synagogue are the proper, time-honored places which provide the appropriate setting for a communion with God. There, religious yearning and the needs of the soul can find satisfaction. Mechanical recitation of prayers in public schools, particularly prayers composed by public officials with a view toward popular acceptance, degrades these true religious experiences. (S.J.C. 1982, 169–70)

Speaking to the same issue in 1963, Dallin H. Oaks (1963, 1135) gave a more even-handed appraisal but did not see school prayer as essential to achieving any of the principal objectives usually attributed to it.

> The first objective — inculcating belief in God — is primarily the province of the home and the church, and many religious people believe that it is not a proper objective of a compulsory public school system. The second objective — promoting morality — can be accomplished by the public schools in a variety of ways, of which a brief, compulsory, state-authored public prayer may be the least effective.
>
> It is the third objective — the combatting of secularism in the curriculum — that has seemed to loom largest in the thoughts of the millions who have protested the school-prayer cases. Yet if the influences of secularism do permeate teachings in our public schools — and there is evidence that they do — a one-minute state-prescribed religious ceremony at the beginning of the school day would certainly be insufficient to offset their influence.

Anecdotal evidence suggests that the concerns expressed by Buzzard, Dershowitz, and Oaks about the quality of school prayer are not altogether ill-founded. Virginia Inman, a reporter for the *Wall Street Journal*, recalls with little fondness her childhood experience with daily school devotional exercises: "For the most part, our devotional lessons were bland, unmemorable homilies that actually trivialized prayer more than they promoted it. Most students considered the daily devotional something of a joke, a sentiment of which I was acutely conscious the many times I was responsible for the lesson myself" (1982, 20).

A letter to the *Christian Science Monitor* from Miriam Stoyer Thomas, a Maine schoolteacher, describes even less edifying encounters with school prayer:

> The people who advocate the Lord's Prayer in public schools should be there just once and hear it. 20,000 times in my life I have heard the following: 1,200 to 2,000 noisy teenagers shuffle in and get seated. Some unknown, five flights down in the school office, mumbles as fast as possible: And the menu today is sloppy Joes and m-m-m (unintelligible) apples. And the football game tonight m-m-m- Our Father who art in Heaven . . . blankety, blankety, Hallowed be thy name. . . . Make ups will be Thursday in the gym . . . forgive us our debts. . . . Ice cream for sale. Get your tickets. Amen."
>
> Now if Sen. Jesse Helms or some other legislator thinks THAT adds to good Christian or Buddhist or Hindu living, let him explain. (29 April 1979, 22)

One of my colleagues at the J. Reuben Clark Law School, in terms less dramatic and overdrawn, has expressed his own disappointment with the prayer experience of his young daughter in an elementary classroom of the Alpine School District. By default and unwillingness to disappoint the teacher when no one else would volunteer, she virtually became the class chaplain for the school year. A prayer style that had once been a warm outpouring of thanks and thoughtful supplication for needed blessings had become, by the end of the year, a routinized and repetitious flow of words with little grace or feeling. This experience obviously was not unique in Utah Valley. The *Provo Herald*, 28 July 1983, p. 32, reports an interview with a Provo teacher who, as a student teacher in a class that prayed vocally, heard "the same children and the same words" each morning. "It was a meaningless repetition with only a small core of the children ever volunteering to pray." Such anecdotes do not establish that school-organized prayer always demeans prayer and stifles spiritual growth, but they show that it certainly can.

Silent Prayer and Meditation

Relevant Supreme Court precedents hold that governmental support of religion, even in the absence of denominational preference, must have a secular purpose and effect and avoid excessive government entanglement with religion. The principal case upholding a moment of silence was decided in 1976 by a federal district court in Massachusetts. There the judge concluded that a "quiet moment at the beginning of the day" might serve a legitimate educational purpose as a means of transition from playground tumult to classroom study. The primary effect was held not to be religious because it also accommodated "students who prefer to reflect upon secular matters." On the facts presented, the district court concluded that silent prayer did not require the student to confront "the cruel dilemma of either participating in a repugnant religious exercise or requesting to be excused," with possible accompanying "scorn or reproach of his classmates" (*Gaines v. Anderson*, 421 F. Supp. 342–43, 45, D. Mass. 1976).

