

Supreme Court Rules Against Requiring Prayer in Public Schools

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In the landmark case *Abington v. Schempp*, the Supreme Court rules that requiring public school students to recite the Lord's Prayer and read from the Bible violates the First Amendment. This is an NBC News special report.

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Transcript

Supreme Court Rules Against Requiring Prayer in Public Schools

ANNOUNCER: In another special report, NBC News presents "The Supreme Court Prayer Decision"; the high court's rulings on the mandatory use of the Bible and the Lord's Prayer in public schools in Pennsylvania and Baltimore, Maryland. Now here is NBC News correspondent, Frank McGee.

FRANK MCGEE, anchoring:

Today, the United States Supreme Court ruled that it violates the Constitution to require reading the Bible or reciting prayers as a religious exercise in public schools. At the same time, the Court carefully spelled out that study of the Bible or of religion, when presented objectively as part of a secular program of education, is not prohibited by the ruling.

In short, a religious exercise cannot be required, but the study of religion is not prohibited. The landmark decision was based on the First Amendment to the Constitution, which reads in part:

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.

Eight Justices interpreted this to mean that in the relationship between man and religion, the state is firmly committed to a position of neutrality. These words were taken from the majority opinion written by Justice Tom Clark. Justice Potter Stewart was the sole dissenter. In his written opinion, he noted that if religious exercises are held to be impermissible activities in schools, religion is placed in an artificial and state-created disadvantage. There were two cases before the Court; one involved a state law in Pennsylvania, the other involved a city school board rule in Baltimore, Maryland.

In Baltimore, each school day had begun with the reading of Bible verses and recitation of the Lord's Prayer.

STUDENT (Woodbourne Junior High School): Psalm 24. The earth is the Lord's and fullness thereof, the

world and they that dwell therein. For he hath founded it upon the seas and established it upon the flock. Who shall ascend into the hill of the Lord? Or who shall stand in his holy place? He that hath clean hands and a pure heart, who hath not lifted up his soul into vanity nor sworn deceitfully. He shall receive the blessing from the Lord and righteousness from the God of his salvation.

ALL STUDENTS: Lord in heaven, hallowed by thy name, thy kingdom come, thy will be done, on earth as in heaven. Give us this day our daily bread and forgive us our trespasses as we forgive those who trespass against us. And lead us not into temptation, but deliver us from evil. For thine is the kingdom, the power and the glory, for ever and ever. Amen.

MCGEE: In 1960, Baltimore's mandatory rule was amended to permit any child to be excused from the exercise upon written request from a parent. Mrs. Madalyn E. Murray from Baltimore is an atheist. She requested that her son, William J. Murray III be excused from the exercise. Young Murray was permitted to leave the classroom. His mother contended he was then subjected to mental and physical abuse because of his disbelief. She filed suit, contesting the legality of the school board's rule. The case made its way to Maryland Court of Appeals, which upheld the school board. Mrs. Murray then appealed to the United State Supreme Court and she explains to NBC's Herb Kaplow.

Mrs. MADALYN MURRAY: There are two issues, I feel, at stake in the prayer issue: the first and most fundamental is my human right to believe as I want to believe. I am an atheist; I mean by an atheist that I do not believe in God, I do not believe in any holy book, I do not believe in heaven and I do not believe in hell. I have a right to these beliefs and to try to live by these beliefs. And when I am forced, or when my children are forced to assume a religious posture in a public school, this is a violation of my particular human right, my freedom of conscience. Very fortunately, in the United States, we have a Constitution, and the Constitution of the United States has embodied these rights into the law of the land. And this law of the land has been violated by the state of Maryland, by the school board of Baltimore City.

Specifically, by imposing, by enforcing upon us a religious ceremony, which we do not accept. Let me say, we are not against religion in schools, incidentally. We are against Bible reading and prayer recitation as a religious ceremony in a respectful posture. We very certainly are for religion in schools; comparative religion, a study of the history of the Inquisition, a study of all of the great religions, religious courses of every kind, religious music. Objectively, and seen as they should be seen in an educational setting. But not as an authoritarian, dogmatic religious ceremony imposed upon all of those in the public schools, where attendance is mandatory.

