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Religion in Public Schools: To Allow or Not to Allow?

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Introduction

An institution that an overwhelming majority of Americans attend is the public school. In fact, ninety percent (90%) of American students attend public school.[1] This is one of the few experiences that many Americans have in common, and it is one that shapes individuals and their futures in many ways. Public school is where students set the educational foundation for college and beyond. It is where students learn the basics in Math, History, English, and Science. It is also where students participate in sports, clubs, and rites of passage like the Prom and Graduation. These early years inherently become an important part of life, preparing students for adulthood and the difficulties that come with it.

During this time of their lives, children tend to abide by the same religious beliefs as their parents or family members.[2] Whether they are forced to accompany their family at church, or their views are genuinely in line with their religious upbringing, children are often exposed to the religion they are born into. As such, parents often do not want their children to be exposed to topics that introduce ideologies that are "different" from their own, particularly with respect to religion.[3] Of course, as young people age, they begin to make decisions for themselves and formulate their

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[1] Imed Bouchrika, *101 American School Statistics: 2020/2021 Data, Trends & Predictions*, RESEARCH.COM, June 10, 2020, https://research.com/education/american-school-statistics.

[2] In a study of approximately 1,800 teenagers (ages 13 to 17) who were surveyed alongside one of their parents, about half the teens (48%) say they have "all the same" religious beliefs as their parents. *U.S. Teens Take After Their Parents Religiously, Attend Services Together and Enjoy Family Rituals*, PEW RESEARCH CENTER, September 10, 2020, https://www.pewforum.org/2020/09/10/u-s-teens-take-after-their-parents-religiously-attend-services-together-and-enjoy-family-rituals/.

[3] *See, e.g., Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 208 (1963) (where Schempp brought suit against his children's public school for requiring daily Bible readings and prayers and the "specific religious doctrines purveyed by a literal reading of the Bible 'which were contrary to the religious beliefs which they held and to their familial teaching'"); *Wood v. Arnold*, 915 F.3d 308, 313 (4th Cir.), cert. denied, 140 S. Ct. 399 (2019) ("[Wood] directed his daughter to refuse to complete any assignment associated with Islam on the ground that she was not required to 'do anything that violated [her] Christian beliefs'").

own beliefs.[4] Yet, in the early stages of their lives, their parents and their schooling are the main influences in their lives.

Furthermore, children and adolescents are incredibly sensitive to certain topics, especially if they are "different" from what they are used to.[5] Some children may find new ideas exciting, while others may find them daunting. Regardless, children are impressionable and vulnerable to new information. Their brains are not fully formed yet, and so they are unable to set apart truth from opinion.[6]

For these reasons and many more, public schools are subject to more restrictions than other government entities when it comes to religious expression.[7] Due to the complexity of the topic of religion in public schools, the U.S. Department of Education issued Federal Guidelines (the "Guidelines") outlining constitutionally protected prayer and religious expression in public elementary and secondary schools.[8] Under the Guidelines, public schools are legally required to confirm that they do not prevent such constitutionally protected activities, as a condition of receiving certain federal funds.[9] The Guidelines dictate how schools can be neutral spaces where students and teachers may exercise their constitutionally protected rights, but the overarching question is whether or not this neutrality is possible.

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[4] "[T]he survey makes clear that many Americans – even among those raised in a single religion – ultimately adopt a religious identity that is completely different than the faith of their parents." *Links between childhood religious upbringing and current religious identity*, PEW RESEARCH CENTER, October 16, 2016, https://www.pewforum.org/2016/10/26/links-between-childhood-religious-upbringing-and-current-religious-identity/.

[5] *See Lee v. Weisman*, 505 U.S. 577, 592–93 (1992) (recognizing the impressionability of elementary school children and the greater threat of religious coercion attendant to religious displays in elementary schools).

[6] *See* Jenny Anderson, *Between the Lines: Only 9% of 15-year-olds can tell the difference between fact and opinion*, QUARTZ, December 3, 2019, https://qz.com/1759474/only-9-percent-of-15-year-olds-can-distinguish-between-fact-and-opinion/.

[7] *Lee*, 505 U.S. at 597.

[8] *Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools*, U.S. DEPARTMENT OF EDUCATION, Jan. 16, 2020, https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

[9] *Id.*

The Guidelines recognize that students may express their religious beliefs in school due to their rights under the Free Exercise Clause. However, under the Establishment Clause, the expression cannot be school sponsored; it must be truly student initiated. **Part I** will analyze what "student initiated" really means and how it is possible to allow religious expression in public schools without violating the Establishment Clause.

Moreover, the Guidelines dictate that "[p]ublic schools may not provide religious instruction, but they may teach *about* religion."[10] Thus, religion can be taught in public schools only if it is done in a non-devotional way. However, teaching religion can pose risks since teachers are humans and humans tend to be biased towards their own beliefs. It is difficult for people to speak about their closely held beliefs in a neutral manner. **Part II** will discuss whether religion can and should be taught in public schools and the risks associated with teaching it.

Overall, there are dangers in allowing religious expression and teachings in public schools, but benefits as well. In analyzing applicable caselaw and regulations, it is evident that students who wish to express their personal religious beliefs may do so, as long as the expression is independent and without school involvement. In addition, religion should not be taught, unless it is for the educational purpose of teaching historical context or promoting tolerance.