More recent lower court decisions have been unwilling to find a secular purpose and effect. It is inherently incongruous, perhaps even disingenuous, for supporters of silent prayer and meditation to represent their intent as secular rather than religious. A 1983 federal court decision in New Jersey found the state legislature's assertion of a secular purpose (to provide a transition between nonschool activities and school work) palpably unbelievable. The judge observed sharply, "Unless one examines the statute in a total vacuum, this conclusion [that the law has a neutral secular purpose] is without rational basis" (*May v. Cooperman*, 572 F. Supp. 1561, D.N.J. 1983). He also ruled that the effect was to advance some religions and inhibit others, to stigmatize objecting minorities and to promote political controversy along religious lines.

Policy objections may be somewhat weaker when addressed to silent prayer as compared with vocal prayer, because silence has less potential for denominational preference. Even so, the federal judge in *May v. Cooperman* concluded that silent prayer provided equal prayer opportunity only to those whose

prayers could "be performed in the prescribed posture [standing or sitting]," while students whose prayers require action and/or sound are precluded from engaging in prayer during the minute of silence." The problem exists because

> the forms of prayer may differ widely. . . . In the traditional American culture silence, bowing one's head and clasping one's hands is associated with prayer. . . . Historically, however, Catholics kneeled and Jews raised their hands. Members of the Islamic faith may kneel on prayer rugs, face east and call out loud upon Allah. For Quakers silence itself is prayer. For others prayer must be vocal. With the increasing cultural and religious diversity in the United States, with traditional western religions being supplemented by adherents of and converts to eastern religions, diversity in the forms of prayer has proliferated. (pp. 1569, 1571–72)

The facts of the New Jersey case revealed that numerous people did indeed object to the practice on religious grounds and were concerned about the social reproach their children might face if they asked to be excused from the exercise. Since fewer people in a typical community are likely to object to silent prayer, the magnitude of the practical problem diminishes; but the principle seems essentially the same. The school is sponsoring a religious exercise, and dissenters must risk social ostracism to avoid participation.

Furthermore, a moment of silent prayer and meditation is unlikely to be as satisfying as vocal prayer to those who hope for moral development. Dick Dingman, legislative director of the Moral Majority, made the point crystal clear in presenting his objections to the Hatch silent-prayer amendment: "We haven't fought all these years for the right to remain silent" (Thompson 1983, 680).

At the same time, the moment of silence is still fraught with possibilities for trivializing and demeaning the reverential concept it is supposed to promote. The New Jersey school board in *May v. Cooperman* had specified a two-minute meditation period, but "by tacit agreement the period of silence was reduced in practice to 30–45 seconds" (p. 1566). Provo schoolteacher Marjorie Bradshaw tried a moment of silent prayer in her classroom but abandoned it after a few months because, as the *Provo Herald* reported, "their lack of reverence and respect for one another made the quiet time useless" (28 July 1983, p. 32). When the speculative religious value of a moment of silence is balanced against the risks of community divisiveness, offense to individual children and parents, and demeaning of religion itself, a constitutional amendment permitting governments to impose it on their children seems wholly unwarranted and undesirable.

Equal Access to School Facilities

Denying student religious groups the use of school facilities on an equal basis with other noncurricular student groups poses an issue not implicated by state-sponsored school prayer. Granting equal access to religious groups might in some sense be *state support* of religion, but failure to do so is clearly discriminatory. As a policy matter, there is no good reason for discrimination against religious groups. Religious activity is as valuable as other kinds of student activity. It is entitled to equal protection under the First Amendment.

The policy objections to school-organized prayer have no application to voluntary, privately initiated religious activity. No one is coerced by the state. No one is made part of a captive audience for a religious exercise. No one is placed by the state in a position where social pressures may conflict with the dictates of conscience. Here the prayer is truly voluntary, and worship may be meaningful because it is voluntary.

In the 1981 case of *Widmar v. Vincent* (454 U.S. 263, 1981), the Supreme Court ruled that state colleges must grant equal access to student religious groups if other student groups are also permitted to use college facilities. The decision was based on free speech rather than religious exercise grounds. The college did not have to open its facilities to any noncurricular student organizations. But once it did, the Court said, exclusion of religious speech was impermissible, content-based abridgement of First Amendment speech guarantees.

