

***The Influence of Setting on
Supreme Court Religious Expression Decisions***

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ABSTRACT

The First Amendment prohibits any establishment of religion, a dicta that has been applied in an apparently inconsistent manner by the Supreme Court when called upon to evaluate various forms of verbal and nonverbal religious communication. Court decisions have approved religious prayers and displays in government settings. When such exercises and displays were introduced to the public school academic setting, the Court chose to disallow the practice. An examination of judicial opinions reveals that justices recognize three factors inherent to the academic setting which justify the apparently contradictory decisions. Because of the captive nature of the audience, the presence of peer pressure, and the unpredictability of pedagogical influences, the Supreme Court has significantly restricted religious communication in K-12 public schools.

During the latter half of the 18th century, relations between the American colonies and the English mother country deteriorated. Eventually, the colonists declared their independence, fought and won the Revolutionary War, and established a new government. The founding fathers authored and adopted the U.S. Constitution, a document that formed a democratic system of government. It was soon recognized, however, that the new system failed to provide and protect individual liberties. As a result of the efforts of Thomas Jefferson and James Madison, this shortcoming was rectified in 1791 with the writing and ratification of the Bill of Rights. The First Amendment to the Bill states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The First Amendment contains three clauses. The initial clauses (Establishment and Free Exercise) protect the freedom of religion while the final clause (Free Speech) guarantees freedom of expression.

On numerous occasions complaints regarding alleged violations of First Amendment rights reached the United States Supreme Court. Many related to religious matters. Questions arose as to whether public policies exceeded constitutional authority in establishing religious practices. Questions also were raised as to whether public policies interfered with the free

exercise of one's religious beliefs. Not all First Amendment challenges focused on religious issues. Some involved free speech issues of dissent, fighting words, hate speech, and symbolic messages. Others treated free press issues such as news reporter's privilege, copyright, obscenity, defamation, and invasion of privacy. Still others concerned the right to associate, petition, and demonstrate. Some litigation centered on claims of deceptive advertising. Recent cases dealt with the regulation of electronic media.

Some First Amendment cases involved a combination of religious and expression issues. These cases concerned verbal communication in the form of various prayers, nonverbal communication through the exhibition of the Nativity scene or a cross, and both verbal and nonverbal communication in the display of a monolith inscribed with the Ten Commandments. In resolving these religious communication issues, the Supreme Court rendered decisions that appear to be contradictory. The Court allowed religious prayer and religious displays in several cases involving governmental settings while restricting such practices in the K-12 public school setting. The apparent inconsistency has been recognized by legal scholars. Ashley Bell claims: "When questioning the Supreme Court's modern Establishment Clause jurisprudence, critics consistently return to one theme – its lack of consistency" (1274). Likewise, Gary Gildin views religious expression jurisprudence as "no model of consistency" (469). Alexandra Furth notes that "the Court's ambivalence about the appropriate role of religion in public life, as well as the proper means for analyzing such issues, has been apparent since its earliest decisions" (581). Finally, Scott Idleman observes that during recent years "the metaphorical wall of separation between church and state [. . .] has clearly been construed to be less rigid or less insurmountable than certain prior cases had seemed to suggest" (2).

This article focuses on the Supreme Court religious expression cases and explores whether the uniqueness of the public school locus justifies these apparently contradictory decisions. It contains three sections: the first identifies decisions that involve religious expression in governmental settings, the second describes cases that treat religious expression in academic settings, and the final section explores reasons inherent to the public school environment that justify differing policies for the settings.

Governmental Setting

Six cases involving various forms of verbal and nonverbal communication comprise this category; one involved prayer in governmental chambers, two involved holiday seasonal displays, one involved display of a cross, and the others concerned display of the Ten Commandments. In each case, the religious practice or display involved a governmental setting.

Marsh v. Chambers, 463 U.S. 783, 1983, involved the practice of the Nebraska legislature to open each of its sessions with a prayer offered by a publicly-funded chaplain. Ernest Chambers, a tax-paying member of the Nebraska legislature, initiated legal action on the ground that prayer violated the Establishment Clause of the First Amendment. The Supreme Court, per Chief Justice Warren Burger, upheld the practice, noting that "the beginning of

sessions of legislative and other deliberative bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom” (786). Burger stressed that offering prayer at the beginning of deliberative governmental sessions has become ingrained into the “fabric of our society.” Invoking Divine guidance at such gatherings is not “a step toward establishment,” but “simply a tolerable acknowledgement of beliefs widely held among the people of this country” (792).