Part I: Student Initiated Religious Expression

A core Establishment Clause principle is that the public school is prohibited from promoting religious devotion; but at the same time, the religious expression of the students must be respected. Regarding free speech, "the government must be neutral both in its own speech and in its treatment of private speech. It may not take a position on questions of religion in its own speech, and it must treat religious speech by private speakers exactly like secular speech by private

[10] *Id.*

speakers."[11] However, that "the government cannot express religious opinions does not mean that it can censor religious expression by private speakers."[12]

In other words, just because the government may not express its opinion towards religion, it does not mean that the government may not allow private individuals to express their own beliefs. This principal is the primary reason why students may initiate their own expression in public schools (within certain parameters), but the school itself may not have any involvement. Thus, neutrality and voluntariness are the central factors in determining whether expression (*e.g.*, prayer, Bible readings, meditation) is student initiated.

A. The Requirement of Neutrality

One of the first landmark cases concerning religious expression in public schools is *Abington School District v. Schempp*, where the Supreme Court ruled that legally or officially mandated Bible reading or prayer in public schools is unconstitutional.[13] Here, the Schempps, whose children attended public school, alleged that their religious rights under the First Amendment had been violated by a state law that required public schools to begin each school day with a reading of at least ten passages from the Bible.[14] The Court found that this law violated both the Establishment Clause and the Free Exercise Clause because of the lack of neutrality, or freedom from the "tenets of one or of all orthodoxies."[15]

As government entities, schools are required to "maintain strict neutrality, neither aiding nor opposing religion."[16] In other words, schools may not favor one religion, religion in general,

[11] Douglas Laycock, *Equal Access and Moments of Silence: The Equal Status of Religious Speech by Private Speakers*, 81 NORTHWESTERN UNIVERSITY L. REV. 1, 3 (1986) (internal quotes omitted).
[12] *Id.* at 11.
[13] *Schempp*, 374 U.S. at 223.
[14] *Id.* at 205.
[15] *Id.* at 222.
[16] *Id.* at 225.

or non-religion. Here, the law required students to read and recite prayers from the Holy Bible (a Christian document), and so the Christian religion was clearly preferred by the State.[17]

In further analyzing neutrality, the Court foreshadowed the infamous *Lemon* Test by considering the purpose and primary effect of the enactment.[18] Overall, there was an Establishment Clause violation because there was religious motive behind the law. It required students to read and recite an opening prayer from the Bible, a religious text, which is a clear contravention from neutrality.[19] Moreover, the Court found that the opening exercise had the primary effect of a religious ceremony and was intended by the State to be so: "[E]ven if its purpose is not strictly religious, it is sought to be accomplished through readings, without comment, from the Bible."[20]

Following *Schempp*, the Court established the longstanding *Lemon* Test for whether a law conflicts with the religion clauses of the First Amendment. First, the statute must have secular legislative purpose. Next, its principal or primary effect must be one that neither advances nor inhibits religion. Finally, it must not foster excessive government entanglement with religion.[21]

The *Lemon* Test was applied in cases to follow including *Wallace v. Jaffree.* Here Jaffree, on behalf of his three children who attended public school, sought an injunction against school faculty from "maintaining or allowing the practice of regular religious prayer services or other forms of religious observances."[22] As such, the constitutionality of three statutes were contested: a statute which created a minute of silence for meditation (the "1978 Statute"); a statute which added the option of voluntary prayer (the "1981 Statute"); and a statute that authorized teachers to recite a prayer with "willing students" (the "1982 Statute").[23]

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[17] *Id.* at 211.
[18] *Id.*
[19] *Id.* at 223.
[20] *Id.* at 224.
[21] *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).
[22] *Wallace v. Jaffree*, 472 U.S. 38, 42 (1985).
[23] *Id.* at 41.

In applying *Lemon,* the Court found that the 1981 Statute that authorizes a one-minute period of silence in all public schools "for meditation or voluntary prayer" violates the Establishment Clause because the legislative intent to include the option of prayer was different from merely allowing students the freedom to choose to engage in voluntary prayer during a minute of silence for meditation.[24] The 1978 Statute already allowed for a minute of silence for meditation, where students could engage in prayer if they wanted to.[25] Therefore, the overall purpose of the 1981 Statute was to incorporate and endorse prayer.

A few years later, in *Lee v. Weisman,* a school principal invited a Rabbi to speak at a public high school graduation and the Court found it to be an Establishment Clause violation.[26] The principal provided the Rabbi with a set of guidelines and advised him that the prayers should be nonsectarian.[27] The Court did not apply the *Lemon* Test, as the test applied was one of psychological coercion. However, with regard to neutrality, the Court stated, "It is a cornerstone principle of our Establishment Clause jurisprudence that 'it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government,' and that is what the school officials attempted to do."[28]

Outside of the public school context, however, the Court is much more lenient in allowing explicitly religious language at public events. The public school context is often distinguished because of the subtle coercive pressures that exist in the public school setting.[29] In fact, legislative prayer has long been upheld.

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[24] *Id.* at 59.
[25] *Id.*
[26] *Lee v. Weisman,* 505 U.S. 577 (1992).
[27] *Id.* at 581.
[28] *Id.* at 588, quoting *Engel v. Vitale,* 370 U.S. 421, 425 (1962).
[29] *Id.*

In *Marsh v. Chambers,* the Nebraska Legislature had employed a chaplain to administer the opening prayer on each legislative day.[30] Chambers, a member of the Nebraska Legislature and a taxpayer of Nebraska, challenged this practice on Establishment Clause grounds.[31] However, the Supreme Court upheld the practice, noting that "[t]he opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country."[32] Moreover, the Court found that while the historical precedence alone may not justify the practice, the practice also posed no real threat of the establishment of religion.[33] Particularly, legislative members are adults, "presumably not readily susceptible to 'religious indoctrination,'"[34] and the prayers were "simply a tolerable acknowledgment of beliefs widely held among the people of this country."[35]

