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Lawyers, the Public, and the Origins of America's Culture Wars

Senior Honors Thesis By Haley Cook, University at Albany, SUNY.
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ABSTRACT

In 1962 and 1963, the United States Supreme Court attempted to untangle religion . The Court decisions did not sit well with many Americans who feared subversion and juvenile delinquency as a result of mandatory school prayer and Bible reading being declared unconstitutional. This paper will argue that there was a mixed public reaction to Engel v. Vitale (1962) and Abington v. Schempp (1963). This paper will look at the mixed reactions of everyday Americans to examine the mid-twentieth century intersections of anti-Communist fear, the rise of Evangelical Christianity, and the fear of juvenile delinquency. It will do so by examining the legal culture's attitudes toward school and religion.

The salutatorian at my high school graduation in 2014 received a standing ovation for her speech about God. She was told specifically not to give this speech, that it might violate the rights of some students and that it violated the separation of church and state. But, she said, God was her inspiration. He picked her up when she was down. His wisdom was what guided her through her teenage years. He afforded her great opportunities and motivated her to work hard and become the salutatorian. He was her motivation, and we could each reach success as well, whether it was with God or not. The gymnasium was overcome with cheers, claps, and shouts as the salutatorian stood up for her beliefs and shared her story in the name of God. Religion has been deeply engrained in America since before the nation's birth, so in some ways, it should be no surprise that the salutatorian received a standing ovation for her speech and her actions on graduation day.

It is debatable whether her actions are truly a violation of the separation of church and state because the topic over religion's proper place in schools is a topic with a mixed reaction. This mixed reaction can be traced to the early 1960s when the United States Supreme Court attempted to untangle religion and education. Although the public is not always happy with the decisions made by the Court, there is rarely a reaction that spans a few months or at most, a few years. The cases of *Engel v. Vitale* (1962) and *Abington v. Schempp*(1963) are two cases that cause a mixed reaction that reaches into the 21st century and into the everyday lives of Americans, as is evident in my high school graduation. The public reaction of *Engel* and *Schempp* is mixed and through the language usage of everyday Americans, the reaction is reflective of three larger and broader trends,

namely, anti-Communist rhetoric, the rise of Evangelicalism, and a moral panic over juvenile delinquency.

BACKGROUND

The intersection of law and religion in the United States can be studied through four main time periods in which historiographical debate has been made: the colonial era, the era of the Founders, the 19th century and lastly, the 20th century. Each period has been peppered with broad and specific questions and the debate has expanded beyond the scope of just legal historians.¹ In his analysis of the historiographical record, Steven Green lays down the contradicting truths that the study of law and religion is built upon. The notion that the United States was the first to disentangle an established religion from the government was viewed as in line with American democratic values. At the same time, Americans put an emphasis on their religiosity.² Until the mid-twentieth century, writings on law and religion were idealized and writings had undertones of contradicting sentiments. Green attributes a shift in historiography to a shift in Supreme Court ideology. Writers continued to portray law and religion in an idealized fashion but put significant weight on the importance of the heroic Framers who possessed the ability to separate church and state.³ Writers of the 20th century also wrote through the lens of the “secularization thesis,” which states that the separation of church and state initiated by the Founders led to secularization. Green states that after the Supreme Court decisions of

¹Green, Steven K. "Law and Religion." Edited by Alfred L. Brophy. *In A Companion to American Legal History*, edited by Sally E. Hadden, 387-406. 1st ed. West Sussex: Wiley-Blackwell, 388

² Green, “Law and Religion,” 388

³ Green, “Law and Religion,” 389

the early 1960s, the secularization thesis was increasingly criticized. The “accommodationist” perspective, which claims that the Founders intended for religion and government to be mutually infused entities, rapidly replaced writings from other perspectives. The Rehnquist and Roberts Courts both favored the accommodationist perspective, citing the long lasting truth that religion and government have been entwined since the Founders.

In his book, Between Church and State: Religion and Public Education in a Multicultural America, James Fraser looks at how religion in the American educational system has changed in tandem with changes in the cultural and religious structure of the United States. He begins with the early educational system in the U.S. and his work finishes in the contemporary period. As he examines periods throughout U.S. history, he talks about the public reaction to certain Supreme Court cases. Fraser cites growing tension in the mid-20th century within the religious community as the cause of the reaction. The loss of Protestant hegemony caused anxiety after the *Scopes* trial. The 1925 trial concerned whether evolution would be taught in the classroom.⁴ Divisions grew between Protestant denominations, birthing the Fundamentalist movement. He tracks the tension in the religious community over time, until he comes to the rise of the religious right and the fight behind the Religious Freedom Amendment.⁵ Fraser argues that the debate over religion’s proper place in American schools has been highly influenced by the religious community. There are continual actions and reactions taken by various religious groups to stay intertwined with American education.

⁴ Fraser, James W. *Between church and state: religion and public education in a multicultural America*. Baltimore: Johns Hopkins University Press, 2016., 111

⁵ *Ibid.*, 171, 180

This thesis will situate itself in-between the approaches of Green and Fraser. Green focuses on the way the Court has interpreted the law and how the Court has viewed certain decisions throughout different periods in history. On the other hand, Fraser looks at the public reaction to famous cases, such as the *Scopes* trial. First and foremost, this thesis is about public reaction. It is about how Americans saw their rights and saw themselves in the early 1960s. It is about what Americans saw as constitutional and unconstitutional. Second, it is about the legality of the cases under examination. The Supreme Court's interpretation of religious freedom was not in step with how Americans interpreted religious freedom. This thesis will examine the disconnect between the Court and the public through an examination of the public's reaction. The reaction to *Engel* and *Schempp* can be organized into four common themes: an appeal to the Founding Fathers, a debate over true democracy or the history of a Christian nation, the inadequacies of emotionally charged rhetoric, and the fear of powerful labels (un-Godly or subversive). The four themes that arise from the public reaction amount to a mixed legacy of the case. The mixed public reaction to the cases of *Engel v. Vitale* and *Abington v. Schempp* can be situated in the larger societal trends of anti-Communism, a rise of Evangelicalism, and a panic over juvenile delinquency.

