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Religion in Public Schools: A View from the Trenches

Robert Boston*

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In December of 1993, I drove to a small town in central Pennsylvania with a lawyer on a mission that, depending on your perspective, may or may not have been from God. We were there to tell a school board that its practice of beginning every school day with a Bible verse broadcast over the school's public-address system was clearly unconstitutional.

A few weeks prior to our road trip, the organization that employed us, Americans United for Separation of Church and State, had received an anonymous note outlining what the school system was doing and pleading for help: "I am a Christian, but I think what they are doing at the schools is wrong," our nameless correspondent wrote. "What my kids learn about religion we will do at home and in church. I do not think it is the school's business."

During the school board meeting, the attorney patiently outlined the law. He pointed out that the U.S. Supreme Court had, 30 years prior, struck down mandatory Bible reading in public schools in a landmark case, also from Pennsylvania, titled *School District of Abington Township v. Schempp*.¹ Members of the board admitted that they were in violation of the law. They wanted to retain the prayer practice, but in the face of the threat of a lawsuit, they voted 7-2 to discontinue it. They made it clear they weren't happy about that. An air of hostility hung in the room, and the attorney and I were treated with open disrespect. In the parking lot after the meeting, we were approached by an angry man who told us to get out of Pennsylvania and added, "Go back south where you belong." I calmly explained to the man that I was a native of the state, born and raised about two hours away from where we were standing.

* Robert Boston holds a degree in journalism and has appeared on CNN, NBC, Fox News, MSNBC, and other news media as an expert on church-state issues. He is the author of church-state books including *TAKING LIBERTIES: WHY RELIGIOUS FREEDOM DOESN'T GIVE YOU THE RIGHT TO TELL OTHER PEOPLE WHAT TO DO* (2014). Mr. Boston is the Director of Communications at Americans United for Separation of Church and State (AU). He would like to thank Alex Luchenitser, Americans United Associate Legal Director, for reviewing drafts of this article and for offering helpful suggestions.

¹ *School District of Abington Township, Pennsylvania v. Schempp*, 374 U.S. 203 (1963).

Although that incident occurred nearly a quarter of a century ago, the details are still vivid in my mind. I remember the school board president saying he would pray for us and urging people to start a national movement to bring back official school prayer. I recall the look of rage on the face of the man in the parking lot.

The attorney I traveled with that day moved on many years ago. I've stayed with Americans United. I'm not an attorney – I hold a bachelor's degree in Journalism – and I've dedicated most of my professional life to writing and speaking about church-state topics. The issue of religion's role in public education is constant. In 1993, the same year we fought that recalcitrant Pennsylvania school board, I wrote a book that was intended to be a layperson's guide to church-state relations. I titled the chapter on religion in public schools "The Issue That Won't Go Away."²

As a non-lawyer, my perspective is less about what the Constitution compels and courts require and more about what's the best way to protect everyone's rights in increasingly diverse communities in a country of many viewpoints. I have a personal perspective as well. My wife and I put two children through the public school system. As someone who was raised in an area where there was very little religious diversity but moved to a place where there is a lot, I've been informed by seeing what's possible and contrasting it to the somewhat parochial, majority-rules vision of my childhood.

I greatly respect the academics who study this issue, and I have used their research many times in my own writings. The problem is, precious little of that research is trickling down to the street level. From where I'm sitting – all too often in the trenches – we're just not making the kind of progress we ought to be by now.

I used to think the natural evolution of religion in America would solve the problem of the proper role of religion in public schools. Thomas Jefferson once observed: "Difference of opinion is advantageous in religion. The several sects perform the office of a Censor morum over each other."³ The idea is that if many different religious organizations were in play, they would perform a natural check over one another. No one would amass too much power and compel others to follow its dictates.

In public education, this principle, I assumed, would create a kind of equilibrium that would lead to peace and harmony. For various reasons, that hasn't happened. Why not? I'll get to that in a moment. But first a

² ROBERT BOSTON, *WHY THE RELIGIOUS RIGHT IS WRONG ABOUT SEPARATION OF CHURCH & STATE* (1993).