Marsh reflects a striking difference from the Court's rulings regarding similar practices held in public schools. Yet, *Marsh* has ultimately stood the test of time and was reaffirmed more recently in *Town of Greece v. Galloway.* Here, a New York town, Town of Greece, had a monthly rotation of local clergy members recite prayers before its legislative meetings.[36] The prayers were not proselytizing or disparaging of other faiths, but were sectarian in nature.[37] As such, the prayers often mentioned the name of Jesus, the Heavenly Father, or the Holy Spirit, which are certainly not non-denominational titles.[38] Despite this, the Court ruled that legislative prayer did not need to be generic or nonsectarian.[39] Rather, "hold[ing] that invocations must be nonsectarian would

[30] *Marsh v. Chambers,* 463 U.S. 783, 784 (1983).
[31] *Id.* at 785.
[32] *Id.* at 786.
[33] *Id.* at 791.
[34] *Id.* at 792.
[35] *Id.*
[36] *Town of Greece, N.Y. v. Galloway,* 572 U.S. 565, 570 (2014).
[37] *Id.* at 573.
[38] *Id.*
[39] *Id.* at 579.

force the legislatures that sponsor prayers and the courts that are asked to decide these cases to act as supervisors and censors of religious speech[.]"[40]

Notably, *Marsh* and *Galloway* are distinguishable from *Lee* because the Town of Greece did not edit or approve prayers prior to the meetings, nor criticize the content of the prayers after the meetings.[41] Thus, while the content of the prayers may not have been entirely neutral, the Town of Greece was neutral towards the administration of the prayers.

B. The Requirement of Voluntariness

It is unlikely that the outcome in *Lee* would have been different had the principal not offered the guidelines or advice to the Rabbi, since the Court found that students were psychologically coerced to join in the prayer. Importantly, the Court treats public schools differently from other government entities. In fact, the Court treats most First Amendment issues involving children in a much stricter fashion.[42] The Court consistently emphasizes the compelling interest in safeguarding the physical and psychological well-being of a minor.[43] "A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens."[44] Thus, the Court has "sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights."[45] The Court treats religious expression in public schools no differently.

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[40] *Id.* at 581.
[41] *Id.*
[42] *See New York v. Ferber*, 458 U.S. 747 (1982) (holding that child pornography is wholly unprotected under the First Amendment, while other depictions of sexual conduct continue to receive First Amendment protections).
[43] *See id.; Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982) ("We agree with appellee that the first interest—safeguarding the physical and psychological well-being of a minor—is a compelling one"); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (holding that the government has broad authority to regulate the actions and treatment of children because the state has a strong interest in protecting the welfare of children).
[44] *Prince*, 321 U.S. at 168.
[45] *Ferber*, 458 U.S. at 757.

Historically, coercion that supported an establishment of religion was by "force of law and threat of penalty."[46] However, the Supreme Court has consistently recognized psychological coercion, which does not involve any legal penalty, as a factor when considering whether religious expression is school sponsored or student initiated. Expression is "truly student initiated" if it is voluntary by the students, meaning that the students are not coerced, directly or indirectly into participating in the religious expression.[47] Direct psychological coercion occurs when the government intentionally and openly confronts someone with the choice of conforming to a religious activity or facing adverse consequences.[48] Indirect psychological coercion is when social, peer, or psychological pressure is imposed upon individuals to engage in, or not engage in, religious matters.[49]

Direct coercion (the more blatant form of coercion) was exemplified in *Schempp,* discussed above. The challenged requirements left students with no choice but to participate in religious expression. Thus, the Court rejected the notion that there is no coercion when students are free to absent themselves from the exercise upon parental consent.[50] The exercises were prescribed as part of the curricular activities of students who are required by law to attend school and held in the school buildings under the supervision and with the participation of teachers employed in those schools.[51] Thus, participation was not entirely voluntary under the law in *Schempp*.

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[46] *Lee,* 505 U.S. at 640 (Scalia, J., dissenting).
[47] *Id.* at 592 ("Our decisions in [*Engel v. Vitale*] and [*School Dist. of Abington*] recognize, among other things, that prayer exercises in public schools carry a particular risk of indirect coercion. The concern may not be limited to the context of schools, but it is most pronounced there").
[48] Rex Ahdar, *Regulating Religious Coercion*, 8 STANFORD JOURNAL OF CIVIL RIGHTS & LIBERTIES, 215, 218 (2012).
[49] *Id.*
[50] *Schempp*, 374 U.S. at 224-25 ("Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause").
[51] *Id.* at 223.

Indirect coercion (the more subtle form of coercion) was exemplified in *Engel v. Vitale*. Here, New York State's Board of Regents wrote and authorized a voluntary nondenominational prayer that could be recited by students at the beginning of each school day.[52] The prayer stated, "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."[53] A group of parents in Hyde Park, New York, including Steven Engel, objected to the prayer and sued the school board president.[54]

Despite that the prayer was evidently neutral in denomination and students could refuse to participate in the prayer by remaining silent, the Court found an Establishment Clause violation.[55] Again, it did not matter to the Court that the specific action was voluntary, because there was some notion of coercion present. Additionally, the Court noted that the Establishment Clause differs from the Free Exercise Clause in that governmental encroachment upon religious freedom does require direct governmental compulsion or coercion.[56] In other words, coercion is a prerequisite to a Free Exercise claim, but not to an Establishment Clause claim. Yet here, despite the students' ability to refuse to participate, the Court found that "[w]hen 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."[57] The Establishment Clause was enacted in order to protect against this exact type of behavior.