HERB KAPLOW, reporting:

Mrs. Murray, wasn't provision made for your son to be able to be excused from this religious recitation in the morning, from this prayer recitation in the morning, if he so chose?

MURRAY: This is one of the primary arguments concerning religion in the public schools today. There is no such thing as a release from the religious ceremonies. My son is forced to stand in the hall, but when he is forced to stand in the hall, he is definitely set apart from his fellow students. He has been abused, castigated, manhandled with physical violence, emotional and psychological pressures. For one solid year, the boy did not have a place on his body that wasn't bruised because of the treatment that he was given in the Baltimore public schools by his fellow students. In addition to this, he endured psychological abuse,

for the most part –

KAPLOW: What do you mean, that it was mostly psychological abuse?

MURRAY: There was a tremendous amount of both. It's impossible to separate any single child out from a total school setting and have one child in 6000 stand outside of a room and be the object of harassment and abuse and say that this is a constitutional liberty, a constitutional right. This is not true, there is no excuse.

KAPLOW: What were some of these instances of alleged harassment?

MURRAY: There have been at least 10-12 breaking of windows in the front of our house, as many breaking of windows in the back. I would like to know what people have against peach trees, iris plants, roses, daffodils, jasmine, and flags because these are the things that are constantly torn down and these are, my flowers, are constantly broken. I had two little maple trees out here, one there and one there, and both of these maple trees have been torn down. We have had our automobile attacked and damage inflicted upon the automobile in excess of \$100 on two different occasions. We have never been able to go out on the streets without persons accosting us, spitting in our faces. I have had my 72-year-old mother surrounded by six boys, who are pushing her around. I have had Bill peaking on at least a dozen occasions, in three years, to such an extent that he had to have medical care for the kind of harassment and abuse that he had. In the school, he was tripped, pinched, poked, shoved, pushed on the stairway, until no one could bear this kind of abuse.

MCGEE: On February 27th and 28th of this year, the Supreme Court listened to four hours of argument from opposing sides. There was intense interest in the case because of its very nature, and because, only the year before, the Court had ruled that a non-denominational prayer composed by New York State school authorities and used in some schools was unconstitutional. The City Solicitor for Baltimore, Francis B. Burch defended the school board. He outlined the argument he presented to the Supreme Court to Herbert Kaplow.

FRANCIS BURCH (Baltimore City Solicitor): If I could bring in the Superintendent of public schools of Baltimore City has stated, the use of the Lord's Prayer and the Bible, in the morning exercises, has a salutary effect on the students. He indicates that it establishes a discipline tone for the day and gives the child a respect for authority. It is our view that the schools should not be denied the right to use these traditional main strings of morality and ethics in their development and training of the – an education of children in public schools. We say that if the Court strikes down the use of the Bible and the Lord's Prayer in the morning exercises, the consequences will be severe. The use of the opening words at the session of the Supreme Court, "God save the United States and this Honorable Court," we believe would then be unconstitutional. The same thing would be true with respect to the opening exercises in Congress, where they have a prayer. The state institution for the sick, the prison, the orphanage, and indeed the armed services would be denied the use of chaplains, the administrators, the priest, and the rabbi. As a matter of fact, I would like to point out that Mrs. Murray herself has publicly stated that she will dedicate herself to the abolition of all of these forms of religiousness, so to speak, in public life.

KAPLOW: What about writings from other religions being used as a basis for creating a proper moral atmosphere?

BURCH: It may well be that they could, if they had the same traditional background that the Lord's Prayer and the Bible have, the 2000 years old and even beyond that. We say it's not a case of which one do you use, as long as you have the same lessons of morality and the ethical values. We say that this is the area where the school board has discretion, that it should – in other words, the Court should not interfere with their discretion in this area. And we do not think it makes any difference whether they use it here – and quite frankly, we've told the Court that they can use the Koran if they want to, out in Hawaii, or any of the other documents in other areas. But we think that if the school board in this judgment makes this decision, that that judgment is one that should be suspended.

