
IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

Nos. 119 and 142

WILLIAM J. MURRAY, III, Infant, etc., et al., *Petitioners*,

—vs.—

JOHN N. CURLETT, et al., *Respondents*.

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, et al.,
Appellants

—vs.—

EDWARD LEWIS SCHEMPP, et al., *Respondents*.

**BRIEF OF THE AMERICAN ETHICAL UNION
AS AMICUS CURIAE**

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BRIEF OF THE AMERICAN ETHICAL UNION AS
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The Interest of the American Ethical Union

This brief is submitted on behalf of the American Ethical Union pursuant to leave granted by this Court.

The American Ethical Union is a federation of Ethical Culture Societies and Fellowships in the United States

which, collectively, constitute a liberal religious fellowship known as the "Ethical Movement" or the "Ethical Culture Movement."

There are thirty Societies and Fellowships of the American Ethical Union in eleven states and the District of Columbia, including the States of Maryland and Pennsylvania. Through its membership in the International Humanist and Ethical Union, the American Ethical Union is part of a world-wide association of Humanist and Ethical Culture groups. At the third International Congress held in Oslo in 1962, delegates attended from 24 countries including the United States, Great Britain, Iran, Holland, Norway, Germany, Japan and Colombia.

As the central organization of the Ethical Culture Movement in the United States, the American Ethical Union is concerned with the effect of the religious practices here in issue upon Ethical Culture members and their children in the States of Maryland and Pennsylvania and elsewhere in the United States. Ethical Culture has been recognized as one of those "religions in this country which do not teach what would generally be considered a belief in the existence of God." *Torcaso v. Watkins*, 367 U. S. 488 at 495 n. 11. This Court, in *Torcaso*, noted among other such religions, Buddhism, Confucianism, Taoism and Secular Humanism. A fundamental tenet of Ethical Culture is the freedom of each individual to determine for himself whether or not to relate his religious aspirations to the existence of a Supreme Being. Accordingly, and equally fundamentally, Ethical Culture rejects organized prayer to a Supreme Being and rejects public reading of the Bible as a religious exercise.

ARGUMENT

Bible Reading as a Ceremonial Function in Public Schools and Ceremonial Recitation of the Lord's Prayer in Public Schools Constitute Governmental Intrusion of Sectarian Religion in Secular Education in Violation of the First and Fourteenth Amendments.

In this brief we will not review the history and case law relating to the Free Exercise and Establishment clauses of the First Amendment, since that would be repetitious of the briefs submitted by the parties and other *amici*. Instead, we will present to this Court considerations indicating how the practices here under review violate the religious beliefs and constitutional rights of adherents of a non-theistic religion such as Ethical Culture.

Non-theism is a view which neither categorically denies, nor dogmatically affirms, the existence of a Supreme Being. Organized non-theistic religious groups, such as the Ethical Culture Societies, include members whose personal faith includes a Supreme Being, and those whose personal faith does not. The concept of freedom of thought and privacy of judgment in such matters is an essential part of Ethical religion. In the words of a leader of the Ethical Movement, "Toward worship, theism, prayer, Ethical Societies take an attitude of strict neutrality, in order that the freedom of ethical fellowship may be kept absolutely inviolate. Some of us are theists, but none of us could ever be induced to join or to lead a Society that made belief in God a condition of membership." (Martin, *Aspects of Ethical Religion*, 92, Ed. Bridges.)

The Ethical Culture Societies conduct services, and maintain religious schools for children which meet regularly on Sunday mornings. The Leaders of the Societies perform the functions of ministers, officiating at marriages and funerals and counselling members on moral and ethical problems. But the outward forms of worship characteristic of most theistic religions are rejected by Ethical Culture.

The Sunday meetings of Ethical Culture Societies do not include prayer or congregational Bible reading as part of the service. Nor is there ever any organized appeal or supplication to a Supreme Being. "The meeting has simple dignity without elaborate ritual. Ordinarily it centers on an address by a Leader or by a Guest Speaker chosen for distinguished achievement in some field of human relations." (*Do You Know the Ethical Movement*, pamphlet published by The American Ethical Union, 2 W. 64 St., New York 23, New York, p. 4.)