³ THOMAS JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* (1998).

detour: It is often the case that a little history helps us understand where we are. So it is with religion in public schools.

I used to do a lot of talk radio. From that, I learned that lots of people cling to a story about religion in public schools that, while it confirms their pro-faith bias, has little connection to reality. In a nutshell, the story goes something like this: We had prayer and Bible reading in our schools for hundreds of years. No one complained. Then a loud-mouthed atheist named Madalyn Murray O’Hair came along in the early 1960s. Possibly backed by Soviet Russia, she filed a lawsuit to end prayer in schools. The super-liberal Supreme Court agreed, and since then our public schools have been God-free zones. A kid can’t even say, “God bless you” if his friend sneezes. This explains why we have so many school shootings.

Where to begin? For starters, public education came along a lot later than many people think. Some founders, like Jefferson, supported the idea of education for everyone, but in most parts of the growing nation, there were no public schools and certainly no laws requiring young people to attend them.

All of that came later. Some states began establishing public schools and passing laws compelling children to be educated in the antebellum period, and there was more growth after the Civil War. But the concept was slow to catch on. Many states had no compulsory attendance laws even into the 20th century.

Many of the public schools that did exist reflected the religious perspective of the country’s Protestant majority. Anyone who thinks there was no conflict over this simply hasn’t read the history. That’s not surprising. Few people know about the history of religion in public schools, and even fewer have read anything about it. The truth is, there was a lot of conflict, primarily between Protestants and Roman Catholics.

The United States of the pre- and post-Civil War eras, in some respects, was not so different from our country. The nation was prone to being periodically seized by waves of anti-immigrant hysteria. In the middle of the 19th century, Catholics became the bogeyman *du jour*. Immigrants from Ireland, Italy, and Eastern Europe had strange religion and strange customs. They read different versions of the Bible and deferred to bishops. Their loyalty was suspect. Did they owe allegiance to the United States – or the pope in Rome?

The country’s ruling WASP elite did all it could to keep the newcomers in their place. Many public schools incorporated daily religious exercises that were Protestant in nature. Catholic pupils were not excused; they had to participate.

In 1844, a three-day riot erupted in Philadelphia after Catholic parents asked that their children be excused from mandatory prayer and Bible reading. The school board was inclined to grant the request, and even that was enough to set off the mobs. During what came to be known as the “Philadelphia Bible Riots,” several people died and a few buildings were burned down, among them a Catholic church.⁴

Cincinnati in the late 1860s underwent a “Bible war” that eventually ended up in state court. The Ohio Supreme Court in 1872 ruled that education officials in the city were not required to sponsor Bible reading in school.⁵

The Ohio high court did not rule that Bible reading in public schools was unconstitutional, only that the schools were not required to do it and could exclude the practice if they chose. Still, the ruling resulted in some eloquent language: “United with government, religion never rises above the merest superstition; united with religion, government never rises above the merest despotism; and all history shows us that the more widely and completely they are separated, the better it is for both,” declared the court.⁶

The tide was turning. In 1890, the Wisconsin Supreme Court struck down required school devotionals. Nebraska’s high court followed suit in 1903. In 1910, the Illinois Supreme Court took a major step forward when it ruled that mandatory religious practices such as prayer, Bible reading and hymn singing were unconstitutional even though, in theory at least, students could be excused from the worship activities.

That wasn’t good enough, declared the court – in fact, it was harmful. Observed the court: “The exclusion of a pupil from this part of the school exercises in which the rest of the school joins, separates him from his fellows, puts him in a class by himself, deprives him of his equality with the other pupils, subjects him to a religious stigma and places him at a disadvantage in the school, which was never contemplated. All this is because of his religious belief.”⁷

Some state courts upheld public school prayer and Bible reading, and in other states the issue never came up. Other schools simply eliminated religious exercises on their own without being ordered to do so by a court because education officials could see the problems mandatory prayer and Bible reading were causing.

⁴ MICHAEL FELDBERG, *THE PHILADELPHIA RIOTS OF 1844: A STUDY OF ETHNIC CONFLICT* (1975).

