



## **In God We Trust: Public Schools and Religious Freedom**

Curriculum Unit 04.01.03  
by Peter N. Herndon

### **Introduction**

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“Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, ... I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between church and state.”

President Thomas Jefferson, 1802

“In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them?.... Religion itself may become a motive to persecution and oppression.”

James Madison, 1787

As my history students discuss the Bill of Rights, and specifically the First Amendment, I have found that they are often confused about the meaning of the Establishment Clause and how the concept of “separation of church and state” came about. They often ask me, “Mr. Herndon is it all right to discuss religion in a public school?” I find that there is usually a great deal of student interest in the subject of religion in schools, and also a fair amount of ignorance about what the law says on the subject. In July, 2002, the Ninth Circuit Court of Appeals in California sparked a firestorm of criticism when it ruled that the phrase “under God” which was added to the Pledge of Allegiance in 1954, was in violation of the separation of church and state and therefore

can no longer be repeated in schools. On May 17, 2004, the first of many same-sex marriages were performed in the state of Massachusetts. Much of the opposition to this practice comes from those with deeply held religious views. Controversial contemporary social issues concerning religion's proper place in public life are nothing new; they continue to provide social studies teachers with hot discussion topics. I personally believe that students need to be encouraged to discuss First Amendment issues; they should realize they have an important stake in knowing that their opinions and beliefs matter and deserve to be protected and respected. As students exchange ideas and opinions with their peers, they experience first hand the "free market place of ideas" which is so important in a civic education. Judge Oliver Wendell Holmes put it this way:

"When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas--that the best test of truth is the power of the thought to get itself accepted in the competition of the market....That at any rate is the theory of our Constitution." (dissenting opinion in *Abrams v. United States* , 1919)

To provoke student interest in the subject of religious issues in public schools, we will begin with a lesson on the issues surrounding the Pledge of Allegiance and the words "under God." According to California atheist Michael Newdow, the plaintiff in the case, "Congress never intended to force people to worship a religion that they don't believe in." When the Elk Grove Unified School District School Board refused his request to remove the pledge from the schools' daily routine, he filed a lawsuit against the school district on behalf of his second grade daughter. The Elk Grove school superintendent appealed the case to the United States Supreme Court upon learning of the 9th Circuit Court's verdict in favor of the plaintiff declaring the pledge unconstitutional. Reaction on the federal level was swift. Congress voted 416-3 condemning the decision, and the Senate was unanimous in its disapproval; the President called the ruling "ridiculous," as did many citizens around the country. The majority, it seems, had spoken its overwhelming opposition to the 9th Circuit Court's ruling. Yet, the incident raises an important question for students of history and civics. The issue is this: is it possible that nine men and women in black robes who sit on the United States Supreme Court should decide for the nation that the President, the Congress and a majority of citizens are wrong and the words "under God" must be removed under the separation of church and state doctrine? This question illustrates a problematic feature of our constitutional system, the separation of powers, and the principle of judicial review. Isn't our American democracy supposed to be about the majority? One offended father in California who claims that his daughter's daily exposure to the current pledge is a violation of his religious convictions has already convinced a California court that he is correct and the majority is wrong. Does this seem right? Is there a major flaw in our constitutional system? Discussion of the opposing points of view raised in the California flag case should be a valid way to approach the history of establishment cases that have affected public schools and public school children in the United States.

Most Americans today agree that the United States should not have an established church and are opposed to religious persecution in any form. There is still disagreement among citizens on the matter of one's freedom to exercise religious beliefs on the one hand, and our government's "wall of separation" of church and state on

the other. Nowhere has this debate played out more dramatically than in the schools of America. My curriculum unit will explore some of the history behind the current debate about religious practices and the public schools and just how the “wall of separation” has been applied in various Supreme Court cases over the past half century.

## Unit Objectives

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This teaching unit contains certain core concepts that relate to the topic, some of which students will be expected to fully comprehend and use. The following is a list of concepts and topics students should be familiar with after completing this unit:

First Amendment

Establishment Clause

Free Exercise Clause

Separation of Church and State

United States District Court

Ninth District Court of Appeals

United States Supreme Court

Majority opinion

Concurring opinion

Dissenting opinion

Judicial review

Judicial restraint

Jurisdiction

Justices

Legal precedent

Overturn/ Overrule

Reversal

atheist

agnostic

appellate court

accommodationist

separationist

verdict

lawsuit

plaintiff

legal standing

statute (federal and state)

"Moment of silence" laws

"Lemon test"

"Endorsement test"

"Coercion test"

Equal Access Law (1984)

Religious Freedom Amendment (1998)

Secularism

## **Schools and Religion in the 17th and 18th Centuries**

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In the Puritan colonies of New England, education was an integral partner to one's faith. In 1647, the Massachusetts legislature passed an historic law that required a school in every Massachusetts town. The statute began with a reference to Satan being active in keeping men from a knowledge of the Holy Scriptures, and was therefore ordered

"...that every township in this jurisdiction, after the Lord has increased them to the number of fifty householders, shall then forthwith appoint one within their town to teach all such children as shall resort to him to write and read."(quoted in Fraser, pages 10-11)

The Puritans were committed to an educated citizenry; this education would have as its goal the inculcation and preservation of their Christian faith. To be able to read was to have the power to understand God's truth as recorded in the Holy Scriptures. Young children learned their alphabet by reciting the rhymes for each letter contained in the *New England Primer*. Each letter was coupled with a Biblical lesson from A ("In Adam's Fall, we sinned All"), through Z ("Zacheus he did climb the Tree, Our Lord to see.") Education was an essential part of one's faith. The public schools were the place to teach not just three, but the *Four R's*: Reading, 'riting, 'rithmetic *and* Religion.

Elsewhere in the colonies in the 1600's and 1700's religious instruction in schools promoted the dominant values of society as a way of passing these values down to succeeding generations. In rural Virginia, the official Anglican-Episcopal state church existed until the time of the Revolution. Although society was less structured than in Massachusetts, the Virginia legislature passed laws that threatened parents with fines if they did not send their children for religious instruction under the auspices of the local church officials. The Connecticut and New Haven colonies followed the Massachusetts model of required religious instruction in the public schools. In 1683, Pennsylvania's law required parents and guardians to instruct their children to read and write "so that they may be able to read the Scriptures and to write by the time they attain to twelve years of age; and that when they be taught some useful trade or skill, that the poor may work to live, and the rich, if they become poor, may not want." (quoted in Fraser, page 12) In Pennsylvania, at least, there were practical elements mixed with the biblical ones.

The emphasis and enforcement of laws varied from colony to colony. It was up to the Protestant denomination in power to establish religious instruction guidelines that would bring up the youth of the colony in a way prescribed by their own religious beliefs. According to one historian, Sidney Mead, the thirteen original colonies were basically "a collection of holy commonwealths" enacting various religious laws and offering little toleration for minority faiths, with the exceptions being William Penn's Quakers in Pennsylvania and Roger Williams and the Baptists in Rhode Island. James Madison and Thomas Jefferson, worked hard to end Virginia's two centuries old Anglican religious establishment, and were able to pass a law in 1786 giving all religious faiths equal footing, and removed the favored status given to the Anglicans.