MCGEE: Attorney Leonard Kerpelman represented Mrs. Murray and her son before the Supreme Court and he summarizes the argument he presented.

Attn. LEONARD KERPELMAN: Well, I'm afraid that they've been driven to that argument because if they admitted that it was a religious ceremony, I think they would have a hard time arguing that it was constitutional. But it's clearly a religious ceremony; you recite the Lord's Prayer, which is found in the New Testament and to have a reading from the Bible, which is of a course a religious book of the Protestant, Catholic, Jewish religions. And it's a little far-fetched to say that this is not a religious ceremony.

KAPLOW: Considerable concern has been expressed that ruling in your favor, in this case, could compound the trend toward the elimination of any practice that has anything whatsoever to do with religion.

KERPELMAN: People have said it means that we will have to take "In God We Trust" off of our money, that we won't be able to sing certain verses of the "Star Spangled Banner" in public places. Well you see, if those things are done, that is, if the slogan is left on the money, if the verse is sung, no one is really injured. No one can come into court and complain that his rights have been violated, that he has been in some way damaged by these things. And therefore, I don't think anyone would have standing to bring a suit to cause these things to be done. There are other matters, which people have said the case will mean, which for different reasons, I think the case does not mean. They have said that Congress won't be able to hold an opening prayer, that we won't be able to supply chaplains to members of the armed services, that they'll not be able to use the Bible in schools as a literary source or a historical source. These things aren't true. As to the Congress and the Supreme Court, they are autonomous bodies; they can conduct whatever ceremonies they as a group decide to conduct. They can't force me to attend, but they can have certain, within certain limits, they can have whatever ceremonies they wish, which are, they feel are in good taste or serve some public purpose to open their session. We've stated in our brief that we only object to one thing and that is the conduct of a religious ceremony in a public school. We don't object to the use of the Bible in a class in literature, in a class in comparative religion, if you want to call it that. Perhaps they translate it into junior high school terms or high school terms. Or comparative philosophy. We would not object to the use of music by Handel or Bach, which may have a religious significance. We can't object to it; those things are not unconstitutional, just because a thing has a religious background, and we don't say that. What we say is, that when the school authorities have in their control a captive audience of young children, it's unconstitutional to go the least step towards indoctrinating them in the presets of any one

religion.

MCGEE: The case reaching the high court from Pennsylvania also involved the reading Bible verses and reciting the Lord's Prayer at the beginning of each school day, but it was different in other respects. First, it was a state law and not a city school board rule; second, it had already been declared unconstitutional by a three-judge federal court and Pennsylvania as a state was appealing this ruling; third, the parents of the students were not atheists but Unitarians. Edward L. Schempp, father of two students, explains his position.

EDWARD SCHEMPP: Of course, we don't object to the Bible; we are Unitarians, we read from the Bible ourselves. We have no objection to the Bible in the public school. What we do object to is a sectarian, religious ceremony, in which selected parts of the Bible are read out of context but as if they were the words of God with a state sanction. This is what we object to.

KAPLOW: Are some of these same passages, the passages that you read in your church?

SCHEMPP: Some of them are, but some of them are definitely obnoxious to a Unitarian. The idea of the Trinity, of Jesus Christ being a member of the Godhead is completely different to Unitarians and it is to the parts of the Bible, which bring out God as a Trinitarian.

KAPLOW: But even those passages to which you do not object in church, you feel should not be read in school?

SCHEMPP: We feel that our whole concept of separation of church and state is such that, in the words of the Court, that when each church and state are each left to their own, it is better for both the church and the state. We do not want any part of religion in schools; it's a divisive influence, it is not anything to help the community or to help the growth in America.

KAPLOW: Mr. Schempp, if most of the students want to recite these prayers and this is rejected by final court decision, are their rights being violated?