⁵ *Board of Education of Cincinnati v. Minor*, 23 Ohio St. 211 (1872).

⁶ *Id.*

⁷ *Ring v. Board of Education*, 245 Ill. 334 (1910).

As all this courtroom action and other activity shows, the issue of religion in public schools was a live controversy in many parts of the country. My point is that the issue of prayer, Bible reading, and other devotional activities in public schools did not suddenly become controversial in the swinging 1960s. The question of the proper role of religion in public schools has been with us as long as there have been public schools.

The U.S. Supreme Court was something of a Johnny-come-lately to the issue. This occurred in part because of lingering questions over the application of the Bill of Rights to the states. This issue, most legal scholars agree, was settled by the adoption of the 14th Amendment in 1868, but, remarkably, the Supreme Court didn't make this clear until the 20th century. In fact, the Supreme Court did not make it clear that the Establishment Clause – that part of the First Amendment that declares that government can “make no law respecting an establishment of religion” – applied to the states until 1947's *Everson v. Board of Education*.⁸ In the post-*Everson* era, federal courts began examining issues that, until then, had been left to state courts.

Early skirmishes at the Supreme Court dealt with the issue of “released time,” that is, the ability of public schools to allow students to leave class during the day to receive religious instruction. In *McCullum v. Board of Education* (1948), the high court ruled that supposedly “voluntary” religious courses could not take place on site at public schools.⁹ A few years later, however, the court ruled in *Zorach v. Clauson* (1952) that it was permissible for public schools to release children during the school day for religious instruction that took place off site.¹⁰

These cases were warm ups for the big show. In 1962, the Supreme Court handed down the first school prayer ruling, declaring that a scheme cooked up by education officials in New York to encourage local districts to sponsor daily recitation of an allegedly non-sectarian prayer drafted by the state Board of Regents was unconstitutional.

The case, *Engel v. Vitale*, was not close. By a 6-1 vote, the Supreme Court struck down the prayer plan.¹¹ *Engel* is an important case but tends to get overlooked today because the plaintiffs faded away after the litigation ended. The parents who brought the case on behalf of their children are all dead. In 2012, the 50th anniversary of the ruling, I tracked down some of their children for an article I was writing. I also spoke with

⁸ *Everson v. Board of Education*, 330 U.S. 1 (1947).

⁹ *McCullum v. Board of Ed. of School Dist. No. 71*, 333 U.S. 203 (1948).

¹⁰ *Zorach v. Clauson*, 343 U.S. 306 (1952).

¹¹ *Engel v. Vitale*, 370 U.S. 421 (1962).

Bruce J. Dierenfield, a professor of history at Canisius College in Buffalo, N.Y., who wrote a book about the *Engel* case. He told me: “The *Engel* plaintiffs were interested in the constitutional principle at stake and religious liberty, but they shunned the spotlight. They wanted the focus to be on the First Amendment to the Constitution.”¹²

The following year, the Supreme Court handed down its ruling in the *Schempp* case. In a legal spat originating in Pennsylvania, the court, again with only one dissenter, struck down coercive recitation of the Lord’s Prayer and daily Bible reading in public schools.

It’s at this point that people often say something like: “Wait a minute. I thought Madalyn Murray O’Hair brought this case.” O’Hair did bring a case challenging school prayer in Baltimore’s public schools. Her challenge worked its way through the courts at the same time as one brought by the Schempp family of suburban Philadelphia. Since the two cases presented virtually the same legal question, the Supreme Court considered them together.

Like the *Engel* plaintiffs, the Schempp family had little interest in becoming media figures after winning the case. Ed Schempp and his son Ellery were happy to give speeches about the lawsuit and sit for interviews, but they never attempted to form a national organization. O’Hair, by contrast, used her case to launch American Atheists and make herself a colorful and combative figure. She often appeared in the media and was a guest on the first episode of Phil Donahue’s popular talk show.