By the time of the Constitutional Convention in 1787, the question was this: was there one single state church that would work for the entire new nation? Could one religious model, say the Puritan one in Massachusetts, get the support from the Presbyterians, Baptists, Anglicans and Quakers who also believed their models were superior? Clearly there had to be compromise. And the compromise was that no one church would dominate. There just were not enough votes for any one faction to win. Remarkably there was very little debate over the adoption of Article VI that stated: "no religious test shall ever be required as a qualification to any office or public trust under the United States." Just two years later Congress approved the First Amendment, with language that made it clear that a national established church was not in the cards for the new nation.

So why the continued debate over the place of religion and public schools? Didn't the First Amendment clearly forbid the government from getting entangled with religion in schools? The answer is contained in the first five words of the Amendment--"*Congress shall make no law* respecting an establishment of religion...." Not until the passage of the Fourteenth Amendment in 1868 were the protections of the Bill of Rights applied to the states. And it was up to the states to administer the public schools, not the federal government. It is significant that the United States Supreme Court remained silent on school and religion for another eighty years until 1947, when the Court chose to rule on its first establishment case in schools ( *Everson v. Board of Education* ) . It has only been since the mid-twentieth century that the battle of church and state within schools has been fought out in the Supreme Court arena. With that said we return to religion in schools following the passage of the Bill of Rights in 1791.

The compromise that allowed for religious freedom and disestablishment proved a victory for the diverse religious groups that populated the new nation. As a result of this compromise, the established churches gave up an important aspect of their power, the power to control public education. Why was this power so important? Many in the churches firmly believed that power over education was the power to shape the religious and moral values of future generations. Without this power to educate from a biblical viewpoint, many religious leaders would argue not only were the foundations of the church at risk, but so were the moral

foundations of the state.

As early as 1776, future President James Madison warned of church-state entanglements and wrote into the Virginia Declaration of Rights that “all men should equally enjoy the fullest toleration in the exercise of religion.” Early on in the nation’s history, as President, fellow Virginian Thomas Jefferson made it clear that, in his view, there was an essential need to keep religion and government interests separate. The following oft-quoted letter to the Danbury Baptist Association of Connecticut in 1802 contained this warning:

Believing with you that religion is a matter which lies solely between man and his God, ... I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between church and state.

(quoted in Alley, *Without a Prayer* , page 36)

Jefferson always saw this wall of separation as a very high one. Unlike his predecessors, Washington and Adams (and his successors to the Presidency) he refused to call for a national celebration for thanksgiving and prayer, on the constitutional grounds that it was a matter for religious groups, not the President, to determine. Despite the compromise made by establishment churches during the Constitutional Convention, and despite warnings from President Jefferson, Protestant religious doctrine continued to influence public education well into the nineteenth century.

## **The Nineteenth Century: The Common School Movement**

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The new state constitution of the state of Massachusetts, ratified before the passage of the First Amendment, included a requirement for cities and towns to provide for “the public worship of God and the support and maintenance of public Protestant teachers of piety, religion, and morality” in the schools. Led by future President John Adams, Massachusetts kept its status as a Christian commonwealth. In 1787, the Congress passed the Northwest Ordinance that contained these words “religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.” (quoted in Fraser, page 23) At the dawn of the nineteenth century, schools, religion and government seemed to be fused together into a tight bond despite the adoption of the First Amendment. But a hot debate was simmering on the nation’s horizon.

It wasn’t until 1818 that the Congregational Church in Connecticut finally was voted out as the official church, and placed it as an equal with other denominations. In 1833, the last two battles for disestablishment were won; the Congregational Churches in Massachusetts and New Hampshire lost their tax subsidies and were relegated to unprotected status. How would the new secular states treat religion in their schools?

Enter Horace Mann, secretary of the Massachusetts Board of Education from 1836 to 1848. As secretary, Mann

worked tirelessly to promote his views of what he called the “Common School Movement.” Mann sought the best of both the secular and the religious worlds. In his view the public school was a place where the child would be free to choose his own religious views; he would, through reason and conscience learn to determine his own religious values. This was a truly democratic approach, he believed; one that would satisfy both Christians and minority faiths. The schools would observe daily Bible readings, but without any comment or sermonizing. Leave the interpretation of the scriptures to the parents and religious leaders. The public schools would not promote a particular religion but did not exclude religion either. His reasoning was this: A nation or state without an established church, as in the past, needed an institution to pass along traditions and shape the culture and standards of morality. Schools traditionally had been an extension of the established church. Why not create “common schools” that would equip the children with the elements of a “common faith?”

But, of course, there were objections to his policies that are still heard today. One objection was the issue of democratic choice: Was it the proper role of a central Board of Education to set curriculum for the local schools throughout the commonwealth? What about bureaucratic costs? Was it proper to expose the children to religion in schools in order to foster common moral values? Whose job should it be to decide what these common moral values should be? Should the state or the parents have the final say in molding the minds and shaping the religious values of the children of Massachusetts? Where does the power for public education finally lie? Don't some decisions have to be made by central committees? Which ones? Can schools work if individual parents have the authority to select the course of study for each child? How can a public school system function without some agreed upon standards and fundamental goals? These were the challenges facing Massachusetts in the 1830's and still challenging public school systems today.

The common school movement was very successful in the Midwest, from the 1830's to the late 1800's. Along with the attempt to educate was the cause of evangelical Protestants to use the common schools to further the kingdom of God and to assimilate immigrants into a common “Protestant” culture. According to historians Timothy Smith and David Tyack, evangelicals such as Connecticut's Lyman Beecher and Calvin Stowe helped to direct and create a school system along the western frontier, in Ohio and beyond, directed by evangelical missionaries. The acceptable textbook for religious instruction in these common schools? Calvin Stowe's answer was “The Bible, the whole Bible and nothing but the Bible, without note or comment, must be taken as the text-book of religious instruction. Instruction in those points which divide the sects from each other must be confined to the family and the Sunday school.” (quoted in Fraser, page 36)

On the female side, another effective leader in the common school movement was Lyman Beecher's daughter, Catharine Beecher, the sister-in-law of Calvin Stowe. Catherine's contribution to the common school movement was her ability, over time, to persuade women that elementary school teaching was an acceptable profession for women. From 1835 to 1845, Catharine worked tirelessly to promote women as the more logical caregivers and instructors for young children in schools. Through the National Board of Popular Education that she founded in 1843, Catharine recruited hundreds of women to become trained in the East and sent out to missionary-teaching positions in the western frontier. In many communities on the frontier, the first professional was the teacher sent out by the National Board or a similar missionary society.

The issue for the religious denominations was this: it was important to establish and spread Christian values in the absence of an established church. How best to do this?

Whatever theological differences Congregationalists, Baptists, Episcopalians, Methodists, --liberals and conservatives--might have over church issues, they tended to unify around support for religious emphasis in the public schools. They believed it would be the public schools that would prove the effective builder of a

morally strong America. Even non-evangelicals like Horace Mann worked hard to establish secular public schools that would help newcomers to America become assimilated into the mainstream and become part of the American Protestant culture. .