SCHEMPP: I can't see how you can say this because our whole concept of church and state is based on the fact that no part of religion should be there as a divisive influence. If we don't have the problem of what to read and how to read it and when to read it, then it cannot be a divisive influence. Our suit and our whole concept of separation of church and state is that this should never come up at all, and there's plenty of time, surely, in our churches and in our homes for Bible reading if it is that necessary.

KAPLOW: There has been some concern expressed, Mr. Schempp, that if you were to have your way and Mrs. Murray were to have her way in the Maryland case, that any expression that has any basis in a religious source would be purged from public life.

SCHEMPP: This is carrying to a ridiculous extreme. On the other hand, you could say that if five minutes of Bible reading are good in schools, then surely an hour of Bible reading would be much better, then six hours of religious reading would be better yet. So if you carry either one to an extreme, you can make either look pretty ridiculous. Nobody's objecting to religion in the school, nobody's objecting to the Bible in the schools; it's only this religious ceremony in which a child has to participate when he and his parents do not agree with it. We want the right for every child and every parent to pick their own God in their own particular way.

MCGEE: To say that today's decision was eight to one is to report a fact. But to say no more is to leave

the implication that eight Justices were in total agreement with the remaining Justice in disagreement. While eight Justices did agree, many of them wrote separate opinions, refining and stating more precisely their interpretation of specific points. Justice Tom Clark, in his opinion, stated the heart of his conviction when he wrote: "In the relationship between man and religion, the state is firmly committed to neutrality. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent." Noting that the state cannot prohibit the free exercise of religion, Clark said that this has never meant that the majority can use the machinery of the state to practice its beliefs. "We have come to recognize through bitter experience," he wrote, "that is not within the power of government to invade the citadel of the individual heart and mind, whether its purpose or effect to be to aid or oppose, to advance or retard." Justice William Brennan joined with Clark in trying to dispel any fear that all religion might be banned from governmental life. The references to God in oaths of office were noted, as were the opening prayers in Congress and the courts. And Justice Brennan stated, "Our decision in these cases does not clearly forecast anything about the constitutionality of other types of interdependence between religious and other public institutions."

Brennan, in noting that children could be excused from participation, said, "This subjects them to a cruel dilemma. In consequence," he continued, "even devout children may well avoid claiming their right and simply continue to participate in exercises distasteful to them because of an understandable reluctance to be stigmatized as atheists or non-conformists simply on the basis of their requests."

In disagreeing, Justice Potter Stewart said, "The issue, in my view, turns on the question of coercion. The absence of coercion upon those who do not wish to participate in the required exercises cannot, in my view, be held to represent the type of support of religion barred by the clause prohibiting the establishment of religion."

In continuing, Stewart said, "Permission of such exercises, for those who want them, is necessary if the schools are truly to be neutral in the matter of religion. And a refusal to permit religious exercises thus, is seen not as the realization of state neutrality, but farther, as the establishment of a religion of secularism or at the least, as government support of the beliefs of those who think religious exercises should be conducted only in private."

Well there can be little question that this decision will be debated in every corner of the country. The principle center of debate, however, will be the Congress of the United States. This report from NBC's Herbert Kaplow in Washington.

KAPLOW: We will never know how close today's vote in the court is to the true sentiment of the Congress. It may be that those students of law, who now help write the laws, would not be too far off if they were freed of the uncertainties of political survival. There will be letters, telephone calls, and telegrams arriving on Capitol Hill in these next few days, conditioning the public utterances of the lawmakers. Unlike last June, after the Court ruled against a government-authored prayer reading, there is now some restraint and caution in Capitol Hill comment. It may be that last time, some lawmakers misanticipated the reactions back home. It probably also was so because last June's decision made today's ruling more expected. Democratic Senator Herman Talmadge of Georgia has not waited for the letters, telephone calls, and telegrams. He made available to television stations in Georgia today the Talmadge

endorsement of dissent to today's ruling.