These decisions are more than 50 years old, but they remain widely misunderstood. Over the years, I’ve encountered many people who were certain that every public school in America had official prayer, and there was no problem until O’Hair complained.

As shown, this is not true. Many people complained about mandatory prayer and Bible reading in schools, with complaints stretching back to the 19th century. These practices were already illegal in some states before the Supreme Court ruled. O’Hair brought one case among many and some public schools voluntarily phased out the religious practice to avoid complaints.

School prayer and Bible reading have also been vested with near-supernatural powers over the years. In the 1950s, officials in New York were convinced that a brief, generic prayer could fend off communism and juvenile delinquency. More recently, I’ve heard school prayer touted as the answer to school shootings, teen suicide, drug and alcohol abuse and sexual activity.

¹² Rob Boston, “*Awesome Anniversary: Engel at 50 -- N.Y. Families Ended Coercive Prayers In Schools,*” CHURCH & STATE 12 (June 2012).

A Religious Right activist named David Barton has even self-published a book titled *America: To Pray or Not to Pray* that purports to show the negative effects of the school prayer decisions. Barton's tome contains a series of charts that will, say, show how the rate of sexually transmitted diseases has escalated since 1962. He blames this on the *Engel* decision, an absurd example of *post hoc ergo propter hoc* in action.¹³

The school prayer rulings led to a spate of attempts to overturn them via a constitutional amendment. All of these efforts failed, but occasionally the issue flares up again. In 1998, the U.S. House of Representatives voted on a so-called "religious freedom" constitutional amendment that would, among other things, have restored official prayer to public schools. The amendment secured a simple majority but fell far short of the two-thirds needed to pass an amendment.¹⁴

What has been frustrating, from the point of an activist in the trenches, has been watching people spend so much time, energy and money to secure a "right" that already exists. Nothing prevents young people from praying on their own in public schools right now. Their prayers must be voluntarily chosen and non-disruptive, but they are allowed. Many states even have laws mandating moments of silence at the beginning of the school day. During this period, students may pray or not as dictated by conscience.

The Supreme Court struck down much more formalized rituals of coercive prayer. In New York prior to the *Engel* ruling, state officials actually wrote a prayer for public schools to use. Allegedly ecumenical, the prayer was in reality watered down and generic. It was an example of a kind of "one-size-fits-all" religiosity that no one actually practices.

The rituals that were declared unconstitutional in the Pennsylvania and Maryland cases were more sectarian. Pennsylvania law required recitation of the "Lord's Prayer," a Protestant supplication. It also mandated daily readings of 10 verses from the "Holy Bible." While the term is vague, it was most often interpreted to mean the King James Version of the Bible. Thus, these practices were by default Protestant in character.

Defenders argued that the practices were "voluntary." This is debatable, in that students (especially very young ones) undoubtedly felt great pressure to take part. I've talked with people who attended public schools in the pre-*Engel* era who speak with great emotion about how difficult it was to get up and leave the room. To do that, you had to be willing to single yourself out, to mark yourself as "different" in a highly

¹³ DAVID BARTON, *AMERICA: TO PRAY OR NOT TO PRAY?* (1988).

¹⁴ The final tally was 224-203.

visible way. Few students were willing to do that, so they just went along to get along.

School prayer amendments to the U.S. Constitution are introduced as a matter of course just about every session. They don't move, and the issue of rewriting the Constitution to return coercive forms of prayer seems to have died down.

This does not mean the larger issue is dead. Indeed, every year attorneys at Americans United receive hundreds of complaints about inappropriate religious activity in public schools. These problems run the gamut. Some school officials have a bad habit of inviting proselytizing groups into schools to offer lectures about things like sex education, drug abuse or suicide prevention. The talks, often delivered by people who have little expertise in the area, inevitably lapse into a sermonette or, at the very least, an invitation to attend a "party" later that evening at a local church that just happens to be evangelistic in nature.

Coaches – especially those who run football programs – are another problem. Whether paid staff or volunteers, coaches are part of the public-school system. Like teachers and principals, they may not engage in religious activity with students. But many do.