One federal district court has applied the *Widmar* rationale to public high schools, but all three Federal Courts of Appeal to consider the issue have said that access for religious groups violates the establishment clause. In two of the cases the court believed that high school students, unlike more mature college students, would perceive the grant of permission as affirmative support for religion.[10] In the other, the court found that granting permission in fact advanced religion, since other groups made little use of the facilities.[11]

Although the lower-court trend is running against the application of *Widmar* to public secondary schools, this situation still presents no current cause for constitutional amendment. Lower-court decisions are no unfailing guide to what the Supreme Court will do, and the Supreme Court has agreed to review one of the lower court cases during its 1985–86 term.[12] When the Supreme Court renders its decision, the *Widmar* doctrine of equal access might well prevail as applied to public high schools.

Conclusion

The secularization of American society, the breakdown of traditional values, and widespread evidence of social disintegration are legitimate cause for concern. So also is the condition of American education, whether viewed as an academic enterprise or as an institution for the transmission of important societal values. But problems so vast and complex are rarely susceptible to

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[10] *Bender v. Williamsport Area School District*, 563 F.Supp. 697 (M.D.Pa. 1983). The district court was reversed on appeal to the Third Circuit, however. *Bender v. Williamsport Area School Dist.*, 741 F.2d 538 (3d Cir. 1984). See also *Brandon v. Board of Education of the Guilderland Central School Dist.*, 635 F.2d 971 (2d Cir. 1980), *certiorari denied* 454 U.S. 1123, *rehearing denied* 455 U.S. 983 (1981).

[11] *Lubbock Civil Liberties Union v. Lubbock Indep. School Dist.*, 669 F.2d 1038 (5th Cir. 1982), *certiorari denied* 102 S.Ct. 800 (1983). A California state court case, *Johnson v. Huntington Beach Union High School District*, 68 Cal. App. 3d 1, 136 Cal. Rptr. 43, *certiorari denied* 434 U.S. 877 (1977), similarly held that meetings of a student Bible club during the high-school day violated both the U.S. and the California constitutions.

[12] *Bender v. Williamsport Area School Dist., review granted* 53 United States Law Week 3585 (19 Feb. 1985).

simple solutions: and that is the trouble with government-sponsored school prayer.

As embodied in much current legislation and in proposed constitutional amendments, it is little more than a symbolic gesture. It is a quick fix requiring no additional tax revenue or parental involvement. It is an attempt to solve large social problems with virtually no investment of social resources. It cannot stem the tide of secularism in the schools or in the country. It is unlikely to bring people closer to God. It has high potential to embroil religion in political conflict, and it may teach our children that prayer can be trivial. Like most other schemes to obtain great benefits at little cost, it is a delusion.

Those who want better schools and better children (and there is no guarantee of either) must be willing to pay for them. The price is paid through parental involvement with children and with their children's education. It is paid through community support — financial and moral — for the good things done in the public schools, and a willingness to work out genuine problems with patience, understanding, and good will. This is more difficult than having the teacher enforce a brief prayer moment at the beginning of the day, but the outcome is likely to be more rewarding.

REFERENCES

Benson, Ezra Taft. "Strengthening the Family." *Improvement Era* 73 (Dec. 1970): 46, 49–50. This address included several disparaging remarks about public education generally.

Boles, Donald E. *The Bible, Religion, and the Public Schools.* Ames, Iowa: Iowa State University Press, 1965.

Burningham, G. Leland. State Superintendent of Public Instruction. Memorandum to School District Superintendents. Subject: School Prayer and Other Church-Related Issues, 3 October 1983. A 29 September version made specific reference to prayer at graduation ceremonies. This reference was omitted from the 3 October version. Copy in my possession.

Buzzard, Lynn R. *Schools: They Haven't Got a Prayer.* Elgin, Ill.: David C. Cook Pub. Co., 1982. In laymen's language, Buzzard presents a thoughtful analysis of the *Engel* school prayer decision in its larger moral, political, and social setting.

Cohodas, Nadine. "Prayer Issue Engulfs Congress as Senate Embarks on Debate." *Congressional Quarterly Weekly Report* 42 (10 March 1984): 538–40.

Cord, Robert L. *Separation of Church and State: Historical Fact and Current Fiction.* New York: Lambeth Press, 1982.

Cornell, George W. "Undaunted, School Prayer Advocates Plan to Persevere." *Los Angeles Times,* 31 March 1984, sec. I-A, p. 7, col. 1.

Cushman, Robert Fairchild. "The Holy Bible and the Public Schools." *Cornell Law Quarterly* 40 (Spring 1955): 475–99.

