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PRAYER AND RELIGION IN THE PUBLIC SCHOOLS: WHAT IS, AND IS NOT, PERMITTED

by

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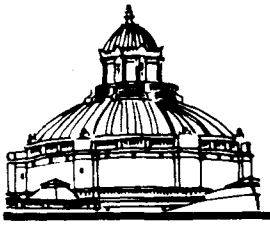

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ABSTRACT

This report provides an overview of judicial decisions concerning the constitutionality of State-sponsored religious activities in the public schools. Particular attention is paid to the Supreme Court's decisions regarding State-sponsored prayer and Bible reading and State-sponsored religious teaching in the public schools. The purpose of the report is to clarify the distinction that has been established in the courts between those State-sponsored activities regarding religion which are constitutionally permissible and those which violate the First Amendment.

CONTENTS

PRAYER AND RELIGION IN THE PUBLIC SCHOOLS:
WHAT IS, AND IS NOT, PERMITTED

Introduction

Few areas of constitutional law have proven to be as controversial and as subject to misinterpretation as that concerning the constitutionality of government-sponsored religious activities in the public schools. In the last three decades the Supreme Court in five decisions and the State and lower Federal courts in dozens of related decisions have attempted to articulate the meaning of the religion clauses of the First Amendment[1/] for a variety of such activities, including State-sponsored prayer, Bible reading, and religious teaching. Notwithstanding continuing political controversy over many of these decisions, they provide a fairly consistent interpretation and application of the First Amendment. The purpose of this report is to summarize the Supreme Court's decisions in this area and their subsequent application in diverse situations by State and lower Federal courts, to the end that a clear view may be obtained regarding what government-sponsored activities regarding religion are, and are not, constitutionally permissible in the public schools.

Supreme Court Decisions

(a) State-Sponsored Prayer and Bible Reading: In two decisions in 1962 and 1963 the Supreme Court held the establishment of religion clause of the First Amendment to be violated by State sponsorship of such devotional activities as prayer and Bible reading in the public schools. In Engel v. Vitale[2/] the

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1/ The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." The Court has held these restrictions to apply to the States as well through the due process clause of the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296 (1941); Everson v. Board of Education, 330 U.S. 1 (1947).

2/ 370 U.S. 421 (1962).

Court was confronted with a requirement of a local board of education in New York that students recite at the beginning of each school day the following prayer, which had been composed and recommended by the New York State Board of Regents:

> Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.

The following year in Abington School District v. Schempp[3/] (and its companion case of Murray v. Curlett) the Court was confronted with State requirements that each school day begin with readings from the Bible and the unison recital of the Lord's Prayer. In each case the States made provision for the excusal or nonparticipation of students, at their request or the request of a parent or guardian.

Notwithstanding the apparently "voluntary" nature of the exercises,[4/] the Court, by a 6-1 majority in Engel[5/] and an 8-1 majority in Schempp,[6/] struck them down as violative of the establishment clause of the First Amendment. In Engel

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3/ 374 U.S. 203 (1963).

4/ It should be noted that in neither case did the Court make any finding with respect to whether participation in the exercises was in fact voluntary, because that issue was not material to its decisions. It suggested, in fact, that because of compulsory schooling, peer pressure, and the official sanction given the exercises, "voluntary" participation might be an impossibility. See Engel v. Vitale, supra, at 431 and Abington School District v. Schempp, supra, at 223.

5/ Joining in Justice Black's opinion for the Court were Chief Justice Warren and Justices Douglas, Clark, Harlan, and Brennan, with Justice Douglas authorizing a concuring opinion as well. Justice Stewart authored a dissenting opinion. Justices Frankfurter and White did not participate.

6/ Joining in Justice Clark's opinion for the Court were Chief Justice Warren and Justices Black, Douglas, Harlan, Brennan, White, and Goldberg, with Justices Douglas, Brennan, and Goldberg each authoring a concurring opinion as well. Justice Stewart, as in Engel, submitted a dissenting opinion.

Justice Black concluded for the Court:

> ...the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.
>
> ...(G)overnment in this country, be it state or federal, is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity. 370 U.S. at 425 and 430.