Lynch v. Donnelly, 465 U.S. 668, 1984, concerned a popular nonverbal community religious display. Each year, the retail merchants' association of Pawtucket, Rhode Island erected a display as part of its observance of the Christmas holiday season. The display, situated in the heart of the shopping district, comprised many figures associated with Christmas, including a Santa Claus house, reindeer pulling Santa’s sleigh, candy-striped poles, a decorated tree, carolers, colored lights, a banner that reads “SEASONS GREETINGS,” and a crèche representing the Nativity scene. Some Pawtucket residents started court action, challenging the city’s inclusion of the crèche in the display. The Supreme Court allowed the display. Justice John Stevens claimed that it had historical rather than religious significance.

It would be ironic [. . .] if the inclusion of a single symbol of a particular historic religious event, as part of a celebration acknowledged in the Western World for 20 centuries, and in this country by the people, by the Executive branch, by Congress, and the courts for 2 centuries, would so “taint” the city’s exhibit as to render it violative of the Establishment Clause. To forbid the use of this one passive symbol – the crèche – at the very time people are taking note of the season with Christmas hymns and carols in public schools and other public places, and while the Congress and legislatures open sessions with prayers by paid chaplains, would be a stilted overreaction contrary to our history and to our holdings (686).

In a concurring opinion, Justice Sandra Day O’Connor added:

Pawtucket did not intend to convey any message of endorsement of Christianity or disapproval of non-Christian religions. The evident purpose of including the crèche in the larger display was not promotion of the religious content of the crèche but celebration of the public holiday through its traditional symbols. Celebration of public holidays, which have cultural significance even if they also have religious aspects, is a legitimate secular purpose (691).

County of Allegheny v. American Civil Liberties Union, 492 U.S. 573, 1989, concerned two holiday displays located in downtown Pittsburgh, Pennsylvania. County government permitted a Roman Catholic organization to display a crèche representing the nativity of Jesus on the staircase inside the county courthouse during the Christmas season. The county used the crèche display as the setting for its annual Christmas-carol program. Another display, outside an office building owned jointly by the city and county consisted of a 45-foot Christmas tree, an 18-foot menorah candelabrum associated with the Jewish holiday of Chanukah, and a sign bearing a

message that the city salutes liberty during the holiday season. The menorah was owned by a Jewish religious organization, but it was stored, erected, and removed by the city. The local chapter of the American Civil Liberties Union filed suit to enjoin displaying the crèche and the menorah on the ground that such displays violated the establishment of religion clause. When the case reached the Supreme Court, the justices held that the crèche was displayed in a manner that violated the Establishment Clause because the county associated itself with the display in a way that endorsed a patently Christian message. Because the crèche stood alone as the single element of the display, was used as the setting for annual caroling, and occupied the “main” part of the building that is the seat of government, “the county sends an unmistakable message that it supports and promotes the Christian praise to God that is the creche’s religious message” (600). Regarding the second display, the Court held that the menorah was displayed in a manner that did not endorse religion but simply recognized both Chanukah and Christmas as part of the secular winter-holiday season. Although the menorah is a religious symbol, its message is not exclusively religious. The menorah is the primary symbol for a holiday that, like Christmas, has both religious and secular dimensions. Furthermore, the menorah stood next to a Christmas tree and a sign saluting liberty. The placement created an “overall holiday setting” that represents two holidays, not one. Justice Harry Blackmun, writing for the majority, indicated that:

the relevant question for Establishment Clause purposes is whether the combined display of the tree, the sign, and the menorah has the effect of endorsing both Christian and Jewish faiths, or rather simply recognized that both Christmas and Chanukah are part of the same winter-holiday season, which has attained a secular status in our society. Of the two interpretations of this particular display, the latter seems far more plausible (616).

Capitol Square Review and Advisory Board v. Pinette, 515 U.S. 753, 1995, involved the display of a cross on a state-owned plaza surrounding the statehouse in Columbus, Ohio. For more than a century, the plaza had been available for public addresses, festivals, and gatherings celebrating and advocating numerous causes. The case began when a local board rejected a request by the Ku Klux Klan to display a cross in the plaza during the Christmas holidays. The board claimed that the display would violate the Establishment Clause. The Supreme Court, in a plurality opinion prepared by Justice Antonin Scalia, noted that private religious speech was fully protected by the Free Speech Clause of the First Amendment. In addition, the right to use government property depended on whether the property had been given the status of a public forum. Scalia concluded: “Religious expression cannot violate the Establishment Clause where it (1) is purely private and (2) occurs in a traditional or designated public forum, publicly announced and open to all on equal terms. Those conditions are satisfied here, and therefore the State may not bar respondent’s [Ku Klux Klan] cross from Capitol Square” (770). Other justices concurred, offering a variety of reasons. According to Justice Clarence Thomas, “the erection of such a cross is a political act, not a Christian one” (770). Furthermore, “although the Klan may have sought to convey a message with some religious component, [. . .] the Klan had a primarily nonreligious purpose in erecting the cross” (771). Justice O’Connor thought that “the reasonable