THE LAST STRAW

Although the focus of this thesis is the public reaction to *Engel v. Vitale* and *Abington v. Schempp*, it is important to understand the legal groundwork that allowed the Supreme Court to decide against mandatory Bible reading and prayer in schools. The legal precedent used by the Court in 1962 and 1963 derives from another Supreme Court

case, *Everson v. Board of Education* (1947). The *Everson* case arose out of the debate to a New Jersey law that claimed it was lawful for school districts to reimburse parents for busing students. Ewing Township repaid parents a total of \$354.74 for the transportation costs of 21 students to four Catholic Schools.⁶ Arch Everson, a New Jersey taxpayer, opposed the law and regarded it as an establishment of religion.

The *Everson* case is important because many historians view it as the first time that the 14th amendment was used to protect the 1st amendment right of freedom from an established religion.⁷ In the 5-4 decision, the majority sided with Everson and saw the New Jersey law as a form of religious establishment. Justice Hugo Black contended that the needs of the individual should come before the needs of the government and erected the infamous “wall” of separation.⁸ The *Everson* case is regarded for its importance among scholars, not among the American public. The case’s importance lay in its ability to set the legal groundwork necessary for future school prayer cases.

The case of *Engel v. Vitale* originated from an objection to a prayer sanctioned by the New York Regents and recited in school districts throughout the state. In an attempt to reflect the religious composition of the state, the NY Regents put together a team of priests, rabbis, and ministers to write the prayer.⁹ The “one size fits all” prayer read, “Almighty God, we acknowledge our dependence on Thee, and we beg Thy blessings

⁶ Dierenfield, Bruce J. *The Battle over School Prayer: How Engel v. Vitale Changed America*. Lawrence, KS: University Press of Kansas, 2007., 46

⁷ *Ibid.*

⁸ *Ibid.*, 48, 49

⁹ *Ibid.*, 67, The religious composition of New York State was 50% Catholic, 25% Jewish, 20% Protestant and 5% unidentified. The team of priests, rabbis and ministers was set up with the goal of creating a nondenominational prayer. Dierenfield refers to the prayer as “Melding patriotism and religion to defeat the Soviet Union...”

upon us, our parents, our teachers and our country.”¹⁰ After learning that the Herricks School Board in New Hyde Park, New York had adopted the prayer, the Roth family contacted the American Civil Liberties Union (ACLU).¹¹ The families who participated in *Engel* were Steven Engel, Monroe Lerner, Daniel Lichtenstein, Lenore Lyons and most importantly, Lawrence Roth.¹² Roth was the first parent to make his unhappiness with the prayer apparent and then gathered the other participants to the case.

Lawrence Roth’s drive to remove organized religion from public education was not only a moral crusade but a deeply personal one as well. Roth was born to Hungarian Jewish immigrants in 1914 and grew up in Turtle Creek, Pennsylvania.¹³ Turtle Creek is where Roth’s older brother was murdered and where Roth eventually rejected his Jewish faith. The Roth family recounts that on September 26, 1924, a group of young men chased Lawrence Roth’s older brother, Sidney. The men shouted, “Get the Jew! Get the Jew!”¹⁴ Sidney was caught and put into a car from which he was later thrown, killing the 16-year-old. Lawrence, only 10 years old, came home from school to find his older brother’s dead body on the floor. Lawrence and other members of his family believe that Sidney was the victim of a hate crime fueled by anti-Semitism.¹⁵ After his brother’s death, Lawrence rejected organized religion and turned to a more egalitarian view of the world and of society.¹⁶ When Roth learned of the prayer instituted at his son’s school, he

¹⁰ Ibid.

¹¹ Ibid., 91

¹² Ibid., 72

¹³ Ibid., 86, 87

¹⁴ Ibid., 87

¹⁵ Ibid.

¹⁶ Ibid., 89

was brought back to that afternoon after school and from there-on-out, was consumed with the fight over the prayer's ultimate undoing.

At a NYC Chapter meeting of the ACLU, members debated the strengths and weaknesses that went hand in hand with taking a case like Roth's. Many members thought it would be better to run a legislative campaign instead of the case, but William Butler, a Catholic Attorney, took the case.¹⁷ Butler's religion is important because of the driving force behind the case, Roth, rejected his religion and had liberal leanings, which could easily be interpreted as Communistic. The NYCLU (the New York Chapter of the ACLU) decided that Butler was the Attorney for the job. He had three priests in his family and his Catholic ties could be of use in the case, framing Butler as a defender of religious liberties.¹⁸ When news of the case began to make its rounds, Leo Pfeffer, of the American Jewish Congress, pushed for the NYCLU to abandon the case. Pfeffer thought it would ruin the chances of a similar case he was working on because his case, *Abington v. Schempp*, would make a better constitutional argument than the NY Regents Prayer would.¹⁹

Ignoring the plea from Pfeffer, Butler pushed through and began with a written request to the Herricks School Board to remove the prayer. The School Board president was William Vitale, and after some consideration, Vitale decided not to remove the prayer. In addition to his title as School Board president, Vitale was an Attorney. He argued on behalf of the Board that the prayer promoted proper learning objectives such as

¹⁷ Ibid., 92,93

¹⁸ Ibid.

¹⁹ Ibid., 105

morality.²⁰ Following the initial refusal by Vitale and the School Board, Butler moved forward with the first step of litigation on December 4, 1958, a request to stop the prayer. At trial, Butler argued that the Regents Prayer infringed the rights provided in both religion clauses of the 1st amendment.²¹ Vitale was replaced and the new Attorney for the School Board, Bertram Daiker, argued that the prayer was aligned with the proper functions of the educational system. The state and the schools are required to develop moral and spiritual values. Instead of handing down a decision, the trial Judge, Bernard Meyer, gave Butler and Daiker two weeks to submit new briefs on the meaning of the Establishment Clause. On August 24, 1959, Judge Meyer found for the School Board because school prayer was common practice throughout the country at the time the 1st and 14th amendments were adopted.²²

As the case made its way through the appeals process, the Roth family and the other petitioners were on a losing streak. On October 17, 1960, the New York Supreme Court Appellate Division 2nd Department affirmed Judge Meyer's decision. On July 17, 1961, the New York Court of Appeals in Albany upheld the lower court decisions. The majority said, "...when the Founding Fathers prohibited 'an establishment of religion' they were referring to official adoption of, or favor of, one or more sects." The two dissenting judges claimed that the Regents Prayer was a form of religious education sponsored by New York State.²³

²⁰ Ibid., 101, 102

²¹ The first amendment has two clauses concerning religion, known as the Free Exercise Clause and the Establishment Clause. The Free Exercise clause states that the government will not restrict the ability of Americans to practice how or what they wish. The Establishment Clause prohibits the government from establishing one religion.