In their Sunday Schools, Ethical Culture Societies carefully avoid developing in their children a view of life that is dependent upon the dogma of the divine word or the worship of a Supreme Being. The program seeks to impart to the children instead an understanding of the religious and cultural heritage of other groups and of the dignity and worth of each individual in order that they may better understand their own Ethical and humanistic heritage.

In part, the study by the children of the traditions of other religions is based upon religious literature, including the Old and the New Testament. The curriculum of the Sunday School of the New York Society for Ethical Culture states that: "The Old and the New Testament are examined as literary documents with great ethical im-

port which have exerted a far-reaching influence on Western civilization.” (*The Sunday School of the New York Society for Ethical Culture*, pamphlet published by the New York Society for Ethical Culture, 2 West 64th Street, New York, New York.) The study of the Bibles and the doctrines therein contained is made under the supervision of a Sunday School teacher who can aid the children in comparing one with another so that their similarities and differences may be brought forth as well as their religious and moral significance.

The Ethical Movement does not subscribe to the claims of any of the various Holy Books of mankind as being the ultimate word. Leaving to each of its members the personal decision as to their divine nature, Ethical Culture draws from various scriptures their moral and ethical principles. “It starts where the Jewish and Christian communions stop, seeing in the ethical precepts of the Old Testament and in those of the New, stages in the evolution of moral standards beyond which we are now to advance.” (*Aspects of Ethical Religion, op. cit. supra* at p. 99.)

The ceremonial reading of the Bible and recitation of the Lord’s Prayer are necessarily offensive to children of followers of the Ethical religion, since they express official sanction of dogmas and practices to which these children cannot subscribe. Even among theistic religions, the Bible readings heard by the children include doctrines not accepted by some sects or denominations. (*Schempp v. School District of Abington Township*, 177 F. Supp. 398, 400 n. 11 (E. D. Pa. 1959.)

It is not only the sectarian doctrines themselves but the manner of their presentation which gives offense. Reading of the Bible to or by congregations and congrega-

tional recitations of prayer are not only rejected by Ethical Culture, but also by other denominations, including a number of theistic groups which shun such practices.

The fact that there is a Protestant version (the King James Bible) and a Roman Catholic version (the Douay Bible)—neither of which is accepted by those of the Jewish faith—underscores the fact that ceremonial Bible reading in the schools favors some religions over others. Which Bible is used tends to depend upon the religious leanings of the predominant group and officials in the particular community—in disregard, of course, of the religious views of the minority in that community.

With respect to the King James version (that used by the school boards now before this Court), it has been said that “Protestant Bible reading might well be construed as a multiple establishment of religion * * * intended to give state support and sanction to the religious belief of Protestants in general in preference to those of Roman Catholics, Jews, other non-Christians, and non-believers.” Butts, *The American Tradition in Religion and Education*, 196 (1950). See also Moehlman, *The Wall of Separation between Church and State*, 153 (1951).

Similarly, the Lord’s Prayer has sectarian aspects among Christian faiths. Conrad Henry Moehlman, late James B. Colgate, Professor of the History of Christianity at the Colgate-Rochester Divinity School, compares the different versions of the Lord’s Prayer and relates the confusion that ensues when children of different Christian faiths attempt to recite the Lord’s Prayer in unison. (Moehlman *School and Church: The American Way*, 110-111 (1954)). Worse than confusion arises, of course, when children of non-theistic or non-Christian religions are pupils in the schools which follow this practice.

Insofar as these cases involve recitation of the Lord's Prayer in the public schools, they would seem indisputably controlled by *Engel v. Vitale*, 370 U. S. 421. In *Engel*, this Court struck down a so-called "non-denominational prayer" which was said to be inoffensive and adaptable to all religions. As Edmond Cahn has cogently stated, that concept "is self-contradictory; it is a chimera. A non-denominational prayer does not and cannot be made to exist. It is as impossible as the progeny of a mule." (Cahn, *On Government And Prayer*, 37 N. Y. U. L. Rev. 981, 992, 1962.) In any event, in *Engel* this Court held the organized recitation of a "non-denominational prayer" invalid as an establishment of religion within the meaning of the First Amendment, since it was performance of "a religious exercise in a governmental institution". It follows *a fortiori* that the Lord's Prayer, which could not possibly be considered "non-denominational", is likewise an unconstitutional exercise in government-sponsored religion. It does not seem necessary, in light of *Engel v. Vitale*, to elaborate further on the nature of the Lord's Prayer, its incompatibility with non-theistic religions such as Ethical Culture, and its unacceptability to followers of a number of theistic religions.