In 2006, Americans United represented a public school in East Brunswick, N.J., where a football coach named Marcus Borden was leading his team in prayers before games. Not all students wanted to take part, and school officials ordered Borden to stop. He stopped organizing the prayers but continued to "take a knee" with players. Borden took the matter to court; he won at the trial level, but a federal appeals court in April of 2008 reversed the lower court and ruled that officials had the right to curb Borden's coercive prayer activities.

While writing this article, a nearly identical situation erupted in Bremerton, Washington, where Joe Kennedy, an assistant coach at Bremerton High School, was placed on administrative leave after he refused to stop praying on the 50-yard line at the end of the school's football games.

School officials told Kennedy to stop. He originally decided not to reapply for the coaching job, but then changed his mind. Backed by a conservative Christian legal group, he is in court demanding that he be rehired and permitted to pray with the players.

These are not isolated issues. In the space of just five weeks in April and May of 2016, Americans United attorneys sent six letters to public schools warning them about religious activity by coaches.

It is worth noting that the Supreme Court has struck down school prayer in the football-game context too. In *Santa Fe Independent School*

District v. Doe, the high court in 2000 invalidated a Texas school district’s policy of allowing students to vote on whether to have “non-sectarian” prayers before football games.¹⁵ The facts that the prayers were led by students, not coaches, did not cure the problem, the court ruled.¹⁶

Coaches are often paid employees of the public-school system, but even if they are volunteers, they are acting in an official capacity. Like teachers and administrators, they can’t engage in religious activity with students. There’s no special set of rules for them; they often just act as if there is.

Advocates of separation of church and state encounter similar problems with the teaching of creationism in public schools: victories in court, defiance on the ground.

Virtually every case has gone our way. Although we lost the *Scopes* trial in 1925, things have been going in the right direction since then. In *Epperson v. Arkansas* (1968), the Supreme Court struck down an Arkansas law that made it a crime to teach evolution in public schools.¹⁷ *Edwards v. Aguillard*, a 1987 case, saw the high court invalidate a Louisiana law that mandated “balanced treatment” between evolution and creationism in public schools.¹⁸

In 2005, a federal court in Pennsylvania struck down an especially ill-conceived policy in the Dover schools that attempted to introduce “intelligent design” (ID), a kind of younger, hipper cousin of creationism, into the town’s schools. U.S. District Judge John E. Jones III put a stop to it. His decision was not appealed because voters in town decided to eject the board members who had dragged them into this legal quagmire. The new board quickly dumped the ID policy.¹⁹

Ah, the sweet smell of success! Kind of. Courtroom victories can compel a public school district to stop teaching creationism, but they can’t make them do a good job of teaching evolution. And some don’t.

The National Center for Science Education, based in Oakland, Calif., works full time to ensure that evolution is taught properly in public schools (the group also combats climate change denial). Some of the stories on its website are horrifying.²⁰

¹⁵ *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000).

¹⁶ *Id.*

¹⁷ *Epperson v. Arkansas*, 393 U.S. 97 (1968).

¹⁸ *Edwards v. Aguillard*, 482 U.S. 578 (1987).

¹⁹ *Kitzmiller v. Dover Area School Dist.*, 400 F. Supp. 2d 707 (M.D. Pa. 2005).

²⁰ NATIONAL CENTER FOR SCIENCE EDUCATION, <https://www.ncse.com> (last visited June 5, 2017).

In Idaho, members of the state legislature proposed a law that would have permitted the use of the Bible in the state's public schools "for reference purposes to further the study of" topics including "astronomy, biology, [and] geology."²¹ Kentucky lawmakers considered a bill that would have extended summer vacation in the hopes that more kids would visit the state's latest attraction – a replica of Noah's Ark replete with dinosaurs in cages. The park, Ark Encounter, was built by a creationist ministry run by Ken Ham, an Australian evangelist. Unlike Noah's simple gopher wood and pitch construction, Ham's ark features steel beams, air conditioning and electric lights.²²

There must be some way to resolve all of this, right? We can't be fated to continue fighting over the role of religion in public schools over and over, squaring off in court and spending money on attorneys that would be better directed to the classroom, correct? Surely there is an answer. Perhaps, but so far it has eluded us.