Similarly, in Schempp Justice Clark concluded for the Court:

> [The Bible-reading exercises] are religious exercises, required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion. 374 U.S. 203.

In both opinions the Court looked beyond the immediate words of the establishment clause to determine its meaning. In Engel Justice Black, canvassing colonial and pre-constitutional history, found two broad purposes behind the establishment clause:

> Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion...The Establishment Clause thus stands as as expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a civil magistrate. 370 U.S. 431-32.

The second purpose, Justice Black said, "rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand":

> It was in large part to get completely away from ...systematic religious persecution that the Founders brought into being our Nation, our Constitution, and our Bill of Rights with its prohibition against any governmental establishment of religion. Id., at 433.

Justice Clark in Schempp, agreeing with these conclusions, examined the previous decisions of the Court concerning the establishment clause and concluded that those decisions "rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another." 374 U.S. at 216. Taken together with the free exercise clause, he said, the establishment clause imposes on government a "wholesome neutrality" toward religion. It can neither favor one sect over all others, nor religion generally over non-religion, nor non-religion over religion. Cyrstallizing the Court's decisions in this area into tests that can be applied to particular legislative enactments, Justice Clark said:

> The test may be stated as follows: What are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. 7/ 374 U.S. at 222. (Emphasis added)

In both cases the Court rejected the argument that the "voluntary" nature of the prayer and Bible-reading exercises freed them from the strictures of the establishment clause:

> The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not. Engel v. Vitale, supra, at 421.

7/ In subsequent cases, the Court has continued to use the tests articulated by Justice Clark and has added a third test: whether the legislative enactment leads to excessive government entanglement with religion. Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970).

It rejected as well the arguments that to deny States the power to prescribe religious activities in the public schools indicates hostility toward religion,[8] that the encroachments on the First Amendment made by state-prescribed prayer and Bible reading in the public schools are so minor and insignificant as to be de minimis,[9] and that the exercises should be permitted as the free exercise of religion by the majority.[10]

In sum, then, by decisive majorities the Court in Engel and Schempp found State sponsorship of prayer and Bible-reading in the public schools to constitute an establishment of religion and thus to be beyond government's constitutional power.

8/ Justice Black in Engel noted that those who led the fight for religious freedom were themselves religious men and that the First Amendment grew out of "an awareness that governments of the past had shackled men's tongues to make them speak and to pray only to the God that government wanted them to pray to." Thus, he concluded:

> It is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance. 370 U.S. at 421.

9/ Justice Clark said:

> The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, "it is proper to take alarm at the first experiment on our liberties." 374 U.S. at 225.

10/ Justice Clark said:

> While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs. 374 U.S. at 226.

(b) State-Sponsored Religious Teaching: In three decisions the Court has also held that the First Amendment is violated by State sponsorship of religious teaching in the public schools, in whatever form, but that it is constitutionally permissible for the schools to accommodate private programs of religious instruction given off the school grounds. In the first case of McCollum v. Board of Education[11] the Court held unconstitutional, 8-1,[12] a "shared time" program in which religion teachers employed by private religious groups were permitted to come into the public schools each week to teach religion to consenting students: The schools did not employ the teachers but cooperated closely with the program. The teachers were subject to the approval and supervision of the superintendent of schools; reports of students' attendance at the classes were made to the school; non-participating students were required to go elsewhere in the school building. The Court found the program to constitute "a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith." As such, the Court said, "...it falls squarely under the ban of the First Amendment":

> ...a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals....333 U.S. at 211.

Five years later in Zorach v. Clausen,[13] the Court upheld, 6-3,[14] the

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11/ 333 U.S. 203 (1948).

12/ Justice Black authored the opinion of the Court, in which Chief Justice Vinson and Justices Douglas, Murphy, Rutledge, and Burton joined. Justices Frankfurter and Jackson authored concurring opinions, in the former of which Justices Jackson, Rutledge, and Burton joined. Justice Reed dissented.

13/ 343 U.S. 306 (1952).