Many schools adopted the *McGuffey's Readers* series, which sold an estimated 122 million copies between 1836 and 1920. It was the ideal textbook for the common schools, as it reflected white middle-class Protestant values as they existed in the early to mid-nineteenth century. The moral message of the Readers was clear, as in the story of the "Good Natured Boy" who "took care of his faithful dog as long as he lived, and never forgot that we must do good to others if we wish them to do the same to us." (*McGuffey's Fourth Reader* , pages 39-43) McGuffey saw his textbook's purpose as more than just inculcating individual morality. The greater design was this belief that the nation's moral and religious values had been built around a common morality and faith and history and the *McGuffey's* series were there to promote these important ideas to the children of the nation. In short, all could learn their place and "take care of the faithful dog."

As the nineteenth century unfolded, it became clear that America was changing. As various Protestant denominations faced issues such as slavery and the new waves of immigration, the dominant Protestant values of the common schools began to lose their influence. Parochial schools began to appear, particularly among the Lutherans and Presbyterians. Later, Roman Catholic schools were formed as a result of the common schools refusal to include their concerns. Native Americans were seen as foreigners and outside the concern of the common schools. African Americans, many of whom were slaves, were generally excluded, and demands to establish racially integrated schools in the north were ignored by common school leaders. One condition the Protestant evangelicals did not really plan for was the mix of a national morality that was becoming highly secularized in the schools. It was one thing to rejoice in the general acceptance of a free universal education in the nation; it was another to refuse to focus on a changing America with its uncertainties and fears. From the mid nineteenth century onward, there were large cracks that began to appear in the Protestant ideal of America and the proper place of religion in a growing secular and diverse society. In a nation of growing cultural and racial diversity, do the religious values of the past expand and become inclusive, or refuse to do so and act out of fear and uncertainty? These issues are still with us.

## **The Twentieth Century: The Supreme Court Enters the Debate**

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The Scopes trial held in Dayton, Tennessee, in 1925, focused the nation's attention on issues relating to God's place in the science classroom. Though the verdict itself was a victory for the anti-evolutionary forces, Christian fundamentalism as a movement suffered a great loss. John Scopes, the high school biology teacher who defied the law by teaching human evolution, was given a small fine and the legal case went no further. Partly because of the religious fervor present at the Scopes trial, revised 1927 editions of Hunter's *A Civil Biology* national textbook was careful to describe evolution as a scientific "theory," and relegated Charles Darwin to the status of a leading biologist, rather than the venerated "father of biology." The later text referred to Darwinism as one "interpretation of the way in which all life changes." Not until the 1960s did evolution return to the respected place it had occupied prior to 1925. And the evolution-creation classroom controversy continues to be debated in school systems today. *See also my Yale Institute curriculum unit on the Scopes Trial.*



Following *Scopes*, the Supreme Court began to make decisions on religion and schools that reflected a changing America. In 1925, the Supreme Court ruled in *Pierce v. Society of Sisters* that Roman Catholic schools were considered valid and that states could not deny their legitimacy. This decision signaled the constitutional right that Catholics and other religious groups had to establish their own schools at their own expense. It is no coincidence that the next quarter century signaled the fastest growth of Catholic parochial schools than in any time in history. Protestant America relative to its schools suffered a significant blow from which many historians claim it was never to recover.

## Two Flag Salute Cases

In Minersville, Pennsylvania in 1935, a brother and sister named William and Lillian Gobitas, whose parents were Jehovah's Witnesses, were expelled from their public school because they refused to salute the American flag. According to their beliefs, any flag is a graven image and therefore saluting it violated one of the Ten Commandments. Ten-year old Billy expressed his reasoning in a letter to the Minersville school officials this way:

Dear sirs,  
. . . . I do not salute the flag [not] because I do not love my country but  
[because] I love my country and I love God more and I must abide by His commandments. Your  
pupil,  
Billy Gobitas (quoted in Fraser, p. 134)

The case, *Minersville School District v. Gobitis* (sic) reached the Supreme Court in 1940, the same year that the Supreme Court decided, in *Cantwell v. Connecticut*, that religious protection under the First Amendment applied to state and local laws. The Gobitas' lost their case, but important questions were raised about religious freedoms and public schools. Could the Pledge be considered a religious rite? To many patriotic citizens, not saluting the flag was not only unpatriotic it was close to treason, especially in a nation fueled by wartime concerns of loyalty and disloyalty. Supreme Court Justice Harlan Fiske Stone, the lone dissenter in the case, warned of the constitutional dangers in denying religious liberties to citizens, even if they were children. He wrote "the state cannot compel belief or the expression of it where the expression violates religious convictions."

Just three years later, Lillian Gobitas, Billy's sister, who had often been harassed by her neighbors in Minersville after the court decision was made, was overjoyed when, on Flag Day, 1943, the Supreme Court overturned *Gobitis*. Writing for the majority in the *West Virginia State Board of Education v. Barnette*, Justice Robert Jackson wrote these memorable words, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what will be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act of faith therein. . . ." (quoted in Alley, *Without a Prayer*, p. 82)

Justice Jackson continued to define the issue as one of fairness for all religious minorities: "Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of

any class, creed, party or faction.”

(quoted in Fraser, p. 137) The principles stated in this decision helped to protect religious freedom in schools far into the remainder of the twentieth century.

### **Compulsory School Prayer and Bible Reading**

The controversial *Everson v. Board of Education* case, decided in 1946, upheld the right of New Jersey school districts to reimburse parents for money they spent for bus transportation for their children to attend Catholic schools. By a slim margin, the court agreed to indirectly aid parochial schools. For the first time, the Supreme Court had made a clear ruling that the Fourteenth Amendment meant that the First Amendment protection applied to state and local law. The five majority judges said that the aid was going to the families, not to the Catholic schools; there were mixed signals sent in this case which have continued to the present as to which forms of parochial school aid are valid and which are not. In a minority opinion, Justice Jackson, who was understanding of the double tax burden for public and parochial school parents stated that support for bus transportation constituted aid for religion. “Catholic education is the rock on which the whole structure rests, and to render tax aid to its Church school is indistinguishable to me from rendering the same aid to the Church itself.”

The 1960s brought two very important challenges to school prayer. The first of these cases was *Engel v. Vitale*. In New York, the State Board of Regents composed a generic undenominational prayer for the public schools of the state: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country.” For some supporters the prayer was confirmation of religious foundations in a fast-changing world. For others it was acknowledgment that America, as opposed to Communist Russia, was certain of its heritage and belief system. For others it was a reminder to the state’s diverse population of what the dominant culture’s faith was all about. For some teachers it was simply a way of getting the class to quiet down before beginning the daily class work.

But there were others who were very uncomfortable with the Regents prayer. For many children there was a daily decision to be made. Should they go along with the prayer and compromise their convictions by going along with the prayer, or risk being ostracized or being made fun of by not complying? The Roth brothers, who were Jewish, were told by their father to leave the classroom during the prayer; for this they earned taunts, fights and ridicule from other students. Lawrence Roth joined suit with five other parents, including Steven Engel and sued the President of the school board, William Vitale. The Court was clear in its response in *Engel v. Vitale* : no school prayers written by school officials can be considered constitutional under the establishment clause of the Constitution. Unfortunately, in victory, Lawrence Roth was the target of harassing phone calls, threats, even a cross being burned on his lawn. Later, one of the two brothers, Joseph Roth remembered fellow students threatening him and the F.B.I. putting him under surveillance.