²² Ibid., 111-116

²³ Ibid., 118

Oral arguments in front of the United States Supreme Court were scheduled for April 3, 1962. The attorney for the Roth's argued that the nature of the prayer was unarguably Christian and it abridged the rights of atheists and of other denominations. The School Board argued that the wall of separation between church and state was confused for an iron curtain. The Board argued that American values differ from totalitarian values and the act of taking religion and God out of schools was akin to the actions of a dictatorial regime.²⁴ The Court sided against the School Board in an 8-1 decision. The majority decision was written by Justice Hugo Black who stated:

When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and degrade religion.

The majority held that although the prayer was "optional," it did not matter. In the eyes of the Court, there was no arguing with the religious nature of the prayer.²⁵ The one dissenting Judge, Justice Stewart, questioned the wall of separation metaphor. He did not agree that the Regents Prayer was an abridgment of rights against atheists or other non-Christian denominations.²⁶

At the same time that the *Engel* case was making its way through the courts, so

²⁴ Ibid., 120, 121

²⁵ Frommer, Arthur, ed. *The Bible and the Public Schools*. New York, NY: The Former Publishing Co, 1963, 186,187

²⁶ Dierenfield, Bruce J. "The Battle over School Prayer: How *Engel v. Vitale* Changed America," 132

were two similar religion cases, *Abington v. Schempp* and *Murray v. Curlett*. The Schempp family was Unitarian from Pennsylvania. The Schempps read and taught the Bible to their three children at home. The Schempps refused to have their children removed from the morning devotional readings that took place at their school although a Pennsylvania statute stated that children could be exempt with parental permission. They felt it would make their children pariahs among the student body. On the other hand, the Murray family was professed atheists. Madalyn Murray argued that Bible reading in their Baltimore school district violated not only her son's but also her own religious liberties. Differing from the Schempps, Murray refused her son to remain the classroom during the morning readings. The Murray case never went to trial because instead of arguing for the Bible reading in court, the Maryland school district sided with Mrs. Murray, admitting the unconstitutional nature of mandatory Bible reading.²⁷ The Supreme Court handed down a decision of the two cases, which were consolidated for their similar nature.

When the Supreme Court heard oral arguments in October of 1962, the Abington school district argued that through the practice of mandatory Bible reading, it was promoting morality and values. On the other hand, the Schempp family argued that the Pennsylvania statute violated the religious liberties of their children. In another 8-1 decision on June 17, 1963, the Court sided against the school district and declared the mandatory Bible reading law unconstitutional. The law read, "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from Bible reading, or attending such Bible

²⁷ Frommer, Arthur, ed. "The Bible and the Public Schools," 39,40

reading, upon the written request of his parents or guardian.”²⁸ The majority decision, articulated by Justice Clark, stated that because the statute required reading from the Holy Bible, it had an obvious preference for a Christian denomination.²⁹ Justice Clark also debunked the arguments of a “religion of secularism” and the “majority’s right.” The court felt that an American needs to know the history of religion and the court did not say that the Bible was banned. In fact, the Court said the Bible should be used as a historical document towards educative ends. Justice Clark iterates the importance of the Free Exercise Clause in that it is there to guarantee the right of free exercise to anyone, but never to a majority who have the intent to enforce their beliefs through the arm of the government.³⁰ The singular dissenter, Justice Stewart, argued that the *Schempp* case did not offer enough evidence to even render a decision. Stewart felt that it was impossible to even claim if the Establishment Clause had been violated.³¹ The law that was invalidated had an exclusion provision and through such provision, it was clear that there was no coercive nature about the law and therefore did not prohibit the student’s free exercise.³²

The two Supreme Court cases produced a mixed reaction across the United States. It is clear from the opinions of the Justices that religion was not made illegal, nor was the importance of religion denied from American life. On one end of the spectrum, Americans were distraught at the thought of God being taken out of the

²⁸ Ibid., 58

²⁹ Ibid., 63

³⁰ Ibid., 78

³¹ Ibid., 165

³² Ibid., 177

classroom. On the other end, Americans were outraged at what they interpreted as shortcomings in the definition of religious liberty by their contemporaries.³³

IN THE COURT OF PUBLIC OPINION

In 1964, Congress published volumes of Hearings that took place before the Committee on the Judiciary. The volumes contain thousands of pages of proposed resolutions, letters from constituents, opinions of various religious and legal organizations, opinions of University Deans and Law School Deans, and snip-its from news sources across the country. In total, there were 154 resolutions offered by 115 members of Congress.³⁴ The 154 resolutions were specifically in reaction to *Engel v. Vitale* and *Abington v. Schempp*, with the most famous of the 154 proposed resolutions being that of Representative Frank Becker from New York.

Engel was decided on June 25, 1962, and Representative Becker introduced the first reaction legislation on June 26, 1962. Known as H.J. Res 752, an “Amendment to the Constitution for Offering Prayers in Public Schools and Places,” would allow prayer to be offered in any public school or public place throughout the United States.³⁵

Throughout 1962, Becker worked to push his legislation. He contacted other members of the House to gain support and he sent continual letters to Chairman of the House

³³ Hooper, William. “What People Talk About: Shall There Be No Sanctuary?” *Boston Globe*, May 17, 1964.

³⁴ U.S. Congress. Committee on the Judiciary. School Prayers. Hearings before the United States House Committee on the Judiciary on Proposed Amendments to the Constitution Relating to Prayers and Bible Reading in the Public Schools on Apr. 22-24, 28-30, May 1, 6-8, 13-15, 20, 21, 27, 28, June 3, 1964. 88th Cong., 2d sess. Cong. Washington: U.S. G.P.O., 1964.