observer would view the Klan's display fully aware that Capitol Square is a public space in which a multiplicity of groups, both secular and religious, engage in expressive conduct." Accordingly, "the reasonable observer would not interpret the State's tolerance of the Klan's private religious display in Capital Square as an endorsement of religion" (782). Justice David Souter approved the display on the condition that the Klan provide a "disclaimer sufficiently large and clear to preclude any reasonable inference" that the cross represented governmental endorsement of religion (794).

Van Orden v. Perry, 545 U.S. 677, 2005, involved a display that surrounded the Texas State Capitol. A six-foot-high monolith inscribed with the Ten Commandments was among the 21 historical markers and 17 monuments that constituted the display. A citizen initiated court action, seeking a declaration that the display violated the Establishment Clause. The Supreme Court held that the monument did not violate the Clause because Texas had a secular rather than religious purpose. According to Chief Justice William Rehnquist,

Texas has treated her Capitol grounds monuments as representing several strands in the State's political and legal history. The inclusion of the Ten Commandments monument in this group has a dual significance, partaking of both religion and government. We cannot say that Texas' display of this monument violates the Establishment Clause of the First Amendment (691-692).

In a concurring opinion, Justice Scalia envisioned "nothing unconstitutional" when a State favors religion generally, honors God through public prayer, or venerates the Ten Commandments "in a nonproselytizing manner" (692). In another concurrence, Justice Thomas argued:

There is no question that, based on the original meaning of the Establishment Clause, the Ten Commandments display at issue here is constitutional. In no sense does Texas compel petitioner Van Orden to do anything. The only injury to him is that he takes offense at seeing the monument as he passes it on his way to the Texas Supreme Court Library. He need not stop to read it or even to look at it, let alone to express support for it or adopt the Commandments as guides for his life. The mere presence of the monument along his path involves no coercion and thus does not violate the Establishment Clause (694).

In yet another concurring opinion, Justice Stephen Breyer observed:

In certain contexts, a display of the tablets of the Ten Commandments can convey not simply a religious message but also a secular moral message (about proper standards of social conduct). And in certain contexts, a display of the tablets can also convey a historical message (about a historic relation between those standards and the law) – a fact that helps to explain the display of those tablets in dozens of courthouses throughout the Nation, including the Supreme Court of the United States.

Here the tablets have been used as part of a display that communicates not simply a religious message, but a secular message as well. The circumstances surrounding the display's placement on the capitol grounds and its physical setting suggest that the State [. . .] intended [. . .] nonreligious aspects of the tablets' message to predominate. And the

monument's 40-year history on the Texas state grounds indicates that that has been its effect (701).

McCreary County v. American Civil Liberties Union of Kentucky, 545 U.S. 844, 2005, involved a similar display, but rendered a different result. The case involved two Kentucky counties that had erected in their courthouses large framed copies of the Ten Commandments. The American Civil Liberties Union initiated court action seeking an injunction against maintaining the displays. Soon thereafter, the counties expanded the displays, assembling with the Commandments framed copies of the Magna Carta, Declaration of Independence, Bill of Rights, Star Spangled Banner, Mayflower Compact, National Motto, Preamble to Kentucky Constitution, and a picture of Lady Justice. The collection was entitled "The Foundations of American Law and Government Display," and each document was accompanied by a statement about its historical significance. The counties argued that the purpose of the displays was not religious but rather educational, informing citizens regarding some of the documents that played an influential role in the foundation of government. The Court found the purpose to be religious, not educational, because the displays lacked historical connection between the Commandments and the other documents. Furthermore, the Commandments are an active symbol of religion which clearly expresses the religious duties of believers. Justice Souter's majority opinion observed that the ceremony for posting the Commandments included a religious pastor who testified to the certainty of the existence of God. As a result, any "reasonable observer" would conclude that the counties "meant to emphasize and celebrate the Commandments' religious message." Souter concluded: "The point is simply that the original text viewed in its entirety is an unmistakably religious statement dealing with religious obligations and with morality subject to religious sanction. When the government initiates an effort to place this statement alone in public view, a religious object is unmistakable" (869). While McCreary and Van Orden seem contradictory, one factor explains the decisions. In McCreary, the Kentucky counties added the historical markers only after a legal threat had been introduced. In Van Orden, the State of Texas had for some time recognized the historical significance of the display.