The very next year, a decision on compulsory Bible reading and reciting of the Lord’s Prayer was decided that had even larger ramifications nationwide. The Supreme Court, not surprisingly, in the *Abingdon v. Schempp* case, struck down a Pennsylvania statute requiring the reading of the Bible at the beginning of the school day; allowing non-participating students to leave the room if they wished. The court strongly objected to the compulsory practice, but in its decision upheld students’ rights to study the Bible and religion within a proper context. Justice Tom Clark wrote for a clear majority:

“It certainly may be said that the Bible is worthy of study for its literary and historic qualities.

Nothing we have said here indicates that such study of the Bible or religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.”

(quoted in Fraser, page 149)

In other words, the study of religion and classroom discussions about religion were allowed but any in school required religious *practices* were forbidden.

There was immediate and strong reaction to these decisions around the country. Congressman Frank J. Becker of New York proposed a constitutional prayer amendment. In Alabama, Governor George Wallace’s response to taking prayer out of the schools was, “I don’t care what they say in Washington, we are going to keep right on praying and reading the Bible in the public schools of Alabama.”

Many white middle-class Protestant Americans, especially those in the Midwest and South, saw a powerful change sweeping across the nation that contested the whole idea of a dominant Christian culture. Respect for minority rights was now the law, even in the schoolroom, where prayer had always held a prominent place.

## **1980’s and 90’s: From the Equal Access Act to the Religious Freedom Amendment**

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Two decades after the Supreme Court had ruled in *Engel v. Vitale* that teacher-led prayer was unconstitutional, President Ronald Reagan proposed a Prayer Amendment to the United States Constitution. Reagan reasoned, “I think what most people in this country--and the polls show that it is overwhelming, the percentage of people who want prayer restored--is the idea that by doing away with it, was almost as if there was an anti-religious bias. It was as if saying to the children that this is no longer important.” (quoted in Fraser, p. 179). .

Though the Prayer Amendment died in committee, Congress did pass the Equal Access Act in 1984 to make it clear that students could attend religious meetings in schools during non-instructional time. The Act stated: “It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting ... on the basis of (religion).”

Also, the law stated (1) that a school system could not require teachers to attend student organized religious meetings and (2) the school district could not use student-run meetings to further their own religious programs.

The United States Supreme Court validated the Equal Access Act in 1990 when it ruled in favor of high school student Bridget Mergens who requested permission to form a Christian club open to students who wanted to study the Bible and pray together. The Court’s ruling in *Board of Education of the Westside Community Schools v. Mergens* made it clear that public schools had to treat student-organized religious organizations on an equal basis with other student clubs.

Early in President Clinton's Presidency the prayer controversy resurfaced when a Democratic Congress passed the Religious Freedom Restoration Act (RFRA) in 1993, only to be overturned four years later by a Supreme Court that declared that "Congress does not enforce a constitutional right by changing what the right is." People were confused. One historian, Edwin Scott Gaustad, writing in 1990, studied the Court decisions regarding religion in schools since *Everson* and found a lot of 5-to-4 decisions, little apparent consistency and a very unclear map for the road ahead. (see Gaustad, *A Religious History of America* , pp. 324-327)

The mixed messages from the Court continued into the 1990s. In 1992, Daniel Weisman, who was Jewish, objected to a Baptist minister saying a prayer at his daughter's middle school graduation. The Court majority decision in *Lee v. Weisman* (a 5 to 4 decision) agreed with the plaintiff that official prayers at public school commencement exercises were a violation of the establishment clause and were therefore unconstitutional. The four dissenting justices sought an accommodationist solution; Justice Rehnquist wrote:

Nothing, absolutely nothing, is so inclined to foster among religious believers of various faiths a toleration, no, an affection for one another than voluntarily joining in prayer together to the God whom they all worship and seek.... To deprive our society of that important unifying mechanism in order to spare the non believer what seems to be the minimal inconvenience of standing or even sitting in respectful nonparticipation is senseless. (quoted in Fraser, p. 203)

Even though Justice Rehnquist was not properly acknowledging the plaintiff's arguments against prayer, the Court seemed hopelessly divided over school prayer. To add to the confusion, a year later, the Court let stand a lower court decision to allow student-led prayers at graduation. The lines on the road map remained confusing to most students, teachers and school administrators. During the 1980s and 1990s there were cases of students being denied the right to exercise private prayer, to carry or read their Bibles in school, and meet for after school prayer meetings or Bible study.

Enter President Bill Clinton. To clarify the official government position on religious expression protections in public schools, in 1995 Clinton published a list of federal legal protections enjoyed by public school students. He remarked that

The Establishment Clause of the First Amendment does not prohibit purely private religious speech by students.... Students may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable nondisruptive activities. Local school authorities ... may not discriminate against religious activity or speech. ([www.ed.gov/Speeches/08-1995/religion.html](http://www.ed.gov/Speeches/08-1995/religion.html))

A number of incidents in the fall of 1997 heightened tensions. In defiance of a federal judge's court order, school officials in Alabama approved measures such as student-led prayers in classes, at assemblies, over the school intercom and at school football games. Large numbers of students got involved in public prayer vigils and school prayer walkouts. The November 8 issue of the *New York Times* carried a large photo of high school students with heads bowed in front of Sardis (Alabama) High School. At another Alabama High School, a senior told a *Times* reporter, "Everyone around here is God-believing... Having Jesus in our school is something that

we need. It gives us strength.” Another student at the high school declared, “We can’t let this judge keep us from praying.” Other incidents occurred in nearby states, including a shooting spree by a fourteen year old freshman at Heath High School in West Paducah, Kentucky, who sprayed bullets into a circle of praying students outside the school, resulting in three students dead and five wounded. The nation was becoming increasingly divided over the issue of the proper place of prayer and the public schools.

Then, on June 4, 1998, the United States House of Representatives debated and voted on a proposed Religious Freedom Amendment to the Constitution. The amendment would have allowed voluntary school prayer, in accordance with a recent poll in which 70% of American voters agreed that such an amendment was needed. The amendment would “secure the people’s right to acknowledge God... [and] the people’s right to pray and recognize their religious beliefs, heritage, or traditions on public property, including schools.” Of course, no person would be required “to join in prayer or other religious activity.” Lastly, the government could not “deny equal access to a benefit on account of religion.” This apparently meant that the government could not refuse funding to religious or sectarian agencies, including religious private schools. By the end of the debate, often acrimonious, sometimes personal, the ayes had it, but not by the required two-thirds majority to begin the amendment process.