As noted above in *Lee v. Weisman*, the Supreme Court once again recognized the significance of psychological coercion. Instead of applying the traditional *Lemon* Test, the Court

[52] *Engel v. Vitale*, 370 U.S. 421, 422 (1962).
[53] *Id.*
[54] *Id.* at 423.
[55] *Id.* at 430.
[56] *Id.*
[57] *Id.* at 431.

introduced the Coercion Test in determining whether attendance at the graduation was voluntary.[58] In doing so, the Court stated:

> The undeniable fact is that the school district's supervision and control of a high school graduation ceremony places public pressure, as well as peer pressure, on attending students to stand as a group or, at least, maintain respectful silence during the invocation and benediction. This pressure, though subtle and indirect, can be as real as any overt compulsion.[59]

In addition to this, high school graduation is a significant occasion in society and so attendance really is not voluntary because "absence would require forfeiture of [the] intangible benefits which have motivated the student through youth and all her high school years."[60]

The Court recognized that these factors likely coerced many students into attending, as well as participating, at least by standing and remaining silent, during the ceremony. As a result, "a reasonable dissenter in this milieu could believe that the group exercise signified her own participation or approval of it."[61] The Establishment Clause clearly forbids schools from persuading and compelling students to participate in religious exercises, which is exactly what occurred here.[62]

Similarly, eight years later in *Santa Fe School Dist. v. Doe,* there was a school board policy that called for students to vote on whether prayers would be delivered prior to football games and to select a student who would deliver them.[63] In finding that the policy would encourage public prayer, the Court stated, "To assert that high school students do not feel immense social pressure, or have a truly genuine desire, to be involved in the extracurricular event that is American high

[58] *Lee*, 505 U.S. at 587.
[59] *Id.* at 593.
[60] *Id.* at 595.
[61] *Id.* at 593.
[62] *Id.* at 599.
[63] *Santa Fe School Dist. v. Doe*, 530 U.S. 290 (2000).

school football is formalistic in the extreme."[64] Thus, the prayer had "the improper effect of coercing those present to participate in an act of religious worship."[65]

Notably, in *Elk Grove Unified School District v. Newdow,* the Ninth Circuit relied on *Lee* and *Santa Fe* in ruling that a public elementary school policy which required students to recite the Pledge of Allegiance daily was coercive.[66] Since the Pledge includes the words "one nation under God," Newdow, the father of a student at the school, alleged that his daughter is "injured when she is compelled to watch and listen as her state-employed teacher in her state-run school leads her classmates in a ritual proclaiming that there is a God, and that ours is one nation under God."[67]

The Ninth Circuit responded that "[t]he coercive effect of the policy here is particularly pronounced in the school setting given the age and impressionability of schoolchildren, and their understanding that they are required to adhere to the norms set by their school, their teacher and their fellow students."[68] Moreover, even if there was no recitation requirement, "the mere presence in the classroom every day as peers recite the statement 'one nation under God' has a coercive effect."[69]

On appeal, the Supreme Court reversed, holding that Newdow lacked standing to bring the claim in the first place.[70] However, in Justice Thomas's concurrence[71], he emphasized that he thought this case was more troubling with respect to coercion than *Lee*, because here, these

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[64] *Id.* at 311 (internal quotes omitted).
[65] *Id.* at 312.
[66] *Newdow v. U.S. Cong.*, 328 F.3d 466, 486-87 (9th Cir. 2003), rev'd sub nom. *Elk Grove Unified Sch. Dist. v. Newdow,* 542 U.S. 1 (2004).
[67] *Id.* at 601 (internal quotes omitted).
[68] *Id.* at 488.
[69] *Id.*
[70] *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 17 (2004) ("it is improper for the federal courts to entertain a claim by a plaintiff whose standing to sue is founded on family law rights that are in dispute when prosecution of the lawsuit may have an adverse effect on the person who is the source of the plaintiff's claimed standing").
[71] Justice Thomas concurred in the opinion because he believes that under precedent, the Pledge policy is unconstitutional; however, he believes that *Lee* was decided incorrectly. In his view, legal coercion (the historical form of coercion) rather than psychological coercion should be required to find an Establishment Clause violation. *Id.* at 45 (Thomas, J., concurring).

students were exposed to the Pledge every day.[72] Moreover, "although students may feel 'peer pressure' to attend their graduations, the pressure here is far less subtle: Students are actually compelled (that is, by law, and not merely 'in a fair and real sense') to attend school."[73]

In contrast with the school setting, legislative meetings that open with prayers are different in nature. Individuals attending legislative meetings are adults, who are not legally required to attend or feel "peer pressured" into attending. Thus, *Town of Greece v. Galloway,* discussed above, differs because the board members were aware that they were free to enter or leave the meetings for any reason at all.[74] As such, "[n]either choice represents an unconstitutional imposition as to mature adults, who 'presumably' are 'not readily susceptible to religious indoctrination or peer pressure.'"[75] Thus, a key difference between prayer administered at a legislative board meeting and prayer administered in public schools is that children are young, naïve, and can easily be persuaded to partake in religious expression if their peers are. Moreover, children may be embarrassed to leave or intimidated by school faculty, which may implicitly require students to remain present for the prayer. Whereas adults are free to come and go as they please with no consequences or fear of repercussions.

Engel, Schempp, Lee, and *Santa Fe* all evidence that voluntariness depends on whether a student is directly coerced through school-implemented requirements or indirectly coerced due to peer pressure, intimidation, or embarrassment. Thus, even if the religious expression is neutral and voluntary, if a student will feel psychologically coerced into participating, then there is an Establishment Clause violation.

C. Accommodating Religious Exercise: Special Protections and Equal Access

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[72] *Id.* at 46.
[73] *Id.* at 47.
[74] *Galloway*, 572 U.S. at 590.
[75] *Id.*, citing *Marsh v. Chambers*, 463 U.S. 783, 792 (1983).