³⁵ Papers of Frank J. Becker 1899-1901, Box 3, Folder 3, ME Grenander Archives, University at Albany (SUNY), Albany, NY

Committee on the Judiciary, Emanuel Celler, in an attempt to set a hearing date for his resolution. On the House floor, Becker stated that June 25, 1962, the day *Engel* was decided, would go down as a black day in American history. Becker vocalized the opinion of many Americans of the time when he stated, “Belief in God is our strongest bulwark against the march of World Communism and we should be doing everything we can to strengthen this defense rather than weaken it.”³⁶ Chairman Celler did not immediately hold hearings on H.J.Res.572, but after the Court decided the *Schempp* case in 1963, proposed amendments flooded the House. In the years directly following *Engel* and *Schempp*, *The LA Times*, *The Chicago Tribune*, *The New York Times*, *The Washington Post* and more, were overwhelmed with letters to the editor that gave insight into America’s conception of the Court’s decisions.

Each letter to the editor or letter from a constituent gave insight into how the average American felt about the school religion cases and the proposed amendments. In reference to Church leaders that sided with the Court, one such letter to the *LA Times* conveyed outrage, “I question the belief in the basic vow of their profession: the furtherance of Christianity... parishioners who are well aware that abolishment of reverence for God is a precept of Communism and Nazi tyranny.”³⁷ *The Detroit Free Press*, which was entered into the Congressional record, underscores the positive reaction to the cases, “The Becker amendment is indeed a cursory, ill-conceived attempt to overthrow a valid Supreme Court decision upholding the separation of state and

³⁶ Ibid.

³⁷ Lachnit, Mary A. "Propriety of Church Leaders' Opposing School Prayer Assailed." *Los Angeles Times* June 23, 1964.

church.”³⁸ The different reactions towards *Engel*, *Schempp*, and the Becker amendment highlight common themes that the public used to illustrate their opinion.

Although those who supported the Court decisions and those who opposed it were firm in their beliefs, they appealed to four common themes: an appeal to the Founding Fathers, a debate over democracy or the history of a Christian nation, the inadequacies of emotionally charged rhetoric, and the fear of labels such as subversive or Communist. The first argument was that the founding fathers were more enlightened than Americans of 1962 and 1963 and therefore, their truth should be respected. Writing into the *Chicago Tribune*, Frank Ehredt quotes George Washington, “Let us indulge with caution the supposition that morality can be maintained without religion.”³⁹ Effectively, Ehredt is saying that we must be cautious as a people to think that we can live in a moral and just society without religion and therefore, according to Ehredt, religion should remain in the schools. Some appeals were not as blatant as Mr. Ehredt’s. For example, Mrs. Richard Adams wrote into the *Los Angeles Times* commenting on the offensiveness of the New York Regents Prayer. According to Mrs. Adams, Christians and Jews are dependent on God; therefore the only people left to be offended by the prayer are atheists. “Neither this country nor the Constitution were based on atheism...”⁴⁰ An appeal to the ideology of the

³⁸ U.S. Congress. Committee on the Judiciary. School Prayers. Hearings before the United States House Committee on the Judiciary on Proposed Amendments to the Constitution Relating to Prayers and Bible Reading in the Public Schools on Apr. 22-24, 28-30, May 1, 6-8, 13-15, 20, 21, 27, 28, June 3, 1964. 88th Cong., 2d sess. Cong. Washington: U.S. G.P.O., 1964.

³⁹ Ehredt, Frank. "School Prayer." *Chicago Tribune*, September 8, 1963.

⁴⁰ Adams, Richard H., Mrs. "School Prayer." *Los Angeles Times*, April 11, 1962.

founding fathers and sometimes the more subtle appeal to the Constitution were used to prove that the public should support the Becker amendment.

Not far from an appeal to Thomas Jefferson and George Washington, was the second common theme among the public reaction to *Engel* and *Schempp*. Those who supported the Court argued that religion was a cornerstone of democracy. Those who opposed the Court counteracted this narrative by arguing for the history of a Christian nation. To elaborate, both arguments had their basis in the religious liberties protected by the 1st amendment. Those who saw religion as a cornerstone felt that religious liberties were the bedrock of the nation and for people to attempt to take that away through an amendment was unheard of and simply wrong. “In a land as diverse as our own, it would be unreasonable to expect and wrong to attempt to find even a simple prayer acceptable to all.”⁴¹ Essentially, the religious diversity of America, protected by the 1st amendment, is what makes America great. Therefore, it would be wrong to violate the freedoms of other religious groups in enforcing a school prayer or Bible reading. On the other hand, those who argued the history of a Christian United States felt it was *their* religious liberties that were violated when God was taken out of school and there was nothing offensive about Christian hegemony.

We Americans should be more than a little concerned when in a Christian nation “under God,” stating on its coins “in God we trust,” using the Bible in its Presidential inauguration ceremonies, opening sessions of Congress with prayer, the use of a simple, nondenominational prayer in the public schools is outlawed

⁴¹ Lewis, Jordan D. "School Prayer." *Chicago Tribune*, May 15, 1964.

by action of the Supreme Court. To what minority are we bowing and joining in rejecting God?⁴²

To these Americans, there was no issue with the prayer other than the issue created by the Court. To them, there were very clear signs that America was a Christian nation and it was offensive that other religions or atheists would attempt to infringe upon the religious liberties of a Christian America.

Third, in the Committee on the Judiciary Hearings, many constituents and news sources that were entered into the record claimed that the 154 amendments, especially the resolution put forward by Representative Becker, had no legitimate purpose. The thought was that it was emotionally charged rhetoric. In an article from the *Washington Post*, there was a discussion concerning the ambiguity of the Becker amendment and what such ambiguity would cause:

In thousands of school districts all over the United States, school boards or school principals or school teachers-public officials all- will be empowered under Mr. Becker's proposal to say what is orthodox in worship for their pupils. It would be hard to find a more certain prescription for discord.⁴³

The amendment proposed by Mr. Becker offered no clear solutions. There was nothing concrete about his proposal. There is no mention of the version of the Bible or type of

⁴² Bauman, Virginia. "School Prayer Decision." *Chicago Daily Tribune*, June 29, 1962.

⁴³ U.S. Congress. Committee on the Judiciary. School Prayers. Hearings before the United States House Committee on the Judiciary on Proposed Amendments to the Constitution Relating to Prayers and Bible Reading in the Public Schools on Apr. 22-24, 28-30, May 1, 6-8, 13-15, 20, 21, 27, 28, June 3, 1964. 88th Cong., 2d sess. Cong. Washington: U.S. G.P.O., 1964., 956

prayer that would be used.⁴⁴ The obscure nature of the Becker amendment led many to believe that it was nothing more than emotionally charged rhetoric. In a *New York Times* editorial, a claim was made that the Congressional hearings were “more emotional than enlightening.” The amendment was nothing more than the latest focus of “impassioned” Congressmen.⁴⁵ In a letter to Congressman Celler, Robert Howard enclosed his interpretation of the Becker amendment. “The use of an emotion-charged issue to vilify and stampede our legislative representatives makes a sham and a mockery of the basic precepts of our American way of life.”⁴⁶ Those who supported the Supreme Court decisions and opposed the Becker amendment argued that it would do nothing but add to an already tough situation. The amendment was riding the coattails of a sensitive issue without adding a solution.