14/ Justice Douglas authored the opinion of the Court, in which Chief Justice Vinson and Justices Reed, Burton, Clark, and Minton joined. Justices Black, Frankfurter, and Jackson each authored dissents.

constitutionality of "released" or "dismissed" time programs in which public school students are permitted during the school day to leave the school grounds in order to repair to nearby religious centers for religious instruction or devotional exercises. Writing for the Court, Justice Douglas differentiated such programs from that struck down in McCollum by stating:

> In the McCollum case the classrooms were used for religious instruction and the force of the public school was used to promote that instruction. Here...the public schools do no more than accommodate their schedules to a program of outside religious instruction. 343 U.S. at 315.

The First Amendment, the Court stated, forbids any "concert or union or dependency" between church and State, but it does not require that they "be aliens to each other--hostile, suspicious, and even unfriendly." In oft-quoted dicta the Court concluded:

> We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeals of its dogma. When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. 343 U.S. at 313-14.

Finally, in Epperson v. Arkansas[15/] the Court unanimously held unconstitutional a State statute which forbade teachers, upon pain of criminal penalty, from teaching the Darwinian theory of evolution. The statute was a variation of the one involved in the famous Scopes trial in 1927,[16/] and made it unlawful

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15/ 393 U.S. 97 (1968).

16/ Though Scopes' conviction was overturned by the Tennessee Supreme Court, the statute was held constitutional. Scopes v. State, 154 Tenn. 105, 289 S.W. 363 (1927).

for any teacher to teach or to use a textbook which taught "the theory or doctrine that mankind ascended or descended from a lower order of animals." The Court found that "fundamentalist sectarian conviction was and is the law's reason for existence," and because of that held the statute to violate the First Amendment. Writing for the Court, Justice Fortas stated:

> Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmemtal neutrality between religion and religion, and between religion and nonreligion....(T)he First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma. 393 U.S. at 103-104, 106.

The State might have acted in a religiously neutral manner, Justice Fortas suggested, if it had simply excised from its curricula all discussion of the origins of mankind. But instead, he said, the State tried to blot out a particular theory because of its "supposed conflict" with "a particular interpretation of the Book of Genesis by a particular religious group." That effort, he said, was "plainly" unconstitutional.

The Scope of the Decisions

(a) What Is Constitutionally Permitted

The Supreme Court, despite several opportunities, has to date chosen to review no further cases concerning the constitutionality of State-sponsored religious activities in the public schools. Nonetheless, the decisions summarized above, coupled with dicta in the Court's opinions and related State and lower Federal court decisions, make clear that not all State-sponsored activities relating to religion in the public schools are constitutionally forbidden. The constitutional permissibility of "released" or "dismissed" time programs, for instance, has in no way been diminished by subsequent

developments in the law.[17] Similarly, dicta in Supreme Court opinions and related State and lower Federal court decisions have consistently affirmed the constitutionality of a State requiring a moment of silence at the beginning of the school day.[18] The courts have also affirmed the constitutionality of the State sponsoring objective teaching about religion and about the Bible as part of a secular program

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17/ Zorach v. Clauson, supra; Smith v. Smith, 391 F. Supp. 443 (W.D. Va.), reversed, 523 F. 2d 121 (4th Cir. 1975), cert. den. 423 U.S. 1073 (1976); State ex rel. Holt v. Thompson, 66 Wis. 2d 659, 225 N.W. 2d 678 (1975); Lanner v. Wimmer, 463 F. Supp. 867 (D. Utah 1978).

18/ The Supreme Court has considered no case raising the issue of the constitutionality of a State-mandated moment of silence at the beginning of each school day, but Justice Brennan, in oft-quoted language from a concurring opinion in Abington, perceived no constitutional objection:

> The second justification (for prayer and Bible reading exercises) assumes that religious exercises at the start of the school day may directly serve solely secular ends--for example, by fostering harmony and tolerance among the pupils, enhanding the authority of the teacher, and inspiring better discipline. To the extent that such benefits result not from the content of the readings and recitation, but simply from the holding of such a solemn exercise at the opening assembly or the first class of the day, it would seem that less sensitive materials might equally well serve the same purpose....It has not been shown that reading from the speeches and messages of great Americans, for example, or from the documents of our heritage of liberty, daily recitation of the Pledge of Allegiance, or even the observance of a moment of reverent silence at the opening of class, may not adequately serve the solely secular purposes of the devotional activities without jeopardizing either the religious liberties of any members of the community or the proper degree of separation between the spheres of religion and government. Abington School District v. Schempp, supra, at 280-81 (Brennan, J. concurring) (emphasis added).