Despite the dangers of advocating for religion in public schools, it is important that all religious individuals are offered opportunity to freely exercise their religious beliefs, within boundaries. While a public school may not offer special treatment to religious individuals, it may offer accommodations to those who need them in order to carry out their religious beliefs, as long as the accommodations do not pose an establishment of religion.

For example, in *Zorach v. Clauson,* the Supreme Court considered a New York City program which allowed students to leave during the school day, at the written request of the parents, to attend religious centers for religious instruction or devotional exercises.[76] In ruling that the program was constitutional, the Court said:

> It takes obtuse reasoning to inject any issue of the 'free exercise' of religion into the present case. No one is forced to go to the religious classroom and no religious exercise or instruction is brought to the classrooms of the public schools. A student need not take religious instruction. He is left to his own desires as to the manner or time of his religious devotions, if any.[77]

Thus, this program was constitutional because the school was simply adjusting the schedule to accommodate religious instruction.[78] By outlawing this program, it would "show a callous indifference to religious groups."[79]

Justice Black argued in his dissenting opinion that through this statute, "New York is manipulating its compulsory education laws to help religious sects get pupils."[80] However, the majority highlighted that the First Amendment strictly dictates that the church and state may not be in "concert or union or dependency one on the other."[81] Encouraging cooperation with and

[76] *Zorach v. Clauson*, 343 U.S. 306, 308 (1952).
[77] *Id.* at 311.
[78] *Id.* at 313-14 ("When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs").
[79] *Id.* at 314.
[80] *Id.* at 318 (Black, J., dissenting).
[81] *Id.* at 312.

recognition of religious beliefs is important because it would otherwise appear as if the government favors those without any religious beliefs, which it may not do either.[82]

Concerns about programs such as these are still a topic of conversation today. For instance, a Texas school district has opened a prayer room where Muslim students may go to pray during the school day, to prevent them from leaving the building for hours at a time to conduct their religious worship.[83] However, when a room, such as this, is accessible to all students of all faiths, it is acceptable because it is neutral, as well as voluntary.

While religious expression must be limited in order to prevent the establishment of religion, in order to respect the free exercise of religion, religious accommodations, offered to any and all individuals, are permitted in public schools. The overarching idea is the equal treatment and recognition of religious groups/individuals to non-religious groups/individuals.

A similar concept referred to as "equal access" was first introduced in *Widmar v. Vincent*.[84] Here, the University of Missouri at Kansas City (a public, state university) accommodated student group meetings by creating a forum generally open for use by student groups.[85] However, the University implemented a policy in 1977 which prohibited the use of its buildings and grounds for religious purposes, including a religious group called "Cornerstone."[86] Hundreds of student groups were permitted to use campus facilities, except for the student Bible study.[87] Thus, through this policy, the University was discriminating against student groups and speakers based on their desire to use a generally open forum to engage in religious worship and discussion, which are forms of

[82] *Id.* at 314.
[83] Michael Martin, *Concerns After Texas School Opens 'Prayer Room' That's Attracting Muslim Students*, NPR, March 26, 2017, https://www.npr.org/2017/03/26/521567078/concerns-after-texas-school-opens-prayer-room-that-s-attracting-muslim-students.
[84] *Widmar v. Vincent*, 454 U.S. 263 (1981).
[85] *Id.* at 267.
[86] *Id.* at 265.
[87] *Id.*

speech and association protected by the First Amendment.[88] As such, the University's policy did not pass strict scrutiny, the necessary test for content-based exclusions.[89] The University argued that if it did offer its facilities to religious groups and speakers, as it did for other groups, it would appear as if the University was establishing religion by allowing religious activity of public property.[90] Yet, the Court rejected this argument noting that an "equal access" policy could not violate the Establishment Clause.[91]

Extending *Widmar*'s public forum analysis a few years later, Congress passed the Equal Access Act of 1984 (the "Act"). The Act prohibits federally funded public secondary schools which allow non-school-sponsored groups of students to meet from discriminating against any meeting of students on the basis of religious content if three requirements are met: the meeting is voluntary and student initiated; there is no government sponsorship; and no unlawful activity is permitted.[92]

The constitutionality of the Act was upheld in *Board of Education of the Westside Community Schools v. Mergens.* In referencing the free speech concept of a "limited public forum" by allowing religious student organizations to use school facilities, the organizations are considered the free speech of the students, rather than the school.[93] As such, the Act does not offer room for coercion or endorsement of religion by the school.[94] Rather, the Act allows for the creation of non-curricular ideas during non-instructional times in which student speech is protected and may not be excluded on the basis of content.[95] Moreover, under the Act, faculty monitors are

[88] *Id.* at 269.
[89] *Id.* at 271.
[90] *Id.* at 270-71.
[91] *Id.* at 271.
[92] 20 U.S.C.A. § 4071 (West 1984).
[93] *Bd. of Educ. of Westside Cmty. Sch. v. Mergens,* 496 U.S. 226, 236 (1990).
[94] *Id.* at 261.
[95] *Id.* at 241.

not allowed to promote, lead, or participate in any such meeting by the religious student organizations, and are merely there to ensure order and good behavior.[96] These clubs are thus examples of what it means to be "truly student initiated."

Part II: Religious Expression in Secular Subjects

Public schools may not teach religion but may teach *about* religion in a non-devotional manner.[97] In order to distinguish teaching religion from teaching *about* religion, public schools are required to adhere to the same values as religious expression: The school must remain neutral if religion is being taught as part of a secular subject and must allow student initiated religious expression in schoolwork. However, it is risky to incorporate religious topics in public school curriculum and to offer open-ended assignments where students may choose a religious topic to work on.