Cases discussed in this section – Marsh, Lynch, County of Allegheny, Capitol Square, Van Orden, and McCreary – indicate that religious prayers and displays in governmental settings are constitutional under the First Amendment when they serve historical, cultural, or educational purposes. However, a display that carries a markedly religious purpose violates the Establishment Clause.

Academic Setting

In seven cases, the Court rejected a variety of forms of religious expression within the public school setting. Six of the cases concerned prayer connected with classroom or extra-curricular school functions. The other case involved posting the Ten Commandments within the school. In each case, the religious practice or display involved an academic setting.

School prayer was the issue at stake in Engel v. Vitale, 370 U.S. 421, 1962. A group of parents initiated court action when the Board of Education required the following prayer, composed by the New York Board of Regents, to be said aloud at the beginning of every school day: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country.” Writing for the majority, Justice Hugo Black noted that the practice violated the Establishment Clause. Black claimed: “There can [. . .] be no doubt that New York’s program of daily classroom invocation of God’s blessings [. . .] is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty” (424). Furthermore, the practice “breaches the constitutional wall of separation between Church and State” (425). In a concurring opinion, Justice William Douglas pointed to the “divisive influence” of the practice and stressed the philosophical foundation behind the First Amendment: “The philosophy is that if government interferes in matters spiritual, it will be a divisive force. The First Amendment teaches that a government neutral in the field of religion better serves all religious interests (443).

The issue arose again in School District of Abington Township v. Schempp, 374 U.S. 203, 1963). The Court considered a Pennsylvania law which required high school students to hold religious exercises at the start of each day. Participation was voluntary; students could leave the room if they wanted, or they could remain in the room and not participate. The Schempp family, members of the Unitarian Church, argued that the exercise contradicted their religious beliefs. A companion case, Murray v. Curlett, involved a Baltimore Board of School Commissioner’s rule that religious services be held at the beginning of the school day. Madalyn Murray and her son, both atheists, argued that the exercise threatened their religious freedom “by placing a premium on belief as against nonbelief” and subjected their “freedom of conscience to the rule of the majority” (212). The Supreme Court, per Justice Tom Clark, recognized the activity as religious in nature.

The conclusion follows that in both cases the laws require religious exercise and such exercises are being conducted in direct violation of the rights of the appellees and petitioners. Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause (224-225).

In a concurring opinion, Justice Douglas acknowledged that, in these cases, there was no direct effort at establishment. He stressed, however, that even a minor violation of the First Amendment must be rejected. “What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery” (230). Justice William Brennan agreed, noting that “interpretation of the Establishment Clause permits little doubt that its prohibition was designed comprehensively to prevent those official involvements of religion which would tend to foster or discourage religious worship or belief” (234).

The Stone v. Graham, 449 U.S. 39, 1980, case involved a Kentucky statute that required the posting of a copy of the Ten Commandments on the wall of each public school classroom.

The Superintendent of Public Instruction justified the posting on the ground that the purpose was secular rather than religious. The Supreme Court's *per curiam* opinion disagreed.

The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text in the Jewish and Christian faiths, and no legislative recitation of a supposed secular purpose can blind us to that fact. The Commandments do not confine themselves to arguably secular matters such as honoring one's parents, killing or murder, adultery, stealing, false witness, and covetousness. Rather, the first part of the Commandments concerns the religious duties of believers: worshipping the Lord God alone, avoiding idolatry, not using the Lord's name in vain, and observing the Sabbath Day (41-42).

The decision noted that the Ten Commandments were not integrated into the curriculum; posting of these texts on the wall served no educational purpose. Instead, if the posting had any effect "it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments." The justices concluded that, while this result might be desirable, "it is not a permissible state objective under the Establishment Clause" (42).