Lastly, many felt that the amendments held so much weight only because Congressman and Representatives feared the labels of ungodly, un-American or subversive. *The Washington Post* outlines the sentiment clearly, “One of the great games in American politics is to set up a strawman and destroy it...one gets the impression that a large-sized strawman is now being belabored unmercifully.” Those who opposed the amendment felt that it boiled down to a game of political ideology. Members of Congress would redbait each other, multiplying the issues of school prayer and attempting to fix something that was not broken. In a *Washington Post* editorial, Kenneth Dole argued that “supporters of the “Becker amendment” are intimidating Congressmen with threats of

⁴⁴ Ibid., 1101

⁴⁵ Ibid., 1339

⁴⁶ Ibid., 1109

campaigning against them as “godless” and “antireligious” if they oppose the bill.”⁴⁷ In a letter to Congressman Celler, C.M.White, a constituent, stated, “The communistic philosophy is a religion, though the opposite of the Christian one.” White goes on to tell Celler the importance of America’s Christian heritage.⁴⁸ Tied into the quotes from Dole and White is the strength of anti-Communist rhetoric and the firm belief that Communism is God-less and therefore un-American. Congressmen and those who did not support the resolutions were framed as subversive Americans and were an example of why such an amendment was necessary.

Although not one of the four main reactions, it is interesting to note that a minority of Americans appealed to the logic of President John F. Kennedy while trying to contextualize the Court decisions. President Kennedy was assassinated in the fall of 1963, only a few months after the *Schempp* decision. Supporters of the Court used the late JFK to validate their argument. In regards to the school prayer cases, Kennedy said:

We have in this case a very easy remedy, and that is to pray ourselves. And I think it would be a welcome reminder to every American family that we can pray a good deal more at home, we can attend our churches with a good deal more fidelity and we can make the true meaning of prayer much more important in the lives of our children.⁴⁹

⁴⁷ *Ibid.*, 1130

⁴⁸ U.S. Congress. Committee on the Judiciary. School Prayers. Hearings before the United States House Committee on the Judiciary on Proposed Amendments to the Constitution Relating to Prayers and Bible Reading in the Public Schools on Apr. 22-24, 28-30, May 1, 6-8, 13-15, 20, 21, 27, 28, June 3, 1964. 88th Cong., 2d sess. Cong. Washington: U.S. G.P.O., 1964., 1106

⁴⁹ *Ibid.*,1340

Writing into the *Boston Globe*, Margaret Southard appealed to JFK in an attempt to debunk the argument that the Court's decision was a God-less decision. "Our late President said that the Supreme Court ruling was the law of the land, but that we were free to pray in our homes and in our churches. If that constitutes God-less communism, let the writer of that letter make the most of it."⁵⁰ Essentially, the Supreme Court was right because JFK backed it.

Following the decisions of the Court in 1962 and 1963, public reaction was mixed, as is evident through the reactions of the everyday Americans published in a variety of newspapers nationwide. Some Americans felt the Court was out of line and overstepped their bounds in taking religion out of schools. Other Americans were annoyed by their compatriot's inability to see the constitutional issue of mandatory prayer and bible reading. Writing into the *Boston Globe*, William Hooper writes,

It's about time we call a halt to the hysteria now rampant in parts of our population over the Supreme Court's decisions regarding school prayer and Bible reading. The court's ruling did not "ban" prayer and Bible reading. It is the U.S. Constitution as interpreted by the court...⁵¹

In this quote from the *Boston Globe*, Hooper is expressing frustration towards other Americans who seem to be wrapped up in a drawn out political and legal debate over prayer and bible reading in schools. Americans not only disagreed with each other over the Court decisions, they were also at odds with how scholars saw the decisions.

Various historians and legal scholars of the time commented on the nature of the

⁵⁰ Southard, Margaret. "Facts on Prayers." *Boston Globe*, December 11, 1963.

⁵¹ Hooper, William. "What People Talk About: Shall There Be No Sanctuary?" *Boston Globe*, May 17, 1964.

reaction because if the public were following the Court's decisions, it would have been clear that the Justices could not have decided any other way.⁵² This point of view, pushed forward by scholars, traces the roots of *Engel* and *Abington* back to the *Everson v. Board* case of 1947. If Americans had been aware of the *Everson* case and a variety of other religion cases prior to 1962, scholars argued that there would not be the perception of the Court overstepping its bounds. Following the *Engel* decision, some Americans, such as Virginia Bauman, wrote into the *Chicago Daily Tribune* on June 29, 1962; felt that their religious liberties were violated by the decision.⁵³ To Americans like Virginia Bauman, the Court decision came out of left field and was offensive to the basic tenets of Christian America.⁵⁴ Following in the wake of opinionated Americans like Virginia Bauman, the Court reiterated in the *Schempp* decision that they did not declare the Bible unconstitutional in any way. The Court declared forced Bible reading an forced prayer of a singular denomination unconstitutional and reiterated that the Bible could and should be used in schools as a historical work.⁵⁵ There was a divide between what the American public perceived and what the Supreme Court stated and this divide is evident in the language used by everyday Americans as they reacted to the Court decisions.

Each of the common themes that appeared in the Congressional record and in newspapers exemplified a discontinuity with what people believed the 1st amendment stood for versus what the Supreme Court declared unconstitutional. Each theme is

⁵² U.S. Congress. Committee on the Judiciary. School Prayers. Hearings before the United States House Committee on the Judiciary on Proposed Amendments to the Constitution Relating to Prayers and Bible Reading in the Public Schools on Apr. 22-24, 28-30, May 1, 6-8, 13-15, 20, 21, 27, 28, June 3, 1964. 88th Cong., 2d sess. Cong. Washington: U.S. G.P.O., 1964.