Occasionally the cry is heard: "Let's do a better job teaching about religion!" The suggestion has a certain appeal. Religion is important to people all over the world, and we tend not to know much about the ones we don't practice. If nothing else, we know that people believe some odd things about Muslims, Hindus and Buddhists, not to mention the smaller Christian sects and the non-believers, who are, according to some researchers, the third largest belief – or non-belief – system in the world, just behind Christianity and Islam.²³

So, as the plan goes, we simply do a better job teaching about religion from an objective perspective. Religion comes back into school, and kids learn valuable things. It's a win-win! Except that it is often not. Teaching about religion has many things to say for it, but it's not the panacea it is sometimes held out to be. The chief problem is that many people who complain about religion's absence in public schools are angry about the absence of *one* religion – their own. Bringing in a bunch of "wrong" religions and holding them up as just as good as Pastor Bob's does not really please Pastor Bob. In fact, it annoys him greatly. That is

²¹ Glenn Branch, *Bible-as-Science Reference Bill in Idaho*, NATIONAL CENTER FOR SCIENCE EDUCATION (Feb. 16, 2016), <https://ncse.com/news/2016/02/bible-as-science-reference-bill-idaho-0016927>.

²² Glenn Branch, *Vacation Creationism Bill Introduced in Kentucky*, NATIONAL CENTER FOR SCIENCE EDUCATION (Jan. 8, 2016), <https://ncse.com/news/2016/01/vacation-creationism-bill-introduced-kentucky-0016853>.

²³ See, e.g., Tom Henegan, "No Religion" is World's Third Largest Group After Christians, Muslims, According to Pew Study, HUFFINGTON POST (Dec. 18, 2012), http://www.huffingtonpost.com/2012/12/18/unaffiliated-third-largest-religious-group-after-christians-muslims_n_2323664.html.

not to say it should not be done – it should because ignorance of the belief systems of others does no one any good and leads to lots of problems – but don't expect it to resolve this particular problem.

Another difficulty is reaching true objectivity. Consider, for example, the Gospels. No serious scholar of the Bible believes the Gospels were written by the men whose names they bear. Nor are they contemporary accounts of the life of Jesus Christ. They were written decades after his death.²⁴

Yet to teach this in a public school is to court great controversy. Options include not teaching it or pretending that the view favored by fundamentalists – that the Gospels were written by the men whose names they bear right after Jesus died (and returned to life) – is equally valid. Neither is attractive.

OK, so what about student-run clubs? There's a federal law, the Equal Access Act of 1984,²⁵ that allows students in public secondary schools to form non-curriculum-related clubs. There are certain restrictions. These clubs meet during “non-instructional” time and are not officially school sponsored. Membership is voluntary.

Is this the answer? It could be – if adults would allow it. The Equal Access Act has a catch: all groups must be treated equally, hence the use of the term “Equal” in the legislation's name. So, if a student wants to form a Christian club at the local high school she can – as long as Jewish kids can form a club too and Hindu kids, Buddhists and so on.

This is usually not a problem. But when atheist students come forth, or Wiccan students, or when someone proposes a gay-straight alliance, problems often arise. Yet the law is clear: equal access truly means equal access. The only clubs that can be curbed are ones that might engage in violent, disruptive, or unlawful activities. That a club may espouse an unpopular viewpoint is not legal cause to ban it. After all, an unpopular viewpoint is not necessarily a disruptive one.

In Winchester, Tennessee, student-run Christian clubs operated happily in public schools for years. No one said a thing. Yet late in 2015 when students at the same school filed paperwork to form a gay-straight alliance, the community threw a fit. The terrified school board hemmed and hawed and dragged the discussion out for months before voting 7-1 to require students to have parental permission before participating in any

²⁴ See, e.g., *GOSPELS, JESUS, AND CHRISTIAN ORIGINS: COLLECTED ESSAYS* (William O. Walker, Jr. ed.) (2015).

