ABSTRACT

Litigation has reached federal courts in the area of church-state relations concerning prayer and bible reading in the classroom, at graduation and extracurricular activities, release-time programs, and use of facilities for religious expression. The principle that the First Amendment requires governmental neutrality toward religion has been easier to prescribe than to apply. Lawsuits have involved claims under the Free Exercise Clause and the Establishment Clause of the First Amendment. Recently the principle of separation of church and state seems to have been replaced by the concepts of equal access and equal treatment for religious groups.

The United States Supreme Court and lower federal courts have consistently declared that school-sponsored prayer during regular school hours and Bible reading for sectarian purposes is unconstitutional. These issues have provided a plethora of litigation focusing on church-state relations.

The First Amendment stipulates, in part that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” (U.S. Constitution, Amendment I; emphasis added). The religious liberties of the First Amendment not only provide protection against actions by the Congress but also, when applied through the Fourteenth Amendment, protect the individual from arbitrary acts of the states (Cantwell v. Connecticut, 1940). On the basis of the establishment and free exercise clauses of the First Amendment, courts must determine the constitutionality of such questions as allowing prayer and Bible reading in the public schools during normal school hours, silent prayer, and prayer at graduations or football games, release-time programs, and permitting religious groups to meet on school grounds.

Prayer and Bible Reading

Two U.S. Supreme Court decisions in the 1960s established case law concerning prayer and bible reading in the public schools. In Engel v. Vitale, 1962, the Court held
that daily recitation of a New York State Board of Regents prayer in the presence of a
teacher was unconstitutional and in violation of the Establishment Clause. In *School
District of Abington Township v. Schempp*, 1963, the Court held that reading the Bible for
sectarian reasons and reciting the Lord’s Prayer in public schools during normal school
hours were unconstitutional. The result of *Engel* and *Schempp* was that religious
exercises in the public schools are clearly unconstitutional. Neither state, nor school, nor
teacher can hold religious services of any type in the public schools. The Court did assert,
however, that the study of the Bible as part of a secular program of education for its
literary and historic values would not be unconstitutional.

**Silent Prayer**

Since *Engel* and *Schempp*, the courts have decided a number of school prayer
cases. Many state constitutions, statutes, and school board policies were changed, thereby
permitting voluntary prayer in the public schools. Teachers and students both have
maintained that the Free Exercise Clause of the First Amendment permits them to
conduct silent prayers in the classroom. This issue was settled by the U.S. Supreme
Court in *Wallace v. Jaffree*, 1985. The Court held that a period of silence for meditation
or voluntary prayer in the public schools is unconstitutional. The Court ruled that the
purpose of the 1981 Alabama silent prayer law was not secular and therefore violated the
Establishment Clause. Courts have rejected most recent challenges to silent meditation
or prayer.

**Prayer at Graduation and Extracurricular Activities**

Courts have been asked to render a decision on the constitutionality of prayers at
graduation exercises and at other school-sponsored activities outside the classroom such
as football games, team practices, and band concerts. The U.S. Supreme Court in *Lee v.
Weisman*, 1992 held that prayers organized by school officials at graduation exercises
were unconstitutional. The Court opined that while some common ground of moral and
ethical behavior is highly desirable for any society, for the state to advance a Judeo-
Christian religious doctrine is “coercive” and can crate great discomfort for students who
do not believe in the particular religious precept that is being visited upon them. And the
U.S. Supreme Court in *Santa Fe Independent School District v. Doe*, 2000 held that
student-led, student-initiated prayer at football games violated the Establishment Clause.
Thus, *Santa Fe* joins a consistent array of precedents that enforce the secularization of
public schools.

**Released Time for Religious Instruction**

The practice of releasing public school children during regular school hours for
religious instruction first began in the United States at the beginning of the twentieth
century. Since then, two significant U.S. Supreme Court cases have addressed the issue
of releasing public school students to receive religious instruction. In *McCollum v.
Board of Education of School District No. 71*, 1948, the Court struck down a plan in
which pupils were released to attend religious instruction in the classrooms of public
school buildings. The Court asserted that the use of tax-supported property for religious
instruction, the close cooperation between school officials and religious authorities, and
the use of the state’s compulsory-education system all tended to promote religious
education, and, therefore, violated the First Amendment.

In a second decision, *Zorach v. Clauson*, 1952, the Court upheld a plan whereby
students were released during public school hours to attend religious instruction off the
school grounds. The Court found that the plan did not violate the First Amendment. The
Court reasoned that whereas the Constitution forbids the government to finance religious
groups and promote religious instruction, the First Amendment does not require the state
to be hostile to religion. From the *Zorach* decision, it is clear that the Supreme Court
does not prohibit some cooperation between public schools and churches, but the nature
and degree of the cooperation are important in determining the constitutionality of the
activity in question.

**Use of Facilities**

It is common practice in public schools to permit student organizations to use
school buildings during non-instructional time. Local boards of education have implied
powers to regulate such use. In such situations, the question arises concerning the
constitutionality of meetings involving religious groups. In 1984, Congress passed the
Equal Access Act (EAA), which has since been amended, in an attempt to clarify the
unsettled area of law where students’ free speech rights compete with the rights of public
schools to control access to the school as a forum for public discourse. The Equal Access
Sec. 801(a) (2008))]:

It shall be unlawful for any public secondary school which receives Federal
financial assistance and which has a limited open forum to deny equal access or a
fair opportunity to, or discriminate against, any students who wish to conduct a
meeting within that limited open forum on the basis of the religious, political,
philosophical, or other content of the speech at such meetings.

A school has complied with the *fair opportunity* requirement if the meetings:

(1) are voluntary and student-initiated;
(2) involve no school or government sponsorship;
(3) allow the presence of school employees only in a non-participatory capacity;
(4) do not materially and substantially interfere with the orderly conduct of
educational activities within the school; and
(5) are not directed, controlled, or regularly attended by non-school persons.
The U.S. Supreme Court, in *Board of Education of the Westside Community Schools v. Mergens*, 1990, upheld the constitutionality of the Equal Access Act. The Court ruled that if a school allows any non-curricular groups to meet, then a limited open forum is created, and any student-initiated group has the right to assemble. These groups would be allowed to convene during non-instructional times when other groups meet.

**Conclusion**

Litigation has reached federal courts in the area of church-state relations concerning prayer and bible reading in the classroom, at graduation and extracurricular activities, release-time programs, and use of facilities for religious expression. The principle that the First Amendment requires governmental neutrality toward religion has been easier to prescribe than to apply. Lawsuits have involved claims under the Free Exercise Clause and the Establishment Clause of the First Amendment. Recently the principle of separation of church and state seems to have been replaced by the concepts of equal access and equal treatment for religious groups.

**References**