Department of Justice, Statement of the Honorable Edward C. Schmults, Deputy Attorney General of the United States, on Proposed Constitutional Amendments Relating to School Prayer Before the Committee on the Judiciary, United States Senate, 27 June 1983. 12 pp. Transcript in my possession.

Durham, G. Homer. "The State, Prayer, and the Public Schools." *Improvement Era* 65 (Sept. 1962): 622, 667–68.

"Era Asks Seven Questions of Latter-day Saints in Congress." *Improvement Era* 70 (Oct. 1967): 24–29.

Gales, Joseph Sr., comp. *Annals of the Congress of the United States: The Debates and Proceedings in the Congress of the United States.* Washington: Gales and Seaton, 1834. References are to volume and column.

Gallup. Among respondents who had heard of the school prayer amendment, a 10 June 1982 Gallup poll showed 79 percent in favor. *The Gallup Poll: Public Opinion 1982.* Wilmington, Del.: Scholarly Resources, Inc., 1983. Pp. 121–24. An 8 Sept. 1983 Gallup Poll registered 81 percent in favor. *The Gallup Report* 217 (Oct. 1983): 17–20.

Harrison, Joseph W. "The Bible, the Constitution and Public Education." *Tennessee Law Review* 29 (Spring 1962): 363–418.

Inman, Virginia. ". . . And Raising Questions About How Schools Would Use It." *Wall Street Journal,* 22 July 1982.

Kimball, Edward L., ed., *The Teachings of Spencer W. Kimball.* Salt Lake City: Bookcraft, 1982.

Kruse, Clifton B. "The Historical Meaning and Judicial Construction of the Establishment of Religion Clause of the First Amendment." *Washburn Law Journal* 2 (1962): 94–107.

Laubach, John Herbert. *School Prayers: Congress, the Courts, and the Public.* Washington: Public Affairs Press, 1969.

McKay, David O. "Parental Responsibility." *Relief Society Magazine,* 49 (Dec. 1962): 876–81.

Meyer, Jacob C. *Church and State in Massachusetts from 1740 to 1833.* New York: Russell and Russell, 1968.

Oaks, Dallin H. "Antidotes for the School Prayer Cases." *Improvement Era* 66 (Dec. 1963): 1048–50, 1134–36.

Pfeffer, Leo. *Church, State and Freedom.* Rev. ed. Boston: Beacon Press, 1967.

"Prayers in Public Schools Opposed." *The Christian Century* 69 (9 Jan. 1952): 35.

"President McKay Comments on Ruling." *Church News,* 22 June 1963, p. 2.

Provo Herald, 28 July 1983, 25–34.

Public Law 98–377, 11 Aug. 1984, *United States Statutes at Large* 98 (1984): 1302.

Rosten, Leo, ed. *Religions in America.* New York: Simon and Schuster, 1963.

S.J.C. Senate. Judiciary Committee, *Proposed Constitutional Amendment to Permit Voluntary Prayer: Hearings Before the Committee on the Judiciary, United States Senate.* 97th Congr., 2nd Sess., on S.J. Res. 199, 29 July, 18 Aug. and 16 Sept. 1982.

S.J.Res. 73. U.S. Congress. Senate. Judiciary Committee. Resolution 73. 98th Cong., 1st Sess., 1983.

S.J.Res. 212. U.S. Congress. Senate. Judiciary Committee. 98th Cong., 2d Sess., 1984.

Stone, Geoffrey R. "In Opposition to the School Prayer Amendment." *The University of Chicago Law Review* 50 (1983): 823–48.

Tansill, Charles C., comp. "Debates in the Federal Convention of 1787 as Reported by James Madison." *Documents Illustrative of the Formation of the Union of the American States.* Washington: Government Printing Office, 1927.

Thompson, Roger. "School Prayer." *Editorial Research Reports* 2 (16 Sept. 1983): 679–95.

"Prayer." Radio Address to the Nation, 18 Sept. 1982. *Weekly Compilation of Presidential Documents* 18 (27 Sept. 1982): 1177–78.

Wilkinson, David L., Utah Attorney General. Memorandum to Utah School District Superintendents. Subject: Memorandum to you from G. Leland Burningham dated 3 Oct. 1983, re "School Prayer and Other Church-Related Issues," 24 Jan. 1984. Copy in my possession.