## The Continuing Debate

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Unfortunately, there is still confusion about the proper role of religion in the schools. In 1997, in a victory for parochial schools in New York City, the U.S. Supreme Court reversed itself and decided in *Agostini v. Felton* Title I public school teachers could teach their secular courses in parochial school buildings. There is the issue of school vouchers. Cities like Cleveland and Milwaukee legally issue tax funded school tuition vouchers to parents who want their children to attend private religious schools. In New York City, Floyd Flake’s church sponsors a Christian school and promotes vouchers to give urban kids a real hope for a quality education they are not getting in the public schools of New York City. So called “balanced treatment” laws governing Creation Science are still being hotly debated. Finally, in June, 2004, the United Supreme Court refused to rule on the constitutionality of “under God” in the Pledge of Allegiance. (see Lesson Plan section of this unit)

In conclusion, I have attempted to highlight some of major events surrounding the cultural and legal history of religion in the public schools of the United States. I have traced the involvement by the United States Supreme Court in its attempt to balance reasonable limits on free religious exercise with appropriate limits on the state’s attempts at establishing religion in the schools. I close with a quotation by Representative Wise of West Virginia who spoke these very emotional words during the debate on the Religious Freedom Amendment in 1998:

Madam Speaker, my faith, I want to get personal for a minute, comes from my heart. I seek, and I know many do, God in many ways, and we each find him in our own way through our parents, through our churches, through our community groups, through our pain, through our joy, through our many errors. That is how we find God. . . .

Madam Speaker, I have great respect for everyone in this Chamber, men and women devoted to their government and to doing right. But with all due respect, I want this Chamber writing laws, I want us writing budgets, I want us writing resolutions. I do not want politicians writing my

children’s prayers. Let my children find God as we all must find God, through ourselves and our churches and our communities and our parents and our upbringings and our many experiences. (quoted in the *Congressional Record* , June 4, 1998, page H 4086)

Not all may agree with the Congressman, but his appeal to common sense and mutual respect suggests a rational basis for discussion as the religion and schools debate continues into the twenty-first century.

## Lesson Plan Section

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### ***Lesson One: Are Moment of Silence Laws Constitutional? Wallace v. Jaffree (1985)***

#### DAY ONE

#### Objectives:

1. To examine an Alabama state law that would introduce a moment of silence in public school classrooms
2. To discuss the difference between the “establishment of religion” and the “free exercise” clauses
3. To evaluate the motives of lawmakers in passing such a law
4. To evaluate testimony by those opposing and supporting such a law
5. To debate school prayer from the point of view of religious accommodationists and religious separationists

#### Materials:

1. One-page narrative containing background of *Wallace v Jaffree*
2. Handout: Witness Testimony chart, one for each student
3. Handout: Role Cards for individuals giving testimony before the court
4. Handout: Justice Stevens majority opinion and Justice Rehnquist’s dissenting opinion in the *Wallace v. Jaffree* case

## Procedures:

1. A panel of 3 appeals judges prepares to hear testimony from witnesses in the case;
2. Witnesses give testimony using role cards prepared by the teacher;
3. Following testimony, students give a written evaluation of the law using information from role play testimony; students keep track using their Testimony Charts

## Teacher Preparation:

1. Copy of the Alabama state law of 1981 mandating a “moment of silence or voluntary prayer” permitting teachers to lead students in a prayer to God as “the Creator and Supreme Judge of the World.”
2. One page summary of *Wallace v. Jaffree* and Witness Testimony chart listing witnesses who testify (see below)
3. Role Cards for witnesses (see below)

## Witnesses:

1. Chioke Jaffree: student who was upset by opening exercise prayers in his classroom and did not like the choice of leaving the classroom during prayers;
  2. Ishmael Jaffree: Chioke’s father, an agnostic who believes that the prayers are a violation of the separation of church and state and his efforts to raise his children as “free thinkers;”
  3. Senator Donald Holmes, sponsor of the law who admitted to establish prayer in the Schools was his purpose in introducing the law;
  4. Jean Baker, ACLU attorney who opposes the moment of silence laws as a violation of the establishment clause of the First Amendment;
  5. Barry Lynn, Americans United for Separation of Church and State who agrees with Baker;
  6. Dan Alexander, president of the Mobile Alabama school board who agrees with the need for prayer in schools;
  7. Rev. Fred Wolfe, Baptist pastor of a Mobile church who believes no one should be offended by the moment of silence with prayer as an option;
  8. Other witnesses (optional) Chioke’s teacher, classmates, State Governor, etc.
- Student Writing Assignment: Discuss the pros and cons of the 1981 Alabama law.

## DAY TWO:

Procedures: Students discuss their written evaluations of the law and present it to the panel of judges;

1. While the judge's consult on their opinion, students are given copies of two Supreme Court justices' opinions from the *Jaffree* case to discuss and evaluate

(1) Justice Stevens' opinion for the Court, declaring the Alabama law must respect the rights of those not in agreement with the Christian faith, including atheists;

(2) Justice Rehnquist's dissenting opinion which refers to the "original intent" of the framers of the Constitution to favor prayer in the public arena

2. After discussion, student will hear opinions from the panel of 3 judges

*Student Writing Assessment:* "Under what conditions, if any, should "moment of silence" laws be allowed in schools?" Discuss.

## DAY THREE:

Procedures:

1. Divide the class into two groups.

(1) Group One is given Justice Stevens' majority opinion with some guiding questions. They represent the "protected minority" point of view; (separationists)

Group Two is given Justice Rehnquist's dissenting opinion which represents a majority of (2) voters in Mobile, Alabama who believe that there is nothing wrong with school prayer, and is a right to be exercised. (accommodationists)

2. Remind students of the differing views of accommodationists and separationists in the continuing debate over religious freedom in schools.

3. Have the two groups debate the following:

"Under the doctrine of separation of church and state:"



- (1) Should Student-led prayers at school assemblies be allowed?
- (2) Should courses that study religions be allowed?
- (3) Should a school club to study the Bible be allowed?
- (4) Should a graduation speaker be allowed to mention God or the Bible or their personal faith in their remarks?
- (5) Should schools be allowed to have a daily moment of silence for prayer or meditation?

- The teacher should appoint a moderator to keep things moving. If the teacher wishes, appoint
4. a group of students to judge the arguments and decide on a winning side. (allow each side to argue, then a short rebuttal)
  5. Have the class discuss which arguments were the most convincing.  
Remind students that although the Supreme Court continues to make decisions about the
  6. Establishment Clause and the tension with the Free Exercise clause, people still have their own personal points of view and may express them freely.

Student Writing Assessment: Write a story, real or imagined, in which the rule of the majority violates a minority's rights under the Constitution and give a legal solution.

Sources: (see Student Bibliography)

" *Vital Issues of the Constitution.* " Student Workbook has a summary of *Wallace v. Jaffree* and a set of questions about the case.

*One Nation Under God?*, published by the Close Up Foundation, includes video.