A. Curriculum Must be Secular

The Court in *Schempp* suggested that "one's education [may] not [be] complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization."[98] However, the difference is that a teaching is religious if it is devotional and constitutes in effect a religious observance.[99] Even in a college curriculum on theology, the Court notes that it is not necessarily the case that it must be taught as a devotional subject: "Theology is defined as the study of the nature of God and religious truth and the rational inquiry into religious questions."[100]

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[96] *Id.* at 253.
[97] *Schempp,* 374 U.S. at 203.
[98] *Id.* at 225.
[99] *Schempp v. Sch. Dist. of Abington Twp., Pa.,* 201 F. Supp. 815, 819 (E.D. Pa. 1962), aff'd, 374 U.S. 203 (1963).
[100] *Locke v. Davey,* 540 U.S. 712, 734-35 (2004).

Moreover, Justice Jackson stated in his dissenting opinion in *Everson v. Board of Education of Ewing Township* that in public schools, rather than religious (in the case of *Everson*, Catholic) institutions, secular education is separated from religious teachings in order to maintain neutrality.[101] As such, "[t]he assumption is that after the individual has been instructed in worldly wisdom he will be better fitted to choose his religion."[102] It is thus well settled that religious teachings can be used for non-religious purposes, but the line between what is secular and what is religious is a fine one – especially because religion is so closely intertwined with history and general moral values.

The Supreme Court has heard numerous challenges to teachings of evolution and statutes aimed at either restricting teaching evolution or require teaching the religious theory of origins. For instance, *Epperson v. Arkansas* involved an Arkansas statute that made it illegal for teachers in public schools and universities to teach or use a textbook that teaches the theory that mankind ascended or descended from animals or to adopt or use a textbook that teaches such a theory (*i.e.*, evolution).[103] Teachers who violated the statute could be charged with a misdemeanor and dismissed.[104]

The Supreme Court struck down the statute because it was clearly not an act of religious neutrality.[105] Rather, it was evident that Arkansas sought to prevent teachers from discussing the theory of evolution "because it is contrary to the belief of some that the Book of Genesis must be the exclusive source of doctrine as to the origin of man."[106]

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[101] *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 23–24 (1947) (Jackson, J., dissenting).
[102] *Id.*
[103] *Epperson v. State of Ark.*, 393 U.S. 97, 99 (1968).
[104] *Id.*
[105] *Id.* at 109.
[106] *Id.* at 107.

Similarly, in *Edwards v. Aguillard*, Louisiana enacted the Creationism Act which required that if evolution is taught in public schools, creationism must be taught as well in order to "protect academic freedom."[107] However, the Court struck down the Act because it was evident that Louisiana was intending to discredit evolution by countering its teachings with teachings of creationism.[108] "A law intended to maximize the comprehensiveness and effectiveness of science instruction would encourage the teaching of all scientific theories about human origins," but the challenged law was not neutral in that sense.[109]

In applying *Lemon*, the Court emphasized that there are particular concerns that arise in the context of public elementary and secondary schools.[110] While the Act's stated goal was "to protect academic freedom," the Act certainly did not further that goal.[111] In fact, teachers already had flexibility to teach different scientific theories, besides evolution, about the origin of life, and so the Act did not provide teachers with any new authority.[112] As such, the Act actually limited the "academic freedom" it sought to protect.[113]

Thus, the overall issue with the anti-evolution curriculum mandates is that the primary effect is to advance religion.[114] Correspondingly, elective religion courses are not permitted if the primary effect of the course advances religion. In *Hall v. Board of School Commissioners of Conecuh City*, a high school offered an elective Bible literature course consisting entirely of a

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[107] *Edwards v. Aguillard*, 482 U.S. 578, 586 (1987).
[108] *Id.* at 579.
[109] *Id.*
[110] *Id.* at 585.
[111] *Id.*
[112] *Id.* 587.
[113] *Id.* at 588–89 ("If the Louisiana Legislature's purpose was solely to maximize the comprehensiveness and effectiveness of science instruction, it would have encouraged the teaching of all scientific theories about the origins of humankind. But under the Act's requirements, teachers who were once free to teach any and all facets of this subject are now unable to do so").
[114] Yet, some scholars argue that evolution is in fact a religious belief as well, and evolution is used to support a religious tenet. As such, "the only difference between evolution and creationism is that one traditionally has been associated with 'religion' while the other has not." Ned Fuller, *The Alienation of Americans from Their Public Schools*, 1994 B.Y.U. EDUC. & L.J. 87, 99 (1994).

Christian religious perspective including a fundamentalist and/or evangelical doctrine.[115] While the course may have been intended to be restricted to secular studies, the Fifth Circuit still found that the primary effect of the course advanced religion.[116] Particularly, the course examinations primarily required routine memorization of the Bible, and thus students were learning religion rather than learning *about* religion.[117]

As in *Hall,* courses may be intended to teach religion, but are disguised as teaching *about* religion. For instance, *Gibson v. Lee City School Board* involved a school board vote to authorize a two-semester Bible History course which was intended to "help students understand the relationship between historical events and their interpretations and development of religious and ethical beliefs as described in the New Testament."[118] The district court responded that if the Bible History course in the first semester is found to advance religion, the curriculum should be revised for the second semester.[119] The district court stated that the course would not advance religion if its purpose is "helping students gain 'a greater appreciation of the Bible as a great work of literature' and source of 'countless works of literature, art and music' or of assisting students acquire 'greater insight into the many historical events recorded in the Bible' or of affording students greater insight into the 'many social customs upon which the Bible has had a significant influence.'"[120] Thus, consistent with *Schempp,* the district court makes clear that aside from its religious significance, the Bible can be an important text for secular teachings and should not be disregarded for its historic and literary qualities.[121]

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[115] *Hall v. Bd. of Sch. Comm'rs,* 656 F.2d 999, 1001 (5th Cir. 1981).
[116] *Id.* at 1002.
[117] *Id.* at 1003.
[118] *Gibson v. Lee Cty. Sch. Bd.,* 1 F. Supp. 2d 1426, 1428 (M.D. Fla. 1998).
[119] *Id.* at 1433.
[120] *Id.,* quoting *Wiley v. Franklin,* 497 F. Supp. 390, 394 (E.D. Tenn. 1980).
[121] *Id.* at 1431. *See Schempp,* 374 U.S. at 225 ("Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment").