⁵³ Bauman, Virginia . "School Prayer Decision." *Chicago Daily Tribune*, June 29, 1962.

⁵⁴ For Virginia Bauman's direct quote, please reference Footnote 42.

⁵⁵ Frommer, Arthur, ed. "The Bible and the Public Schools," 78

evident in the language use of everyday Americans, which grew out of Evangelicalism in the 1950s, a moral panic over juvenile delinquency in the 1950s and anti-Communist rhetoric. In the next section, this thesis will draw upon the language usage of the average Americans and their reaction to the Supreme Court cases to show its relation to Evangelicalism, anti-Communism and a panic over juvenile delinquency.

Anti-Communist Rhetoric

The importance of Anti-Communist rhetoric and its relation to the mixed public opinion following Engel and Schempp is evident in the use of Congressional red-baiting and the fear of labels. One event that exemplifies the use of anti-Communist rhetoric is a film produced by the House Un-American Activities Committee in 1960. The House Un-American Activities Committee or HUAC can be defined as, “congressional investigating committee,” which began to “take the position of prosecutor, jury and judge with respect to alleged Communists.”⁵⁶ Congressional investigatory committees have been used since the 1st Congress because through the investigation of sensitive and controversial issues, Congress has a better handle on what proper legislation might entail.⁵⁷

In the spring of 1960, HUAC called hearings in San Francisco, California, to hear testimonials from well-known Communist leaders.⁵⁸ After the hearings, HUAC produced a propaganda film entitled, *Operation Abolition*. Narrated by Fulton Lewis III and commissioned by Congressman Francis E. Walter, the film was a compilation of various media clips from the events of May 12-14 depicted in such a way as to incite fear of

⁵⁶ Uphaus, Willard E. *Commitment*. New York: McGraw-Hill, 1963, 128

⁵⁷ *Ibid.*, iii

⁵⁸ *Operation Abolition*. Performed by Fulton Lewis III. Washington: Capital Film Labs, 1960.

moral decay and Communist take-over in those who watched it. The film can be used as a lens to contextualize the process of redbaiting and labeling mentioned in the opinions of everyday Americans.

Operation Abolition paints a picture of the public's fears about juvenile delinquents and Communist subversives as reoccurring themes throughout the film. The film shows groups of student protestors along with a sprinkling of "known" Communists, outside San Francisco City Hall where the hearings were held. The protesting students chanted a Communist hymn, "We Shall Not Be Moved," which was a distraction to the hearing.⁵⁹ According to *Operation Abolition*, the protestors turned to violence when they started to beat the peaceful police officers, causing the police to drag the violent protestors out of City Hall. The students were charged after officers needed to be hospitalized. One newspaper, *The Daily Californian*, described the chaos the Communists caused, saying, "Communists have chosen the minds of our youth."⁶⁰ Through the film, HUAC perpetuated and exaggerated anxieties about the malleable American youth and the influence of subversives.

The events of May 1960 were still important in early 1961 after a play inspired by

⁵⁹ *Operation Abolition*. Performed by Fulton Lewis III. Washington: Capital Film Labs, 1960. The Communist hymn, "We shall not be moved," was later shown by the Northern California Chapter of the ACLU to be an African American hymn used during times of slavery and oppression by the Black Community. At the same time it used by the student protestors in California, it was also used during the sit-ins and bus-boycotts of the Civil Rights Activists. For more on this, please reference the response film *Operation Correction*. *Operation Correction*. Performed by Ernest Besig. United States: American Civil Liberties Union, North California, 1961.

⁶⁰ *Operation Abolition*. Performed by Fulton Lewis III. Washington: Capital Film Labs, 1960.

Operation Abolition was put on at Rutgers University. After a showing of the play, there was a Q&A session with two men who had been a part of the film and its controversy. Again, the topic of the “Communist” hymn was a topic of conversation. Fulton Lewis III, the narrator of *Operation Abolition*, said that if the demonstrators in San Francisco had heard the hymn originally from the African American community, they were fine and were not subversives.⁶¹ On the other hand, if the protestors had learned the hymn from the Communists when they handed out a sheet at the protests, they were obviously Communist dupes. Another student asked a question concerning the Committee’s interpretation of the Fifth Amendment to which Mr. Lewis replied, “Virtually, yes, he’s saying he’s a Communist if he takes the Fifth Amendment.” Obviously frustrated that the University students did not see the clear signs of subversion and Communist activity behind the May 1960 hearings, Mr. Lewis stated, “Rutgers has failed... They haven’t provided courses on anti-communism, they don’t read the Bible of anti-communism, J. Edgar Hoover’s *Master of Deceit*.”⁶² The commentary by Mr. Lewis is representative of a larger scale redbaiting and the power behind the label “Communist”.

The film *Operation Abolition* is an example of the use of specific labels against a variety of people. Throughout the film, Mr. Lewis attempts to frame the protestors as subversives and as Communist dupes. When Mr. Lewis visits Rutgers, he again tries to label the student body as subversive and outlines the simple thought process behind red-baiting. For example, unless a protester learned the African hymn from the African American Community, it was actually a Communist hymn. It becomes clear why many

⁶¹ Wakefield, Dan. "Un-American' Plays the Colleges." *Nation* 192, no. 4, January 28, 1961:75.

⁶² Ibid.

Congressional representatives redbaited and labeled each other as subversive in order to garner support for their 154 resolutions concerning school prayer and bible reading.

There was a fear and a stigma attached to the label of Communist that somehow made one un-American and un-Christian, and a Congressman was un-American and un-Christian if he opposed the Becker amendment.

Evangelical America

Religion has been engrained in America since before the nation's birth. It is an indisputable part of America's cultural heritage. Scholars have speculated that the first quarter of the twentieth century was a period of secularization.⁶³ Scholars have also argued that the period following World War II saw an immediate revival of religion as a centralizing force of mainstream America.⁶⁴ During the 1930s and 1940s, religion and in particular, fundamentalism and evangelicalism, were in the forefront of the average Americans' mind as can be seen through public opinion polls and surveys, and later in their reaction to *Engel v. Vitale* and *Abington v. Schempp*.