See also Gaines v. Anderson, 421 F. Supp. 337 (D. Mass., 1976) (State statute prescribing a moment of silence at the beginning of each school day for purposes of "meditation or prayer" held constitutional) and Opinion of the Justices, 108 N.H. 97, 228 A. 2d 161 (1967) and Opinion of the Justices, 113 N.H. 297, 307 A. 2d 558 (1973) (advisory opinions affirming the constitutionality of proposed State statutes prescribing a period for silent meditation).

of instruction.[19] The courts have also uniformly upheld the inclusion of invocations and benedictions in commencement ceremonies[20] and have found constitutional objections to baccalaureate services to be insubstantial.[21] Finally, the First Amendment has been consistently interpreted to pose no bar to States providing opportunities for students to participate in ceremonial or patriotic exercises which incidentally involve a profession of faith, such as the singing of the national anthem, the recital

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19/ In Engel the Court noted:

> ...it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. 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 of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment. 374 U.S. 203, 225.

In Epperson it reiterated:

> ...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....393 U.S. 97, 106.

See also Florey v. Sioux Falls School District 49-5, 619 F. 2d 1311 (8th Cir. 1980) (school board regulation permitting observance of holidays having both a religious and secular basis upheld); Calvary Presbyterian Church v. University of Washington, 72 Wash. 2d 912, 436 P. 2d 189 (1967) (constitutionality of college-level course entitled "The Bible As Literature" affirmed); Wiley v. Franklin, 474 F. Supp. 525 (E.D. Tenn. 1979) (constitutionality of Bible as literature course taught by teachers with bachelor's degrees in Biblical literature upheld); Todd v. Rochester Community Schools, 41 Mich. App. 320 200 N.W. 2d 90 (1972) (constitutionality of using book containing religious references in literature course upheld).

20/ Wood v. Mt.Lebanon Township School District, 342 F. Supp. 1293 (W.D.Pa. 1972); Grossberg v. Deusebio, 380 F. Supp. 285 (E.D.Va. 1974); Wiest v. Mt. Lebanon School District, 457 Pa. 166, 320 A. 2d 362, cert. den. 419 U.S. 967 (1974).

21/ Goodwin v. Cross County School District No. 7, 394 F. Supp. 417 (E.D. Ark. 1973); Chamberlin v. Dade County Board of Public Instruction, 171 So. 2d 535 (Fla. 1965).

of the pledge of allegiance, and the reading of historical documents such as the Declaration of Independence.[22/]

(b) What Is Constitutionally Prohibited

Nevertheless, the scope of the limitations imposed by the First Amendment remains broad: The First Amendment denies government any power to conduct or sponsor or prescribe religious teaching or devotional exercises in the public schools, even though participation therein may be "voluntary." Government may not tailor the public school curriculum to the principles or prohibitions of

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22/ In Engel the Court noted:

> There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance. Engel v. Vitale, supra, at 421, ftnt. 21.

See also Sheldon v. Fannin, 221 F. Supp. 766 (D. Ariz. 1963) (singing of national anthem in public schools held not to violate establishment clause); Smith v. Denny, 280 F. Supp. 651 (E.D. Cal. 1968), appeal dism'd 417 F. 2d 614 (9th Cir. 1969) (requirement that students recite daily the pledge of allegiance upheld); Opinion of the Justices, 113 N.H. 297, 307 A. 2d 558 (1973) (advisory opinion that statute empowering school districts to provide for the voluntary daily recitation of pledge of allegiance would be constitutional). It appears clear that student participation in exercises involving incidental professions of faith or other affirmations of belief must be voluntary to comport with the First Amendment. West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943).

any particular sect or dogma.[23] It may not permit private teachers to use the school premises for the purpose of giving religious instruction to consenting students during the school day.[24] It may not sponsor or prescribe devotional exercises such as prayer and Bible reading as a regular part of the school curriculum.[25] Finally, it may not permit the public schools to be used as the medium for the distribution of such sectarian