On this note, assignments on religious topics pose dangers due to the student involvement and possibility of it appearing that the assignment is requiring students to preach religion. In *Wood v. Arnold,* the Fourth Circuit ruled constitutional an assignment in an eleventh-grade history class to summarize a lesson on Islam.[122] Specifically, the assignment asked students to respond to questions about the history of Islam, the beliefs and practices of Muslims, and the links between Islam, Judaism, and Christianity.[123] The Fourth Circuit had no problem with the assignment because it concerned purely factual information and did not ask students to memorize, recite or write complete statements of faith.[124] For instance, the assignment included "fill in the blank" questions about the "Five Pillars" of Islam, such as the statement, "There is no god but Allah and Muhammad is the messenger of Allah[.]"[125]

The circuit court found that this kind of assignment satisfies the first prong of *Lemon* because there was a secular purpose in teaching world history.[126] Additionally, the assignment did not have the primary effect of advancing religion because it simply asked the students to identify the tenets of Islam but did not suggest that students adopt those beliefs as their own.[127] It is evident that the circuit court believed it would have constituted "devotional practice" if it did ask students to conduct these actions. However, this was not the type of case that required students to participate in daily religious exercises as in *Lee*, rather, "the challenged materials were 'integrated into the school curriculum' and were directly relevant to the secular lessons being taught."[128] Thus, the

[122] *Wood v. Arnold,* 915 F.3d 308, 312 (4th Cir.), cert. denied, 140 S. Ct. 399 (2019).
[123] *Id.* at 316.
[124] *Id.*
[125] *Id.* at 312–13.
[126] *Id.* at 316.
[127] *Id.* at 317.
[128] *Id.*

assignment did not amount to an endorsement of religion because it did not compel the students to confess a faith in Allah through written word.[129]

B. Religious Texts May Be Used for Context

A large part of the problem with teaching classes about religion has to do with the books and texts that are used in carrying out those teachings. The intentions of a book are quite clear from its contents, unlike the courses themselves and those who teach them. Thus, in deciding whether religion can be taught in public schools, it is important to look at the books employed in public school courses and libraries.

To start, the Supreme Court has recognized that "the Bible is worthy of study for its literary and historic qualities."[130] Thus, it has been ruled that public school libraries may include Bibles and other religiously oriented books, as long as no one sect is favored, and the inclusion does not indicate any preference for religious works in general.[131] More than forty years before the modern Establishment Clause jurisprudence, a public school's decision to purchase twelve copies of the Bible in the King James version for the high school library was challenged on constitutional grounds.[132] This case was brought even before the Establishment Clause was incorporated and made applicable to the states through the Fourteenth Amendment.[133] Yet, in this case entitled *Evans v. Selma Union High School District,* the Supreme Court of California held that the public school did not violate the Establishment Clause by purchasing the King James Bibles for its library.[134]

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[129] *Id.* at 318-19.
[130] *Schempp*, 374 U.S. at 225.
[131] *Evans v. Selma Union H.S. Dist.*, 193 Cal. 54 (1924).
[132] *Id.* at 55.
[133] *See Everson*, *supra*.
[134] *Id.*

The state court emphasized that the original manuscript of the Bible has been lost for centuries and the Bibles available today are different translations or copies.[135] The King James version happens to be the version most generally in use in today's society and is a "recognized classic."[136] Thus, this case would likely survive *Schempp* because it is consistent that the King James Bible is a work of literature which add value generally to education and not only to its worshipping communities. The Bible in the King James version is undoubtedly a sectarian work of literature, as is the Douai version used in Catholic Churches, yet both have merits of their own.[137] Thus, either version or both may be placed in public school libraries without violating the Establishment Clause.

Furthermore, in *Roberts v. Madigan*, a Colorado District Court considered the legal propriety of keeping the Bible in a public school classroom's library.[138] The district court noted that a "school library is a mirror of the human race, a repository of the works of scientists, leaders, and philosophers. It is the locus where the past meets tomorrow, embellished by the present."[139] As such, the Bible is certainly welcome in a school library since it is commonly regarded as a work of literature, history, ethics, theology, and philosophy.[140]

However, the same response does not apply for secondary religious texts. One of the books at issue in *Roberts* was entitled *The Bible in Pictures and The Story of Jesus*, which was specifically written to provide children with a better religious understanding of the Christian interpretation of the Bible and cannot be regarded as having a secular purpose.[141] In affirming the district court's holding that this type of book should be removed from the classroom library, the Tenth Circuit

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[135] *Evans,* 193 Cal. at 58.
[136] *Id.* at 58-60.
[137] *Id.* at 60.
[138] *Roberts v. Madigan*, 702 F. Supp. 1505, 1512 (D. Colo. 1989).
[139] *Id.*
[140] *Id.*
[141] *Id.*

noted, however, that "the Establishment Clause focuses on the manner of *use* to which materials are put; it does not focus on the content of the materials per se."[142] Thus, school officials are allowed to exercise discretion in placing materials in the classroom, but the main issue in *Roberts* was that the teacher was "setting a Christian tone in his classroom" by frequently reading Bible passages to his students.[143]