In the early 1930s, George Gallup designed the first national poll that sought the answer to private and personal questions, and he quantified them in a way that had not been done previously.⁶⁵ Gallup wanted to "numerically interpret" religion and in 1937, Gallup asked those in his sample if they were members of a church. In Gallup's mind, the response was alarming and signified a drop in religion in the United States.⁶⁶

⁶³ Green, Steven K. "Law and Religion," 388

⁶⁴ *Ibid.*

⁶⁵ Wuhnnow, Robert. *Inventing American Religion: Polls, Surveys and the Tenuous Quest for a Nation's Faith*. Oxford University Press, 2015, 3

⁶⁶ *Ibid.*, 49

Respondents answered that 75% were members of a church, but to Gallup, this was significant due to the age cohorts of the respondents. Older Americans typically answered yes to the church membership question, while the younger Americans typically answered no. In 1942, Gallup asked another personal religious question, but this time it was about bible reading habits. Americans responded by stating that 59% had read the Bible within the last year. This was up a substantial amount from 1939 when 6% said they had read the Bible within the last year. The percentage of Americans who reported reading the Bible rose to 64% by 1964.⁶⁷ In 1944, Gallup asked Americans “Do you believe in God,” and 96% responded that yes, they believed in God.⁶⁸ Gallup was wrong in his initial assessment. American religiosity was on the rise, not the decline. Although the numbers tend to speak for themselves, fundamentalist youth movements and a religious revival were in the foreground from the 1930s through the 1960s.

Billy Graham was a famous Evangelical who inspired masses and converted thousands of Americans through his religious rhetoric. Graham was one of the leading field representatives for the Youth for Christ, an evangelical interdenominational organization that focused on youth problems in America.⁶⁹ It was a time when girls coming of age were potential sexual deviants and boys were potential delinquents.⁷⁰ Leaders of all youth organizations, not just Billy Graham and the Youth for Christ leaders, were setting out to save the youth from moral decay.⁷¹ At contrast with other

⁶⁷ Ibid., 50

⁶⁸ Ibid.

⁶⁹ Bergler, Thomas E. *The Juvenilization of American Christianity*. Grand Rapids, MI: William B. Eerdmans Publishing Co, 2012, 25, Gasper, Louis. *The Fundamentalist Movement*. NV: Mutton & Co, 1963, 130

⁷⁰ Bergler, Thomas E. “The Juvenilization of American Christianity,” 16

⁷¹ Ibid., 5

scholars who claim World War II increased religiosity, Thomas E. Bergler attributes an increase in religiosity in the United States to the process of juvenilization. Bergler defines juvenilization as “the process by which the religious beliefs, practices and developmental characteristics of adolescents become accepted as appropriate for Christians of all ages.”⁷² Essentially, Bergler’s claim is that youth groups of various denominations, Evangelicalism included, advertised religion in a way that was congruent with popular culture. Scholar Joel A. Carpenter, who argues a similar point, backs Bergler’s argument. Carpenter states that the Youth for Christ organization is a successful example of religious revival because the group did what was required to “gain legitimacy” among American youth.⁷³ Their tactics to gain followers were not at all unlike what a business would do to advertise to possible consumers. In essence, one of the main components of the resurgence of religion was contingent upon the ability of youth groups and their leaders to sell religion.

The success of Youth for Christ is reflected in the rise of Bible clubs and the numbers of youth membership organizations across the nation leading to and during the 1950s. Throughout the mid-1940s, the Youth for Christ movement began to propel itself into the public eye.⁷⁴ In the summer of 1945, the group held weekly rallies to encourage the masses and eventually convince them of the destiny they shared with America, to evangelize the rest of the world.⁷⁵ Rallies ranged from an average of 300-400 per week

⁷² Ibid., 4

⁷³ Carpenter, Joel A. *Revive Us Again: The ReAwakening of American Fundamentalism*. New York, NY: Oxford University Press, 1997, 166

⁷⁴ Ibid., 161

⁷⁵ Ibid., 166, 177

across the country and attendance of the rallies ranged from 300,000 to 400,000.⁷⁶ During the 1951-52 school year, there were roughly 700 clubs nationwide. Five years later in 1956, there were over 1,500 bible clubs.⁷⁷ The increase in bible clubs was echoed by a rise in church attendance and the rise of Evangelicalism. Church membership was higher than it had been during World War II, with numbers at an estimated 100,000,000.⁷⁸

In reviewing the Gallup polls and the famous Evangelical Billy Graham, a picture of a Christian America emerges in the mid 20th century. As seen through public surveys and the increases in bible clubs and Youth for Christ rallies, religiosity was on the rise in the late 1940s through the early 1960s. One statistic stands out above the others, which is when Gallup asked Americans “Do you believe in God,” and 96% responded that yes, they believed in God.⁷⁹ Americans like Virginia Bauman wanted to know what minority Christian America was bowing down to in declaring bible reading and prayer unconstitutional.⁸⁰ Americans like Mrs. Richard Adams held that the school prayer was not offensive to anyone except for atheists because America was a founded on Christian principles, “Neither this country nor the Constitution were based on atheism...”⁸¹ The Evangelical movement was gaining momentum from the ground up, while from the top-down, the Supreme Court declared mandatory bible reading and prayer in schools unconstitutional. The rise of Evangelicalism is evident in the language that some Americans used while writing into newspapers after *Engel* and *Schempp*.

⁷⁶ Ibid.

⁷⁷ Bergler, Thomas E. “The Juvenilization of American Christianity,” 151

⁷⁸ Gasper, Louis. “The Fundamentalist Movement,” 1

⁷⁹ Ibid.

⁸⁰ Bauman, Virginia . "School Prayer Decision." *Chicago Daily Tribune*, June 29, 1962.

⁸¹ Adams, Richard H., Mrs. "School Prayer." *Los Angeles Times*, April 11, 1962.

Education and Morals

In 1835, Alexis de Tocqueville said America's strength and the strength of Christianity was due to the separation of church and state.⁸² Red fear and a panic over juvenile delinquency in the 1950s tended to muddy the waters on the exact meaning and interpretation of the phrase "separation of church and state," especially in regards to the education of America's youth. In an event with the 20th Congress, Nikita Khrushchev laid out the goals of Soviet Russia. Khrushchev painted the patterns of industry, agriculture, material and cultural standards with bullet-laced words. According to his reports, the U.S.S.R came out ahead of the United States on all accounts, proving the positive outcomes aligned with Communism.⁸³ To this, the United States responded with "Goals for Americans." In the education section of the "Goals," the purpose of educating the youth is analogous with preserving American democracy. "For the health and strength of the individual and the nation, education should be provided at every level and in every discipline." Belief that education is a pillar of American democracy is a reoccurring theme throughout the 1950s and early 1960s. Americans on both ends of the political spectrum fully believed that education was a key to fighting juvenile delinquency or inciting subversive tendencies.