Insofar as these cases involve readings from the Bible, we believe that the *Engel* case also governs. The Bible readings here in question—which are part of the daily opening exercises—are equivalent to the recitation of the Regent's Prayer in the *Engel* case. They are ceremonial and devotional in character. Indeed in the Maryland case, they may be used interchangeably with recitation of the Lord's Prayer. There is no element of exposition or teaching associated with these ceremonial readings of the Bible;

they are obviously, like the reading of the Lord's Prayer, religious rather than educational in character. Accordingly, such readings also fall within the category of an establishment of religion.

This Court has held that "neither a State nor the Federal Government can constitutionally force a person to profess a belief or disbelief in any religion" nor "constitutionally pass laws nor impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." (*Torcaso v. Watkins*, *supra* at 495.) By prescribing the activities here in issue, the school boards in these cases have done precisely what was said to be prohibited in the *Torcaso* case.¹

The claim that these practices are excused because of alleged absence of coercion has been raised in the present cases because of the provisions for excusing a pupil from the devotional part of the schools' opening exercises upon the request of parent or guardian. That question has been settled contrary to the position of the school boards. This Court said, in *Engel*:

1. A number of state courts have declared Bible reading and prayer recitations in public schools to be unconstitutional. The Supreme Court of Illinois expressly found that reading of the Bible in public schools constituted sectarian instruction in public institutions in addition to being a form of religious worship commonly practiced by certain sects, particularly when combined with the Lord's Prayer. (*People ex rel. Ring v. Board of Education*, 245 Ill. 334, 92 N. E. 251 (1910). See also *State ex rel. Weiss v. District Board*, 76 Wisc. 177, 44 N. W. 967 (1890), *State ex rel. Freeman v. Scheve*, 65 Nebr. 853, 91 N. W. 846 (1902), *Herold v. Parish Board*, 136 La. 1034, 68 So. 116 (1915)). The Supreme Court of New Jersey has held unconstitutional the mere free distribution of Bibles in the public schools on the ground that the schools would be aiding one sect to the detriment of others. (*Tudor v. Board of Education*, 14 N. J. 31, 100 A 2d 857 (1953), cert. denied 348 U. S. 816.)

“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. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that.”

Engel v. Vitale, supra, at p. 430.

See also

People ex rel. McCollum v. Board of Education,
333 U. S. 203 (1948) p. 227.²

It is submitted, therefore that recitation of the Lord's Prayer and the Bible reading prescribed by the school boards for the public schools, like the prayer in the *Engel* case, constitute an establishment of religion and an interference with the free exercise of religion under *Engel*, *Everson v. Board of Education*, 330 U. S. 1, and *West Virginia State Board of Education v. Barnette*, 319 U. S. 624. These religious practices interfere with the rights of parents to raise their children in their own reli-

2. On the coercive impact of situations such as those here involved, it has been pointed out, in a discussion of the contention that the “non-denominational” prayer involved in the *Engel* case was “merely optional”:

“They were actually satisfied to tell a school child of normal sensibility, ‘If you want to be different from everyone else, you can remain silent while your classmates pray in unison to God; you can conspicuously absent yourself at the opening of school while they ask God to bless *their* parents and *their* country. No coercion, purely voluntary!’ If one can believe *that*, one can believe anything.” (*Cahn op. cit. supra* at p. 987).

religious traditions and impose disadvantages upon the children, under the mantle of governmental authority, for their failure to subscribe to the religious practices of others. This use of a public school system as a means of religious indoctrination causes dissension in the community along religious lines. The First and Fourteenth Amendments were designed to prevent just that.

This Court noted in *Engel* that the protection of the rights of religious minorities and the protection of the fabric of democratic society as we have known it requires

“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.” (*Ibid.*, at p. 435.)

Conclusion

The prescribed practices of Bible reading and recitation of the Lord’s Prayer in the public schools of Maryland and Pennsylvania violate the First and Fourteenth Amendments. The decision in No. 119 should be reversed and the decision in No. 142 should be affirmed.

Respectfully submitted,

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