

FIRST AMENDMENT: FREEDOM OF RELIGION

This activity explores the line between religion and public schools with a focus on the Supreme Court case *Engel v. Vitale*, 370 U.S. 421 (1962). Students will examine the question: Is school-sponsored prayer in public schools unconstitutional?

About These Resources

- The First Amendment has two provisions concerning religion: the Establishment Clause and the Free Exercise Clause. Learn more about these clauses in [First Amendment and religion](#).
- Analyze the [facts and case summary](#) for *Engel v. Vitale*.
- Build arguments for both sides, starting with these [talking points](#).
- Use critical thinking skills and share reflections on the [discussion questions](#).
- Compare *Engel v. Vitale* to [similar cases](#).

How to Use These Resources

This activity is a modified [Oxford style debate](#).

1. To get started, have participants read the *Engel v. Vitale* [facts and case summary](#).
2. Assign student attorneys to the issues listed in the [talking points](#). They are suggested points— not a script—for the debate. Student attorneys are encouraged to add their own arguments.
3. All other students are jurors who deliberate (and may refer to these talking points) during the open floor debate. They debate among themselves in the large group or smaller groups and come to a verdict after the attorneys present closing arguments.

FIRST AMENDMENT AND RELIGION

The First Amendment has two provisions concerning religion: the Establishment Clause and the Free Exercise Clause. The Establishment clause prohibits the government from "establishing" a religion. The precise definition of "establishment" is unclear. Historically, it meant prohibiting state-sponsored churches, such as the Church of England.

Today, what constitutes an "establishment of religion" is often governed under the three-part test set forth by the U.S. Supreme Court in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under the "Lemon" test, government can assist religion only if (1) the primary purpose of the assistance is secular, (2) the assistance must neither promote nor inhibit religion, and (3) there is no excessive entanglement between church and state.

The Free Exercise Clause protects citizens' right to practice their religion as they please, so long as the practice does not run afoul of a "public morals" or a "compelling" governmental interest. For instance, in *Prince v. Massachusetts*, 321 U.S. 158 (1944), the Supreme Court held that a state could force the inoculation of children whose parents would not allow such action for religious reasons. The Court held that the state had an overriding interest in protecting public health and safety.

Sometimes the Establishment Clause and the Free Exercise Clause come into conflict. The federal courts help to resolve such conflicts, with the Supreme Court being the ultimate arbiter.

- Check out [similar cases](#) related to *Engel v. Vitale* that deal with religion in schools and the Establishment Clause of the First Amendment.

FACTS AND CASE SUMMARY: ENGEL V. VITALE

Facts and case summary for *Engel v. Vitale*, 370 U.S. 421 (1962)
School-sponsored prayer in public schools is unconstitutional.

FACTS	A New York State law required public schools to open each day with the Pledge of Allegiance and a nondenominational prayer in which the students recognized their dependence upon God. The law allowed students to absent themselves from this activity if they found it objectionable. A parent sued on behalf of his child, arguing that the law violated the Establishment Clause of the First Amendment, as made applicable to the states through the Due Process Clause of the Fourteenth Amendment.
ISSUE	Whether school-sponsored nondenominational prayer in public schools violates the Establishment Clause of the First Amendment.
RULING	Yes (8-1)
REASONING	The majority, via Justice Black, held that school-sponsored prayer violates the Establishment Clause of the First Amendment. The majority stated that the provision allowing students to absent themselves from this activity did not make the law constitutional because the purpose of the First Amendment was to prevent government interference with religion. The majority noted that religion is very important to a vast majority of the American people. Since Americans adhere to a wide variety of beliefs, it is not appropriate for the government to endorse any particular belief system. The majority noted that wars, persecutions, and other destructive measures often arose in the past when the government involved itself in religious affairs.
CONCURRENCE	Justice Douglas In his concurrence, Justice Douglas took an even broader view of the Establishment Clause, arguing that any type of public promotion of religion, including giving financial aid to religious schools, violates the Establishment Clause.
DISSENT	Justice Stewart Justice Stewart argued in his dissent that the Establishment Clause was only meant to prohibit the establishment of a state-sponsored church, such as the Church of England, and not prohibit all types of government insolvent with religion. In particular, he found that the nondenominational nature of the prayer and the "absentee" provision removed constitutional challenges.

TALKING POINTS

Question:

Is school-sponsored, nondenominational prayer in public schools unconstitutional?

Engel (Student)

Vitale (State)

1. Does nondenominational, school-sponsored prayer force religion on impressionable children?

Affirmative. Yes.

Although the government may have a legitimate interest in certain religious matters concerning adults, e.g., providing chaplains to the military or to prisoners on death row, there is a difference when the government involves itself with religious matters concerning children. Children are particularly impressionable, and school-sponsored prayers may lead such children to embrace a religion that neither their parents nor they would otherwise choose.

Negative. No.

The prayers prescribed for recitation before the beginning of class are short and nondenominational in character. There is no lengthy discussion as to what they mean. They simply recognize the country's dependence upon God. Theological discussions are not held in the classrooms of these schools. Such discussions are left to religious instruction classes outside of the public schools, which parents may or may not wish their children to attend. There is no way that such a short prayer can be considered enough to "coerce" an impressionable mind into accepting a particular faith.

2. Does school prayer that is nondenominational constitute governmental interference in religion?

Affirmative. Yes.