Sen. HERMAN TALMADGE (Democrat, Georgia): The First Amendment of the Constitution of the United States reads in part as follows: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Congress has made no such law. Unfortunately today, the Supreme Court of the United States rendered the decision, prohibiting the reading of the scripture and reciting of the Lord's Prayer in our public schools. Anyone who has made the slightest study of the history and origin of the First Amendment of the Constitution of the United States can reach no conclusion except the fact that Thomas Jefferson and James Madison were determined that we would not have an established church in America. At that time, we had eight colonies out of thirteen that had an established church and were supported with tax funds. Today's decision, instead of serving to protect and to preserve religious freedom, which clearly was the intent of the First Amendment, has rendered a decision that is offensive to everyone who wishes to keep this a religious nation, where men, women, and children may worship God as they see fit in freedom.

KAPLOW: Otherwise, the comment today ranged from a remark by Republican Congressman O'Konski that the Judges ought to be given mental exams through Republican Senator Aiken wondering if it is not now illegal to recite a prayer in Congress, through Democratic Senator McCarthy, who thought that the long-range effect of this might be good in that those parents who think so highly of prayers in school might now do better by their children religious-wise at home. O'Konski said he may test the issue more tomorrow, in challenging the reciting of the opening prayer in the House of Representatives. A few lawmakers wonder whether a Constitutional amendment may be necessary. There were such moves after last June's ruling. Senator Eastland, for one, was joined by three other southern Democratic Senators in proposing a Constitutional Amendment, which in effect would have nullified last June's ruling. It got nowhere. Right now, there are moves also outside of Congress to further restrict the Court. One of these would provide for a court comprised of chief justices of each state, which would be able to override the Supreme Court in certain matters, one of which would include today's ruling. Now this is not near adoption, it is still alive, but the Court has survived such challenges many times in the past. Herbert Kaplow, NBC News, Washington.

MCGEE: Public reaction to the Supreme Court decision on prayer in the schools is predicted, or is predictable, and it's expected to be largely negative. In Chicago, the author of the book, Religion and the Law, has urged restraint before accusing the Supreme Court of striking out against religion. Here is Professor Philip Kurland of the University of Chicago Law School.

Prof. PHILIP KURLAND (University of Chicago): My reaction is not one of surprise. I think it quite clear that most of the bars, certainly the legal teaching profession, and I expect the clerks too, anticipated the judgments, which the Supreme Court rendered this morning. The newspaper and other public media have, in the past few weeks or months, indicated how much the religious organizations have been preparing their membership for exactly the result, which occurred today. I am not surprised, either, because I think that the results reached this morning were certainly in accord with the precedents that the Court has established in the past. And this is especially true of the New York Region's prayer case, which was decided only a year ago. I think that any decision different than what was reached this morning would

more likely run into the difficulties of requiring overruling of earlier cases. A year ago, the criticism of the Court for rendering the decision it did render in the New York Region's prayer case, I think, was more vituperation than criticism. And I should hope that those who are really interested in understanding the function that the Court is performing would undertake to read the opinions, and there are quite a few of them, before it reached any conclusions that the Court had destroyed religious life in American society. I would only point out that there are many jurisdictions within the United States in which the local courts, the high courts of the states, have already reached a conclusion as to the construction of the state Constitutions exactly similar to that reached by the Supreme Court of the United States this morning, and that religion has flourished in these communities equally as well as it has in those communities, which have utilized Bible reading and school prayers.

MCGEE: It comes as a shock to the present generation of Americans, members of what President Kennedy has called a rather settled society, to be reminded of the revolutionary spirit of this country's founders. They wrote our Constitution when memories of religious oppression were fresh. The time of church-dominated states was not then in the distant past. They believed that those who had the power to influence our spiritual life must not be given authority over our temporal life. Or as a writer of the time, John Locke, put it, "If church and state are kept separate," he said, "the one attending to the worldly welfare and the other to the salvation of souls, then there should never be cause for discord to happen between them." Frank McGee, NBC News.