In 1951, the Educational Policies Committee published a work meant to advise teachers and administrators on the proper functioning of moral and spiritual values in education. The Educational Policies Committee (EPC) states that public schools in the United States have to be a stronghold of religious freedom and this can make them see

⁸² Singh, Surgit. *Communism, Christianity, Democracy*. Richmon, VA: John Knox Press, 1965, 88

⁸³ Singh, Surgit. "Communism, Christianity, Democracy," 99

intolerant and anti-religious. In fact, they are not anti-religious solely because they teach spiritual and moral values.⁸⁴ The juxtaposition of a moral and spiritual, but yet secular education is persistent.

There was a panic that without proper education, the morals and spiritual ethics of the nation's youth would fall by the wayside, creating juvenile delinquents. Teachers were to focus on spirituality and instill American values without enforcing a denomination.⁸⁵ It was the job of teachers to focus on fundamental values and if teachers veered too closely on the side of curriculum and not on spirituality and morals, they were doing their job incorrectly.⁸⁶ In 1953, the American Council on Education stated that if schools were silent on the topic of religion, it was essentially the equivalent to making them irreligious. If schools were silent and irreligious, the minds of the nation's youth would be as well.⁸⁷ The fear of juvenile delinquency can also be seen in the addition of the words "Under God" to the pledge of allegiance. The words were added to keep God and proper values in young minds at school every day during the pledge.⁸⁸

America as a Nation and Americans, in general, saw education as a fundamental component of democracy. Public schools and teachers shape the next generation, and prayer and bible reading within schools were tools that were used to enrich the morals of the children. As seen in the mixed public reaction, to some Americans the Court decision was an example of the "secularist" trend. To other Americans and various scholars, the

⁸⁴ Educational Policies Committee, comp. *National Education Association of the United States Moral and Spiritual Values in the Public Schools*. 1951.

⁸⁵ *Ibid.*, 54

⁸⁶ *Ibid.*, 55

⁸⁷ Martin, Allys A. "Keep God in Our Public Schools." *The Texas Outlook* 43 (April 1959): 24-25

⁸⁸ *Ibid.*

Court was simply interpreting the Constitution.⁸⁹ Writing into the *Los Angeles Times*, Mary Lachnit describes her dissatisfaction with Church leaders, who stand with the Court, when she wrote, “Church leaders who have chosen to join the movement to abolish prayer in public schools show a shocking lack of moral responsibility to American youth at a time when immorality is becoming increasingly rampant.”⁹⁰

According to Mary Lachnit, by standing by the decision to take prayer out of schools, an individual was complacent in the fight against immorality and juvenile delinquency.

Through an examination of anti-Communist rhetoric, the rise of Evangelicalism, and the panic over juvenile delinquency, it is with clarity that the public reaction to *Engel* and *Schempp* is understood. There was no singular factor that leads to the mixed reaction and at some level, anti-Communism, the rise of Evangelicalism, and juvenile delinquency meant something different for every American. The difference in meaning is evident in the public reaction in the 1960s and in its aftermath.

CONCLUSION

Although 115 Congressional representatives proposed 154 amendments, none of them were passed. Exactly twenty years after *Engel* was decided, President Ronald Reagan decided to pursue a school prayer amendment because he claimed the Supreme Court interpreted the 1st amendment incorrectly.⁹¹ Reagan reignited the fire on the issue of school prayer and the outcome was the Equal Access Act of 1984. This act gave

⁸⁹ Hooper William. “What People Talk About: Shall There Be No Sanctuary?” *Boston Globe* May 17, 1964.

⁹⁰ Lachnit, Mary A. “Propriety of Church Leaders’ Opposing School Prayer Assailed” *Los Angeles Times* June 23, 1964.

⁹¹ Fraser, James W. *Between church and state: religion and public education in a multicultural America*. Baltimore: Johns Hopkins University Press, 2016.,176

student groups the same rights regardless of if they were political or religious.⁹² In 1998, 36 years after *Engel* was decided, another school prayer amendment garnered attention on the House floor. The Religious Freedom Amendment read, “To secure the people’s right to acknowledge God according to the dictates of conscience...”⁹³ The vote was 224-203. Although more voted for the amendment than those who did not, it fell short of the 2/3 needed to send the Act to the Senate.⁹⁴ This highlights the continued mixed reaction because enough people wanted a school prayer amendment that a proposed Act achieved enough votes to show that a substantial amount of representatives and their constituents supported the measure. At the same time, the Act did not achieve the majority needed to secure the Act made its way to the Senate, symbolizing that a substantial amount of representatives and their constituents’ disapproved of the measure. Ultimately, the Act was not passed but it shows how divisive the issue of school prayer was long after the Court handed down the *Engel* and the *Schempp* decisions.

In 1962 and 1963, the Supreme Court attempted to disentangle religion from the American public educational system. It did so, but not without a mixed reaction. Through newspapers, editorials and the Congressional record, it is clear that opinions varied from person to person. The language that everyday Americans used can be traced to three broader and larger trends at the time, namely, anti-Communist rhetoric, the rise of Evangelicalism and the panic over juvenile delinquency. Although the language used by Americans of the 1960s has shifted from charges of immorality, subversive and irreligious to something different, the issue of religion’s proper place in schools is as

⁹² *Ibid.*, 178

⁹³ *Ibid.*, 180

⁹⁴ *Ibid.*

salient an issue as before. My high school graduation in 2014 is a product of this mixed reaction and shows that the legacy of school prayer and bible reading were mixed and remain mixed more than 50 years after the *Engel v. Vitale* and *Abington v. Schempp* were decided.⁹⁵

⁹⁵ The salutatorian at my high school graduation will remain nameless but it is important to clarify that this thesis is not an attack on her or her religious beliefs. Personally, I hold her in high regard, as she is one of the hardest working, driven, smart, and compassionate people I have ever met. The graduation ceremony is used only as a jumping off point to examine a larger historical phenomenon, namely, the mixed public reaction following the Supreme Court decisions of *Engel v. Vitale* and *Abington v. Schempp*.

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