*Lesson Two:*

Should "Under God" Remain in the Pledge of Allegiance? *Newdow v. U.S. Congress*

DAY ONE

Objectives:

1. To study a contemporary Circuit Court case, *Newdow v. U.S. Congress* (2002), the case that challenged the "under God" phrase in the Pledge of Allegiance;
2. To examine the complaint by the plaintiff and the reason for the lawsuit
3. To critique the Court Opinion by Judge Goodwin and his legal logic under the "separation of church and state" doctrine
4. To evaluate the Partial Dissent by Judge Fernandez and his legal reasoning
5. To discover the importance of previous court decisions (legal precedents) in deciding court cases and the application of certain legal tests (i.e. the "Lemon test")

Materials:

1. The United States Court of Appeals for the Ninth Circuit decision of *Newdow v. U.S. Congress* (2002), which is available at [www.findlaw.com](http://www.findlaw.com). (links: click "fed">"cases">"9th Circuit")
2. Document: "Newdow Case: Guidelines for study" (See Appendix 1 below)
3. Document: "Newdow Case: Majority and Dissenting Opinions" (Appendix 2)

Procedures:

1. Introduce the topic by getting student feedback on the question of the Pledge itself--its purpose, its place in history, controversies about the those refusing to say the pledge for religious reasons (refer to flag salute cases in my unit) or for any other reasons. Can people be compelled to salute the flag? What if any should the consequences be??  
 Why would a parent want to "protect" his elementary school child from saying the Pledge, as Michael Newdow did in this case? Is he within his constitutional rights? What should the little girl do until the case is settled?
3. Pass out the first page of the Newdow Case (page 9105 of the opinion) to the students and have them examine it. Notice who Mr. Newdow is suing (the US Congress, President Bush, the State of California, and 2 School Superintendents). Try to explain his logic; which part(ies) does it seem he can sue and which part(ies) are not liable? Discuss.
4. Begin to examine together the Opinion of the Court (use Guidelines for Study document from *Appendix 1* below) and have students list terms they are unfamiliar with. Discuss the issues as they arise. (pp. 9118 to 9124)

Written Assignment: The phrase "under God" in the Pledge, according to Newdow, violates the Establishment Clause of the Constitution. Is he correct? Evaluate.

DAY TWO

Procedures:

1. Review written assignments for a clear understanding of Newdow's objections
2. Continue to guide students through the Court document using the "Guidelines for Study" questions, examine important legal concepts and arguments in the Newdow case. Especially important are the "Lemon test" the "endorsement test" and the "coercion test" of a law that is religiously neutral in its application.

Written Assignment: According to the Court, why is the Pledge an "impermissible government endorsement of religion?" (page 9124) What arguments would you use against the Court's opinion?

DAY THREE

Procedures:

1. Review arguments for and against the removal of “under God” from the Pledge as a violation of the Establishment Clause of the First Amendment
2. Hand out the Majority and Dissenting Opinions (Appendix 2 below) to students for their analysis either as a class or as a classroom debate.
3. Debate: Divide students into three groups.

- (1) These students argue for the plaintiff using Judge Goodwin’s Majority Opinion.
- (2) These students argue for the school district using Judge Fernandez’ dissent.
- (3) These students serve as a panel to award points to either side and make a final “Supreme Court” decision

*Written Assessment:* Summarize the arguments, pro and con in this case, then write your own Supreme Court opinion.

Note: The U.S. Supreme Court, on June 14, 2004, ruled that atheist Newdow lacked legal standing in court and could not legally represent his daughter since he did not have legal custody. The mother, Sandra Banning, supports leaving the pledge as it is and wants her daughter to keep reciting the pledge.  
<http://wid.ap.org/documents/scotus/040614newdow.pdf>

### **Appendix 1: “ Newdow Case: Guidelines for Study”**

To be used with the U.S. Court of Appeals 9th Circuit Court Decision

Page 9105:

1. Identify “Plaintiff-appellant”
2. Identify “Defendants-Appellees”
3. What happened between March 14, 2002 and June 26, 2002?
4. How many judges heard the case?
5. How many judges gave opinions in the case?

Page 9109--Counsel

6. Notice how many lawyers were involved in the case for the plaintiff (only Newdow acting as his own attorney); for the defendants.

Page 9110--Opinion

7. When and how were the words “under God” added to the Pledge?
8. What part of the Constitution is Newdow challenging? Why?
9. What are Newdow’s religious beliefs?
10. Why is his daughter required to say the pledge every day in school?

Page 9111

- Why does  
Newdow  
say his  
daughter  
11. is  
“offended”  
by the  
pledge?

Pages 9118-9121--The Establishment Clause arguments

12. The *Lemon v. Kurtzman* case set up the “Lemon Test” which has 3 parts. According to this test what is the government prohibited from doing,? (p. 9120)
13. In the *Lynch* case, Justice O’Connor set up another test called the “endorsement test.” What does this test prohibit the government from doing?
14. In the *Lee* case, the “coercion” test was formulated. Explain what further restrictions this test established.
15. What did the Court decide about student-led prayers at football games in the *Santa Fe* case? (p. 9121)

Pages 9122-9124--The Majority Opinion

16. What did the magistrate judge (lower court) judge rule about the mention of God in the Pledge?
17. What does the Court mean that “under God” is an endorsement of religion and what reasons does the Court use?
18. The Court refers to more than six previous Court decisions to support its views. Comment on the use of these precedents.
19. Why, according to the Court (p. 9124) is the Pledge an “impermissible government endorsement of religion?” Do you agree? Explain.

## **Appendix 2:** Newdow Case: Majority and Dissenting Opinions

A. Judge Goodwin’s Majority Opinion in *Newdow I* (excerpts)

“In the context of the Pledge, the statement that the United States is a nation “under God” is an endorsement of religion. It is a profession of a religious belief, namely, a belief in monotheism. The recitation that ours is a nation “under God” is not a mere acknowledgment that many Americans believe in a deity. Nor is it merely descriptive of the undeniable historical significance of religion in the founding of the Republic. Rather, the phrase “one nation under God” in the context of the Pledge is normative. To recite the Pledge is not to describe the United States; instead, it is to swear allegiance to the values for which the flag stands: unity, indivisibility, liberty, justice, and –since 1954--monotheism. The text of the official Pledge, codified in federal law, impermissibly takes a position with respect to the purely religious question of the existence and identity of God.... “[T]he government must pursue a course of complete neutrality toward religion.” *Wallace*, 472 U.S. at 60.

“The Pledge, as currently codified [containing “under God”], is an impermissible government endorsement of religion because it sends a message to unbelievers ‘that they are outsiders, not full members of the political community, and an accompanying message to adherents [believers] that they are insiders, favored members of the political community.’ *Lynch*, 465 U.S. at 688 (O’Connor, J., concurring)

“Similarly, the policy and the Act fail the coercion test. Just as in Lee, the policy and the Act place students in the untenable position of choosing between participating in an exercise with religious content or protesting.... The coercive [required behavior] effect of the Act is apparent from its context and legislative history, which indicate that the Act was designed to result in the daily recitation of the words “under God” in school classrooms. President Eisenhower, during the act’s signing ceremony, stated: “From this day forward, the millions of our school children will daily proclaim in every city and town, every village and rural schoolhouse, the dedication of our Nation and our people to the Almighty.” 100 Cong. Rec. 8618 (1954)

“... In sum, both the policy and the Act fail the Lemon test as well as the endorsement and coercion tests.