The First Amendment does more than just prohibit the establishment of an official state religion, e.g., the Church of England. Recognizing the importance of religious beliefs to those who hold them, the Amendment is meant to prohibit any governmental interference with religion. Any prayer, even if it is nondenominational, may still be offensive. On the one hand, they might not be in conformity with the tenets of a given religion. On the other hand, devout persons might feel that these prayers trivialize religion. It is simply not the government's job to become involved in religious affairs.

Negative. No.

The First Amendment does not prohibit every interaction between government and religion. By providing for a nondenominational prayer, the state was very careful to choose a prayer that was mindful of the many diverse beliefs of those who attend New York's public schools. The prayer simply acknowledges dependency on and appreciation of a divine being, God. Adherents to all faiths can interpret this provision in light of their own faith traditions. Even if a person were an atheist or an agnostic, that individual does not have to say the prayer. If anyone feels strongly opposed, that person may be excused. A nondenominational prayer of this sort, without adherence to any particular creed, is not the same as a government "establishment" of religion.

3. Does nondenominational prayer in schools have an adverse impact on religion?

Affirmative. Yes.

The First Amendment was enacted to prohibit the government from becoming involved in religion. A brief overview of history shows that governments have often manipulated religion to achieve political goals, and, in doing so, often have oppressed nonconformists. Moreover, government involvement in religion may adversely impact religion because it involves temporal authorities imposing their views on a

Negative. No.

The mere use of a nondenominational prayer can hardly be equated with the type of governmental interference with religion that, historically, was responsible for the oppression of dissidents and an adverse impact on religion itself. The prayer at issue does not even conform to any one creed, but is aimed at being acceptable to all. Therefore, it does not seem logical to say that the prayer can adversely affect religion. Since this is the extent of the government's "interference," certain "slippery slope" arguments do not seem applicable.

matter that is not their area of expertise.
Religion benefits when the government is left out of it.

4. Is the option to leave the classroom or remain silent during a prayer a false choice that could have negative consequences for students who do not participate?

Affirmative. Yes.

The school prayer at issue in this case is not saved because of the absentee provision. The First Amendment protects absolute, not qualified, rights. The Amendment forbids government interference with religion. The Amendment cannot allow this interference and then permit violators to get around it by allowing objectors to remove themselves. Moreover, those who remove themselves may be subject to ridicule and forced to feel shame for their actions.

Negative. No.

Even if some students are strongly opposed to the prayer in question, the state shows respect for that students' rights by allowing the students to be absent from the room during the prayer. Students also may remain silent during the prayer if they feel that leaving would subject them to ridicule. The majority of people in the State seem to be in favor of the prayer, so it would seem unfair for a minority of persons who oppose it to inflict their will on the majority, especially when the State has already provided means to protect the rights of dissenters in these cases.

DISCUSSION QUESTIONS

Use these questions to start thoughtful discussion on the issue of religion in schools.

1. Where is the line between religion and public schools?
2. Where do school-sponsored prayers fit in, and is the practice of praying at school constitutional if the prayer is nondenominational?
3. What if students are allowed to remain silent or leave the room during the prayer?
4. Is school-sponsored prayer in public schools unconstitutional?

SIMILAR CASES

The following cases are related to *Engel v. Vitale* and focus on the Establishment Clause of the First Amendment.

Everson v. Board of Education, 330 U.S. 1 (1947)

Providing bus rides to parochial school students is constitutional.

The School Board of Iwing Township allowed its buses to transport children to a Catholic school. The Supreme Court rejected an Establishment Clause challenge to this practice, and held that the School Board was merely providing a financial benefit to the children and their parents, and was in no way promoting religious beliefs that are associated with the parochial school.

Abington School District v. Schempp, 374 U.S. 203 (1963)

School-sponsored Bible reading before class is unconstitutional.

A Pennsylvania law required that each school day open with the Pledge of Allegiance and a reading from the Bible. The law permitted students to absent themselves from this activity if they found it objectionable. Citing *Engel*, the Court held that school-sponsored Bible reading constituted government endorsement of a particular religion, and thus violated the Establishment Clause of the First Amendment.

Westside Community Schools v. Mergers, 496 U.S. 226 (1990)

Public schools may not prohibit student religious groups from meeting on school grounds after hours.

Westside School District prevented a student religious club from meeting on its property after hours, citing First Amendment concerns. The club argued that the school's action violated their Free Exercise rights and the federal Equal Access Act. The Equal Access Act was passed by Congress to ensure that any school receiving federal funds could not prevent religious and other groups from using school property after hours. The Supreme Court upheld the Equal Access Act against an Establishment Clause challenge, saying that "neutrality" and no "hostility" to religion is all that is required by the First Amendment.

Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000)

Students may not use a school's loudspeaker system to offer student-led, student-initiated prayer.

Before football games, members of the student body of a Texas high school elected one of their classmates to address the players and spectators. These addresses were conducted over the school's loudspeakers and usually involved a prayer. Attendance at these events was voluntary. Three students sued the school arguing that the prayers violated the Establishment Clause of the First Amendment. A majority of the Court rejected the school's argument that since the prayer was student initiated and student led, as opposed to officially sponsored by the school, it did not violate the First Amendment. The Court held that this action was school-sponsored prayer because the loudspeakers that the students used for their invocations were owned by the school.

Zelma v. Simmons Harris, 536 U.S. 639 (2002)

Certain school voucher programs are constitutional.

The Ohio Pilot Scholarship Program allowed certain Ohio families to receive tuition aid from the state. This would help offset the cost of tuition at private, including parochial (religiously affiliated) schools. The Supreme Court rejected First Amendment challenges to the program and stated that such aid does not violate the Establishment Clause.