²⁵ 20 U.S.C.A. § 4071 (1984).

school club, a move of dubious legality but one that allowed the alliance to exist.²⁶

But remember, Equal Access clubs are entirely voluntary. In many schools, most students choose not to join religious clubs. Of course, as an advocate of separation of church and state, this is completely fine with me, but many religious conservatives continue to argue for a more formal role for religion in public education.

This brings us to the final proposal: the installation of a generic, or “one-size-fits-all” faith in schools. The argument goes something like this: Yes, we can’t impose sectarian practices onto students, but surely there is a generic expression of faith that most people would find inoffensive.

This suggestion has long roots. The “regent’s prayer” struck down in New York in 1962 was generic and had been composed by an interfaith committee. It didn’t reference Jesus, just God. We all believe in God, right?

Well, no. Much has been written about the rise of “nones” in America – those people who, when asked to name their religion, reply, “None.”

Make no mistake: Most of these people are not atheists, agnostics or humanists (although some are). Many identify as “spiritual but not religious” or may blend religious traditions into their own personal brew. In doing so, they are much like Thomas Jefferson who once famously stated: “I am a sect by myself, so far as I know.”²⁷ Their religious exploration takes places outside the confines of a denomination or house of worship.

Would every Christian be happy with a prayer to a generic god in public schools? Would every Jew? Every Hindu? Every Buddhist? Every “none”?

Certainly not. The quest for a generic faith we can all rally around, though long running in America, is a fool’s errand. What usually happens is that the rote repetition of “God talk” ends up hurting religion. Federal courts have upheld the use of the phrase “In God We Trust” on U.S. currency, asserting that it is a form of “ceremonial deism,” an odd term the courts have adopted to avoid making difficult decisions about long-standing governmental actions that endorse religion in a general way (the

²⁶ Brian Justice, *Extra-curricular Clubs: School Board Affirms Parental Approval*, WINCHESTER HERALD CHRONICLE (Apr. 11, 2016), <http://www.heraldchronicle.com/extracurricular-clubs-school-board-affirms-parental-approval/>.

²⁷ *Letter from Thomas Jefferson to Ezra Stiles Ely* (June 25, 1819), <https://www.loc.gov/item/mtjbib023541/>.

inclusion of “under God” in the Pledge of Allegiance is another example).²⁸ They have never extended that curious legal reasoning to public schools and for good reason: Generic prayer infringes on the rights of non-believers and believers as well.

Seriously religious people do not pray to a generic god. To believers, prayer is a profound attempt to connect with the most awesome power in the universe. It’s not a thing to be gotten through before moving on to algebra or a rote practice done without thought. It is serious business.

In short, devout people do not pray to a generic god at home – why would they accept their children doing it in a public school? And atheists do not pray to a god at all. A policy of official generic religiosity in public schools, therefore, could only please those people who value the symbolism of religion more than its substance.

Is there an answer to the perennial battles over the role of religion in public education? My non-lawyer’s answer is that yes, there is – just not one likely to please religious conservatives. But here it goes: Teach your kids religion at home. Take them to a house of worship. Instruct them to pray. Let them know their rights to religious freedom in public schools, but do not expect these taxpayer-funded institutions that by law must serve youngsters from a variety of religious and non-religious traditions to buttress your faith in any way. They cannot do that – and you should not want them to.

Not every issue is open to a reasonable compromise. Sometimes people want things they cannot have. The people who want to use the public-school system as a vehicle to spread their personal faith (and no others) or turn it into a device for the propagation of a civil religion marked by “God and country” rhetoric won’t get what they want.

This has been a surprisingly hard lesson for some people to learn. As I was writing this article, attorneys with Americans United sent a letter to a public school district in a Bible Belt state after receiving complaints that school officials at a high school were reciting Christian prayers over the loudspeaker every morning. Mind you, the Supreme Court struck down practices like this 55 years ago.

It may be time for another road trip.

²⁸ See Steven B. Epstein, *Rethinking the Constitutionality of Ceremonial Deism*, 96 COLUM. L. REV. 2083 (1996).



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