“In conclusion, we hold that (1) the 1954 Act adding the words “under God” to the Pledge, and (2) EGUSD [Elk Grove Unified School District]’s policy and practice of teacher-led recitation of the Pledge, with the added words included, violate the Establishment Clause....” (pages 9122-9131, selected)

B. Judge Fernandez, Circuit Judge, Dissenting Opinion. (excerpts)

“We are asked to hold that inclusion of the phrase “under God” in this nation’s Pledge of Allegiance violates the religion clauses of the Constitution of the United States. We should do no such thing. We should, instead, recognize that those clauses were not designed to drive religious expression out of public thought; they were written to avoid discrimination.... [W]hen all is said and done, the danger that “under God” in our Pledge of Allegiance will tend to bring about a theocracy or suppress somebody’s beliefs is so miniscule [tiny] as to be *de minimus* [of no serious concern]. The danger that phrase presents to our First Amendment freedoms is picayune [of little consequence] at most.

“Judges, including Supreme Court Justices, have recognized the lack of danger in that and similar expressions for decades, if not for centuries, as have presidents and members of Congress.... In *County of Allegheny v. American Legion*, 492 U.S. at 602-03, 109 S. Ct. at 3106, the Supreme Court had this to say: ‘Our previous opinions have considered *in dicta* the motto [“In God We Trust”] and the pledge, characterizing them as consistent with the proposition that government may not communicate an endorsement of religious belief.’

“...[S]uch phrases as “In God we Trust,” or “under God” have no tendency to establish a religion in this country or to suppress anyone’s exercise, or non-exercise, of religion, except in the fevered eye of persons who most fervently would like to drive all tincture of religion out of the public life.... I realize that some people may not feel good about hearing the phrases recited in their presence, but, then, others might not feel good if they are omitted.

“... [U]pon Newdow’s theory of our Constitution, accepted by my colleagues today, we will soon find ourselves prohibited from using our album of patriotic songs in many public settings. “God Bless America” and “America the Beautiful” will be gone for sure, and while use of the first three stanzas of “The Star Spangled Banner” will still be permissible, we will be precluded from straying into the fourth [stanza]. And currency beware! Judges can accept those results if they limit themselves to elements and tests, while failing to look at the good sense and principles that animated those tests in the first place. But they do so at the price of removing a vestige of the awe we all must feel at the immenseness of the universe and our own small place within it, as well as the wonder we must feel at the good fortune of our country....” (pages 9132 to 9136, selected)

Document Source: [www.findlaw.com](http://www.findlaw.com) (click on: “Federal>Cases>9th Circuit”)

Case number 00-16423 (Newdow I)

Case was argued and submitted on March 14, 2002 and decided and filed June 26, 2002

Case was amended on February 28, 2003 (Newdow II).

### **Appendix 3: Important Supreme Court Cases**

*Everson v. Board of Education* (1947)--(5-4 vote) upholds New Jersey's right to fund bus transportation to parochial schools; a victory for the separationist view..

*McCullum v. Board of Education* (1948)--(8 to 1 vote) overrules a school district practice Illinois that held religious classes in public schools during school hours..

*Engel v. Vitale* (1962)--bans voluntary nondenominational school prayers in New York..

*Abington School District v. Schempp* (1963)--strikes down a Pennsylvania law that required compulsory Bible reading and school prayer..

*Wallace V. Jaffree* (1985)--declares Alabama's "moment of silence and prayer"

laws unconstitutional.

*Board of Education v. Bridget C. Mergens* (1990)--allows student-led Bible clubs to meet after school under the same rules for other noncurricular clubs..

*Lee v. Weisman* (1992)--(5-4 vote) disallows school-sponsored prayers at graduation ceremonies

*Santa Fe Independent School District v. Doe* (2000)--- disallows student-led prayers at high school football games

### **Appendix 4: Selected Quotations by Supreme Court Justices**

#### 1. The study of religion in the schools:

"Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment." (Justice Tom C. Clark, *Abington v. Schempp*, 1963, which disallowed official prayers and devotional reading of the Bible)

#### 2. The state's promotion of any one religious view:

"While the study of religions and of the Bible from a literary and historic viewpoint, presented objectively as part of a secular program of education, need not collide with the First Amendment's prohibition, the state may not adopt programs or practices in its public schools or colleges which 'aid or oppose' any religion." (Justice Abe Fortas, *Epperson v. Arkansas*, which prohibited any state from teaching evolution theory for religious reasons)

#### 3. A joint opinion from four Justices on prayers at graduation ceremonies:

"Nothing, absolutely nothing, is so inclined to foster among religious believers of various faiths a toleration, no, an affection for one another than voluntarily joining in prayer together to the God whom they all worship and seek. Needless to say, no one should be compelled to do that.... To deprive our society of that important

unifying mechanism in order to spare the non believer what seems to be the minimal inconvenience of standing or even sitting in respectful nonparticipation is senseless.” (Dissenting opinion to *Lee v. Weisman* , 1992)

#### Appendix 5: Quotations for Discussion

1. Historian Donald Kennedy on allowing for differences of points of view on evolution and religion: “How important it is for scientists to treat religious convictions with respect--in particular, not to suggest, even indirectly, that science and religion are unalterably opposed.”

2. Calvin and Hobbes comic strip dealing with so-called “big questions”

Teacher: Does anyone have a question?

Calvin: What’s the point of human existence?

Teacher: I meant any questions about the subject at hand.

Calvin: Oh.. (staring back at the book he mumbles, “Frankly I’d like to have the issue resolved before I expend any more energy on this”)

3. Author Warren Nord, promotes a middle way to the “all or none approach.”

“The conventional wisdom among educators is that religion is irrelevant to virtually everything that is taken to be true and important. One reason our situation is so difficult is that most educators are not very well educated about religion.”

4. Martin Luther King in 1967, spoke of the American community as diverse and often divided. “We have inherited a large house, a great ‘world house’ in which we have to live together--black and white, Eastern and Western, Gentile and Jew, Catholic and Protestant, Moslem and Hindu--a family unduly separated in ideas, culture and interest, who because we can never again live apart, must learn somehow to live with each other in peace.” (from *Where Do We Go From Here, Chaos or Community?*)

5. Yale law professor and author Stephen Carter complains that the media and the public are quite prejudicial when it comes to religion in schools. “If the school’s teachings are offensive to you because you are gay or black or disabled the chances are that the school will at least give you a hearing.... But if you do not like the way the school talks about religion, or if you believe that the school is inciting your children to abandon their religion, you will probably find that the media will mock you, the liberal establishment will announce that you are engaged in censorship, and the courts will toss you out on your ear.” (Carter, *The Culture of Disbelief*, page 52)

# Bibliography

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## Teacher Bibliography

Alley, Robert S. *School Prayer. The Court, The Congress and the First Amendment.*

Buffalo, NY: Prometheus Books, 1994.

A strong proponent of strict separation of church and state, Alley makes a strong case that James Madison, author of the first amendment, was also. His thesis is that the leaders of the so-called religious right, since the landmark *Engel v. Vitale* prayer decision, have fostered intolerance toward those opposing school prayer.

Alley, Robert S. *Without a Prayer. Religious Expression in the Public Schools.*

Buffalo, NY: Prometheus Books, 1996.