Wallace v. Jaffree, 472 U.S. 38, 1985, began when a father of children enrolled in Alabama public schools sought an injunction against an Alabama statute which authorized public school teachers to hold a one-minute period of silence for "meditation or voluntary prayer" on each class day. The parent complained that his children had been subjected to "various acts of religious indoctrination" and were "exposed to ostracism from their peer group class members if they did not participate." The Supreme Court, per Justice Stevens, held that the Alabama law "had no secular purpose" and thereby violated the Establishment Clause (56). Justice Lewis Powell likewise concluded that "Alabama's purpose was solely religious in character" (65). And, Justice O'Connor found the law to be unconstitutional because "the purpose of the statute is to endorse prayer in public schools" (77).

Lee v. Weisman, 505 U.S. 577, 1992, began when principals in the Providence, Rhode Island public school system invited members of the clergy to offer invocation and benediction prayers as part of graduation ceremonies. The father of one of the graduates initiated court action, arguing that the practice violated the Establishment Clause. He noted that the Constitution guarantees that government may not coerce students to participate in activities which "establish" a religious faith, or "tend to do so." Speaking for the Court, Justice Anthony Kennedy agreed. He found the government involvement with religious activity to be "pervasive, to the point of creating a state-sponsored and state-directed religious exercise in a public school." Furthermore, "conducting this formal religious observance conflicts with settled rules pertaining to prayer exercises for students" (587). He concluded:

The sole question presented is whether a religious exercise may be conducted at a graduation ceremony in circumstances where [. . .] young graduates who object are induced to conform. No holding by this Court suggests that a school can persuade or compel a student to participate in a religious exercise. That is being done here, and it is forbidden by the Establishment Clause of the First Amendment (599).

Justice Blackmun's concurrence provided a detailed examination of religious expression jurisprudence, after which he observed:

The Court holds that the graduation payer is unconstitutional because the State in effect required participation in a religious exercise. Although our precedents make clear that proof of government coercion is not necessary to prove an Establishment Clause violation, it is sufficient. Government pressure to participate in a religious activity is an obvious indication that the government is endorsing religion (604).

Justice Souter added his support to the decision: "When public school officials, armed with the State's authority, convey an endorsement of religion to their students, they strike near the core of the Establishment Clause. However "ceremonial" their messages may be, they are flatly unconstitutional (631).

Santa Fe Independent School District v. Doe, 530 U.S. 290, 2000, provided yet another decision that found religious rituals in public schools in violation of the Establishment Clause. Parents and students objected to a school district policy that allowed students to read Christian prayers and invocations at graduation ceremonies and home football games. The District argued that the student messages were "private student speech, not public speech." The District stressed that there is a crucial difference between government speech which endorses religion, which the Establishment Clause forbids, and private speech which practices religion, which the Free Speech and Free Exercise Clauses protect. Writing for the Court, Justice Stevens disagreed, noting that the delivery of the type of messages involved in this case – on school property, at school-sponsored events, over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, pursuant to a school policy – is not properly characterized as "private speech" (302). According to Stevens, the policy is invalid because it "unquestionably has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events" (317).

In the cases explicated in this section – Engel, Schempp, Murray, Stone, Wallace, Lee, Santa Fe – the Court disallowed religious prayer and religious display in the academic setting. In each case, the justices determined that a religious purpose was central to the exercise or display.

Justification of Apparent Contradictions

The previous sections identify Supreme Court decisions that pertain to religious expression in governmental and academic settings. The decisions indicate that while the Court approved various forms of religious expression in the government setting, it rejected such forms of expression in the K-12 public school academic setting. The decisions appear to be contradictory. An examination of jurisprudential reasoning sheds light on apparent inconsistencies.

When the Supreme Court justices considered each of the cases, they examined the specific facts in light of the First Amendment's Establishment Clause. In two cases involving the governmental setting, the justices found a violation of that principle. In County of Allegheny,

Justice Blackmun's majority opinion argued that the nativity crèche “promotes the Christian praise to God” (600). In McCreary County, Justice Souter's majority view argued that the manner in which the Ten Commandments were displayed constituted “a religious object” that was “unmistakable” (869). In these cases, the decisions were the product of reasoning from principle – religious expression which tended to establish religion had to be prohibited. In the majority of cases involving a governmental setting, however, justices cited circumstances which allowed various verbal and nonverbal forms of religious expression. In Marsh, Justice Burger contended that during the opening of legislative sessions, “prayer is deeply embedded in the history and tradition of this country” (786). In Lynch, Justice Stevens argued that the nativity scene has historical as well as religious significance (686). In County of Allegheny, Justice Blackmun claimed that the menorah display did not promote a single religion, but was part of an “overall holiday setting” (616). In Capitol Square Review and Advisory Board, Justice Thomas envisioned the Ku Klux Klan's cross as “a political act, not a Christian one” (771). And, Justice Rehnquist in Van Orden argued that the posting of the Ten Commandments had a secular rather than religious purpose (691-692). In the majority of religious expression cases that involved governmental settings, the justices argued that unique circumstances allowed various forms of religious expression. The line of argument was based on circumstantial exceptions to the Establishment principle.