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23/ Epperson v. Arkansas, supra; Wright v. Houston Independent School District, 366 F. Supp. 1208 (S.D. Tex. 1972), aff'd 486 F. 2d 137 (5th Cir. 1973), cert. den. sub nom. Brown v. Houston Independent School District, 417 U.S. 969 (1974) (First Amendment held not to compel school districts to include other theories regarding origins of man in addition to theory of evolution); Daniel v. Waters, 515 F. 2d 485 (6th Cir.) on remand, 399 F. Supp. 510 (M.D. Tenn. 1975) (statute prescribing inclusion of Genesis account in any presentation of theories of the creation of man and the universe and exclusion of all "occult or satanical" theories held unconstitutional); Smith v. State of Mississippi, 242 So. 2d 692 (Miss. 1970) (same as Epperson); Malnak v. Yogi, 592 F. 2d 197 (2d Cir. 1979) (teaching Transcendental Meditation in public schools held to violate establishment clause); Lanner v. Wimmer, 463 F. Supp. 867 (D. Utah 1978) (giving of course credit for Bible courses taught in "released" time program held unconstitutional); Wiley v. Franklin, 468 F. Supp. 133 (E.D. Tenn. 1979) (public school Bible study course that was primarily religious rather than of an historical, literary, or otherwise secular nature held unconstitutional).

24/ McCollum v. Board of Education, supra.

25/ State and lower Federal court cases subsequent to Engel and Schempp have involved forms of State-sponsored prayer and/or Bible reading identical to those in Engel and Schempp and numerous variants. None, with the exception of State prescription of a moment for silent meditation, has survived constitutional scrutiny. See, e.g., Alabama Civil Liberties Union v. Wallace, 331 F. Supp. 966 (M.D. Ala. 1971), aff'd 456 F. 2d 1069 (5th Cir. 1972) (State statute prescribing daily Bible reading held unconstitutional); Kent v. Commissioner of Education, 402 N.E. 2d 1340 (Mass. 1980) (State statute prescribing daily period of prayer in public schools held unconstitutional); DeSpain v. DeKalb County School District, 225 F. Supp. 655 (N.D. Ill. 1966), reversed 384 F. 2d 936 (7th Cir. 1967), cert. den. 390 U.S. 906 (1968) (teacher sponsorship of pre-snack verse of thanks by kindergarten children held unconstitutional); State Board of Education v. Board of Education of Netcong, New Jersey, 108 N.J. Sup. 564, 262 A. 2d 21 affirmed 57 N.J. 172, 270 A. 2d 412 (1970), cert. den. 401 U.S. 1013 (1971) (school board sponsorship of daily "free exercise of religion" period during which student read aloud prayers from the Congressional Record held unconstitutional); Collins v. Chandler Unified School District, 470 F. Supp, 959 (D. Ariz. 1979) (student council sponsorship of prayer by student at beginning of school assemblies held unconstitutional).

literature as Gideon Bibles to consenting school children.[26]

(c) Issues Not Yet Definitively Resolved

Contrary decisions have been rendered by State and lower Federal courts on two matters in this area, however--(1) whether the First Amendment permits school officials to accommodate students who at their own initiative wish to join together for devotional prayer and Bible reading on school premises during the school day, and (2) whether it permits school officials to post the Ten Commandments or other religious statements on classroom walls. With respect to the first issue, the courts have consistently held that at the elementary and secondary school level it is within the discretionary authority of school officials to bar all use of school facilities for student-initiated religious activities.[27] In addition, two State appellate courts and one Federal district court have gone further and held that the establishment clause requires that such student-initiated activities on school property at the elementary and secondary levels be barred, that is, that school officials are constitutionally forbidden from accommodating such student activities on school property.[28] At the college level, however, contrary decisions have been rendered on this issue, one State

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26/ Tudor v. Board of Education of Borough of Rutherford, 14 N.J. 31, 100 A. 2d 857 (1953), cert. den. 348 U.S. 816 (1955); Brown v. Orange County Board of Public Instruction, 128 So. 2d 181 (Fla. App. 1960), aff'd 155 So. 2d 371 (Fla. 1963); Goodwin v. Cross County School District No. 7, 394 F. Supp. 417 (E.D. Ark. 1973); Meltzer v. Board of Public Instruction of Orange County, Florida, 548 F. 2d 599 (5th Cir. 1977), on rehearing en banc, 577 F. 2d 311 (5th Cir. 1978), cert. den. 439 U.S. 1089 (1979).