This is the companion book to Alley's *School Prayer* volume. In it he asks the question, "What's wrong with a little prayer?" His book documents the intimidating experiences that individuals who have challenged local prayer statutes have had to deal with.

Carter, Stephen L. *The Culture of Disbelief: How American Law and Politics Trivialize*

*Religious Devotion.* New York: McMillan, 1993.

Yale Law School professor's provocative book about the effects that our highly secularized society is having on religion in general and persons of faith in particular.

Are we losing respect for persons who seek to practice their freedom of religion openly?

Cremin, Lawrence A. *American Education: The Colonial Experience, 1607-1783.*

New York: Harper and Row, 1970.

The authoritative work on American colonial education; stresses the influence of Biblical ideals as foundational to the colonial schools. Included in Cremin's 688-page book is a 90-page bibliographical essay. Part 1 of a 3-part series, all published by Harper and Row.

Fraser, James. W. *Between Church and State. Religion and Public Education in a*

*Multicultural America.* New York: St. Martin's Press, 1999.

One of the major sources for my research. Fraser is an educator concerned with public school issues such as diversity, freedom of religious expression, and the expanding roles of Congress and the Supreme Court in schools and the effect on curriculum. The book begins in the 1600s and ends with a chapter on 21st century issues such as school vouchers and creationism. There are 25 pages of notes and annotated bibliography.

Larson, Edward J. *Summer for the Gods: The Scopes Trial and America's Continuing*

*Debate Over Science and Religion.* New York: BasicBooks, 1997.



A readable and well-documented book that analyzes the historical context of the “Trial of the Century” the persons involved and then moves to the modern debate over the teaching of creationism in public schools. Includes discussion of the historical inaccuracies in the Spencer Tracy film *Inherit the Wind* and almost forty pages of notes and sources.

Levy, Leonard. *The Establishment Clause. Religion and the First Amendment*. New

York: McMillan, 1986.

Sometimes technical in his arguments and his search for precise definition of legal terms and concepts, Levy is often critical of the Supreme Court when its decisions have the effect of “making law” rather than just interpreting it. He is fascinated with the Founders’ ideas of “original intent” and discusses Madison and Jefferson’s views of the “wall of separation” between church and state.

Nord, Warren A. *Religion & American Education: Rethinking a National Dilemma*.

Chapel Hill, NC: University of North Carolina Press, 1995.

Suggests appropriate ways to approach the issues of religion and public education in today’s multicultural society.

The National Academy of Sciences. *Teaching About Evolution and the Nature of*

*Science*. Washington, D.C.: National Academy Press, 1998.

An instructive report for science teachers on ways to teach the theory of evolution allowing for students with strong religious viewpoints.

Urofsky, Melvin I. *Religious Freedom. Rights and Liberties Under the Law*. Santa

Barbara, CA: ABC-CLIO, Inc., 2002.

A comprehensive and readable 400-page volume that is part of the “America’s Freedoms” series. The author includes case summaries and court opinions in nearly all of the cases discussed in this teaching unit, a table of cases, and an excellent annotated bibliography. The documents section features thirty Primary Source documents that span 375 years of American history. Could be used as a high school textbook.

## **Student Reading List**

Douglas, William O. *The Bible and the Schools*. Boston: Little, Brown, 1966.

A 65-page booklet that explains some of Douglas’ views of the Establishment Clause and the principle of religious neutrality that laws ought to protect.

Dudley, Mack E. *Engel v. Vitale (1962): Religion and the Schools*. New York: Holt,

1995.

The story of one of the Supreme Court’s most controversial decisions surrounding New York state’s officially mandated classroom prayer. The New York supreme court upheld the daily practice because it did not amount to religious “instruction.” But did it?

Ginger, Ray. *Six Days or Forever? Tennessee v. John Thomas Scopes*. London:

Oxford University Press, 1979.

Very readable and accurate account of what really happened at the famous “Monkey Trial” in Tennessee in 1925. William Jennings Bryan and Clarence Darrow come to life; excellent analysis of the anti-evolution movement and fundamentalism.

Lynn, Barry, Marc D. Stern, and Oliver S. Thomas. *The Right to Religious Liberty*. The

Basic ACLU Guide to Religious Rights. Carbondale, IL: Southern University

Press, 1995.

A practical question and answer format, part of the Handbook Services Series published by the American Civil Liberties Union. Emphasizes citizen rights and how they can be protected. Chapter headings include, “The Establishment Clause,” “The Free Exercise Clause,” and “Religion and Public Education.” There are two useful appendices which explain the Equal Access Act (1993) pertaining to public schools and religious clubs.

## **Materials for Classroom Use**

Bassiouni, M. Cheriff, et. al., eds. *Vital Issues of the Constitution*. Chicago: The Law in

American Society Foundation, 1989. ( *Teachers Guide* authored by Robert H. Ratcliffe, published in Boston by Houghton Mifflin Company)

An excellent classroom resource designed to introduce high school students to the Constitution using an inductive approach. Includes an Introduction to the Constitution and our Legal System, a five-page Glossary, a four page Index of cases, and a Mock Trial. Divided into six chapters; Chapter One challenges students to analyze the constitutional issues in six freedom of religion cases.

Finkelman, Paul, ed. *Religion and American Law: An Encyclopedia*. New York:

Garland Publishing, Inc., 2000.

Alphabetically arranged, from *Abington v. Schempp* to Religious Zoning Cases, this 600-page reference book is an invaluable tool to any educator on the subject of religion and the law. After each case is summarized and decisions quoted, a list is provided of similar Supreme Court “Cases Cited,” plus helpful bibliographies for each article.

Sass, Charles R. *One Nation Under God? School Prayer and the First Amendment*.

Alexandria, VA: Close Up Publishing, 1995.

This excellent classroom resource has lessons on the history of freedom of religion, the *Wallace v. Jaffree* school prayer case and a proposed “Religious Equality Amendment.” Includes four Student Activities, six Student Handouts and a free 30-minute video. Available from Close Up Foundation Publishing, 44 Canal Center Plaza, Alexandria, VA 22314 (1-800-765-3131)

Urofsky, Melvin I. *Religious Freedom. Rights and Liberties Under the Law*. Santa

Barbara, CA: ABC-CLIO, Inc., 2002.

Could be useful as a student text; details the historical origins and appropriate cases under chapters titled “The Establishment Clause” and “The Free Exercise Clause.” Contains a summary of important Supreme Court opinions. (see Teacher Bibliography above)

**Web Sites:**

Americans United for Separation of Church and State: [www.au.org](http://www.au.org)

Education Week: [www.edweek.org](http://www.edweek.org)

People for the American Way: [www.pfaw.org](http://www.pfaw.org)

U.S. Department of Education: [www.ed.gov](http://www.ed.gov)

Court Decisions: [www.findlaw.com](http://www.findlaw.com)

**Other Organizations:**

American Civil Liberties Union National Assoc of Secondary Principals

American Family Association National Conference of Christians and Jews

American Federation of Teachers National Council on Religion & Public Ed

American Jewish Congress National Council for the Social Studies

Christian Legal Society National Education Association

Law in American Society Foundation National School Boards Association

National Association of Evangelicals Rutherford Foundation

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