In cases involving academic settings, the justices upheld the Establishment Clause principle but not necessarily because of the potential establishment of religion. Rather, the justices found causal factors inherent to the academic setting which justified upholding the principle: 1) captive audience, 2) peer pressure, and 3) pedagogical unpredictability. The justices argued that these factors produced potentially negative effects on the learning environment.

The first justification asserts the existence of a captive audience in the public school setting. Justice O'Connor, in her concurring opinion in Wallace, argued that kids are very impressionable and function as a captive audience. O'Connor claimed: “This Court's decisions have recognized a distinction when government-sponsored religious exercises are directed at impressionable children who are required to attend school, for then government endorsement is much more likely to result in coerced religious beliefs”(81). Writing in Lee, Justice Souter realized the role of a captive audience. He noted that school officials requiring a prayer as part of the graduation exercise is similar to Presidential religious proclamations or other statements of support for religion in public life. However, prayer in such settings is “rarely noticed,” “conveyed over an impersonal medium,” “ignored without effort,” and “directed at no one in particular.” Souter went on to indicate that prayers under these conditions “inhabit a pallid zone worlds apart from official prayers delivered to a captive audience of public school students and their families” (630).

A second justification is the existence of peer pressure. Justice Kennedy acknowledged the “undeniable fact” that forces of supervision and control which operate at a high school graduation ceremony impose “peer pressure on attending students to stand as a group or, at least, maintain respectful silence during the invocation and benediction.” Kennedy pointed to

psychological research which documents that “adolescents are often susceptible to pressure from their peers towards conformity, and that the influence is strongest in matters of social convention” (Lee, 593). Justice Stevens cited factors in the school setting as contributing to the peer pressure. For example, in the Santa Fe case, the event resembled a regularly scheduled school-sponsored function – message broadcast over school’s public address system, cheerleaders and band members in uniforms sporting school name and mascot, school’s name on banners and flags, crowd displaying school colors and insignia. It is likely that under such influences observers would judge “messages as a public expression of the views of a majority of the student body delivered with the approval of the school administration (308).

A third justification envisions danger in the unpredictable nature of teachers. Justice O’Connor, in Jaffree, expressed concern that the coercive impact of the “moment of silence” would increase “if the teacher exhorts children to use the designated time to pray” (73). This concern was also noted by Chief Justice Burger in Lemon v. Kurtzman, 403 U.S. 602, 1971, a case which examined whether the religious clauses of the First Amendment were violated by state statutes which provided financial support to church-related schools. Burger warned:

We cannot [. . .] refuse here to recognize that teachers have a substantially different ideological character from books. In terms of potential for involving some aspect of faith or morals in secular subjects, a textbook’s content is ascertainable, but a teacher’s handling of a subject is not. We cannot ignore the danger that a teacher under religious control and discipline poses to the separation of the religious from the purely secular aspects of pre-college education. The conflict of functions inheres in the situation (617).

In Engel, Justice Douglas noted that the classroom teacher is a public official being funded by the public payroll, having responsibility for “performing a religious exercise in a governmental institution.” Douglas acknowledged that, in such instances, “it is said that the element of coercion is inherent in the giving of this prayer” (441-442).

This section reveals that justices cite three factors – captive audience, peer pressure, and pedagogical unpredictability – which contribute to the different decisions reached by the Supreme Court when judging forms of religious expression. These factors indicate that inherent differences in the governmental and academic settings provide reasonable accountability for the decisions.

Conclusion

The wording of the First Amendment clearly prohibits any establishment of religion or denial of the free exercise of one’s religious preference. That dicta has been applied in an apparently inconsistent manner by the Supreme Court. The Court has approved decisions involving religious prayers and displays in government settings. When such exercises and displays were introduced to the academic setting, the Court chose to disallow the practice. An examination of Court opinions reveals that justices recognize three factors inherent to the academic setting which justify disallowance of such practices. Because of the captive nature of

the audience, the presence of peer pressure, the unpredictability of pedagogical influences – the Supreme Court has significantly restricted forms of verbal and nonverbal religious communication in the public schools.

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