27/ Stein v. Oshinsky, 348 F. 2d 999 (2d Cir.), cert. den. 382 U.S. 957 (1965); Hunt v. Board of Education of Kanawha County, West Virginia, 321 F. Supp. 1263 (S.D. W. Va. 1971); Trietley v. Board of Education of City of Buffalo, 65 App. Div. 2d 1, 409 N.Y.S. 2d 912 (1978).

28/ Johnson v. Huntington Beach Union High School District, 137 Cal. Rptr. 43,68 Cal. App. 3d 1, cert. den. 434 U.S. 877 (1977); Trietley v. Board of Education of City of Buffalo, supra; Brandon v. Board of Education of Guilderland Central School, 487 F. Supp. 1219 (N.D.N.Y. 1980).

supreme court holding that an even-handed policy permitting the religious use of university space is permitted by the establishment clause and, perhaps, required by the free exercise clause,[29/] one Federal district court holding a university policy forbidding the regular use of university space for worship by recognized student groups to be required by the establishment clause.[30/] Thus, though the trend and weight of decisional authority on this issue suggests that student-initiated use of school facilities for religious purposes implicates the State in religious activity in violation of the establishment clause, particularly at the elementary and secondary level, it may be premature to deem this issue to be definitively resolved.

With respect to the second issue, the split in judicial authority is less one-sided: Two State supreme courts have upheld the constitutionality of the State posting the Ten commandments[31/] or plaques with the phrase "In God We Trust"[32/] on the classroom walls, while one Federal district court has held the posting of the Ten Commandments to violate the establishment clause.[33/] Thus, on this issue no trend of judicial decision would as yet appear evident.

29/ Keegan v. University of Delaware, 349 A. 2d 14 (Del. 1975), cert. den. 424 U.S. 934 (1976).

30/ Chess v. Widmar, 480 F. Supp. 907 (W.D. Mo. 1979).

31/ Stone v. Graham, 599 S. W. 2d 157 (Ky. 1980).

32/ Opinion of the Justices, 108 N.H. 97, 228 A. 2d 161 (1967).

33/ Ring v. Grand Forks Public School District No. 1, 483 F. Supp. 272 (D.N.D. 1980).

Conclusion

Because both the establishment and free exercise clauses are worded as absolutes, it is sometimes ambiguous whether governmental involvement in a given activity is a permissible accommodation of religion or a forbidden establishment of religion. But the essential meaning of this part of the First Amendment that has been elaborated by the courts over the last three decades would appear to be that government must be neutral regarding religious faith, serving neither as its agent or advocate nor as its adversary. Particularly in its role as educator, government is required to be objective and impartial about religion, not partisan.

The result of this interpretation of the First Amendment is that government has been held to be constitutionally barred from using its authority to inculcate or proselytize about, or to permit others to inculcate or proselytize about, religious faith in the public school, whether by means of sponsorship of prayer, Bible reading, sectarian instruction, or distribution of sectarian literature. On the other hand, governmental involvement in a number of activities has been found to have neither the purpose nor a primary effect of advancing religion and thus to be constitutionally permissible--teaching about religion and religious literature as part of a secular program of instruction, sponsoring religiously neutral moments of silence, prescribing ceremonial or patriotic exercises which may incidentally involve professions of faith, and accommodating private programs of religious instruction given off the school premises.

Whether accommodation of student-initiated religious groups on school property or posting of wall plaques containing religious sentiments in class-

rooms violates government's essential neutrality regarding religion has not yet been definitively adjudicated. But after three decades of litigation the general thrust of the First Amendment in this area would appear to be clear: In the public schools government must be neutral and objective regarding religion.