As such, it is well-settled that religious texts can be offered and used for secular purposes in public schools, but it is crucial that the texts are not offered as works of truth. For example, in *Herdhal v. Pontontoc County School District,* a mother challenged a public school's religious Bible instruction.[144] Importantly, one of the teachers at the school taught the Bible "not as a work of fiction, but as a historic record, *i.e.,* as a record of what actually occurred in the past."[145] Specifically, the teacher stated that his students study the "virgin birth and Jesus' miracles and the resurrection" just as the Bible explains it, and as a historical account of those events.[146] The Court ruled that this constituted religious instruction because the Bible is "not capable of historic verification" and as such, it "can only be accepted as a matter of faith and religious belief."[147]

The district court in *Herdahl* found that, "[T]o simply read the Bible without selectivity is to read a religious book and to teach the Bible literally without interpretation is to convey a religious message or teach a religious lesson."[148] Thus, using the Bible in courses itself is constitutional, as long as it is not portrayed as a truthful account of history.

C. Danger of Teacher Biases

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[142] *Roberts v. Madigan,* 921 F.2d 1047, 1055 (10th Cir. 1990).
[143] *Id.* at 1056.
[144] *Herdahl v. Pontotoc Cty. Sch. Dist.,* 933 F. Supp. 582 (N.D. Miss. 1996).
[145] *Id.* at 596.
[146] *Id.*
[147] *Id.*
[148] *Id.*, quoting *Wiley v. Franklin,* 468 F. Supp. 133, 149 (E.D. Tenn. 1979).

It is evident that teaching about religion is possible and employing religious texts is possible, but the way the lesson is taught, and the book is used is crucial. In public schools, lessons about religion and use of religious texts must be done so carefully as to ensure it is being taught in a non-devotional manner. Teaching about religion is risky because public school teachers often possess their own religious beliefs, which may or may not be in line with the religion being taught in the course.

Public school teachers are agents of the government, and so they may not promote any particular religion, religion in general, or lack of religious belief to their students.[149] For instance, in *Johnson v. Poway Unified School District,* the Court held that a teacher may not post religious banners in his classroom because as the speech of a public school teacher, it appeared as if he was endorsing religion on behalf of the government.[150]

However, this rule becomes tricky when public schools decide to offer courses about or including religious topics. Mandated curriculums are often established by the state in which the public school resides; however, teachers often have discretion in the way that courses are taught.[151] Thus, the method in which a teacher teaches the students about religion is incredibly important so as not to imply that the teacher is endorsing religion. For instance, in *Wood v. Arnold,* discussed earlier, the teacher had showed a PowerPoint presentation with a slide that stated, "Most Muslim's [sic] faith is stronger than the average Christian."[152] While the Fourth Circuit ultimately found that this statement had a secular purpose, this kind of statement could come across as opiniated. The

[149] *Johnson v. Poway Unified Sch. Dist.,* 658 F.3d 954 (9th Cir. 2011).
[150] *Id.* at 970.
[151] 12 DAVID N. BOOTE, TEACHERS AND TEACHING: THEORY AND PRACTICE, 461, 463 (2006).
[152] *Wood,* 915 F.3d at 312.

plaintiff had contended that she interpreted it to mean defendants endorsed a view of Islam over Christianity.[153]

In addition, even though teachers are government employees, it does not mean that they are completely stripped of their First Amendment rights.[154] It just means that when speaking about religion, they must be speaking as citizens rather than as employees performing their official job duties.[155] Thus, they do not have the right to freely express religious matters in the classroom setting because that is where they are performing their official job duties. Moreover, unlike other government employees, teachers are tasked with the particularized and delicate role of educating and preparing the future generation. Thus, teachers often have lasting impacts on their students, not just educationally, but socially as well.[156]

Teachers undoubtedly serve as role models to students.[157] As such, it is crucial that teachers maintain neutrality in teaching religious topics, but like all Americans, teachers are entitled to their own religious beliefs. Thus, whether or not teachers can maintain neutrality–despite their personal beliefs–when teaching about religion, is a huge factor in determining whether religion can be taught in public schools without violating the Establishment Clause.

Teachers in Catholic schools often view the role of teaching as a form of ministry and a calling from God.[158] Religious education is extremely important in the Catholic faith, and so Catholic values are often "infused" in the teachings of all subjects at Catholic schools.[159] Whereas

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[153] *Id.* at 313.
[154] *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) ("it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate").
[155] *Garcetti v. Ceballos*, 547 U.S. 410, 410 (2006).
[156] Colleen Cotnoir; Susan Paton; Lisa Peters; Cynthia Pretorius; Leslie Smale. *The Lasting Impact of Influential Teachers*, SEMANTIC SCHOLAR (July 24, 2014), https://www.semanticscholar.org/paper/The-Lasting-Impact-of-Influential-Teachers.-Cotnoir-Paton/27d3b15b34952c80bb78cd6d6db7033e7ce23db6#paper-header.
[157] *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986).
[158] *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 192 (2012) ("I feel that God is leading me to serve in the teaching ministry").
[159] *See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2057 (2020).

in the public school setting, even if a teacher's views coincide with Catholicism in that religious values should be infused in educational lessons, that teacher must ensure that his or her own closely held beliefs do not peak through lessons that incorporate religious topics.

In *Lemon,* where two statutory programs which provided funds to private school teachers' salaries were at issue, the Court analyzed the potential dangers and corresponding entanglements of these types of programs.[160] In distinguishing these programs from ones funding textbooks in private schools, the Court recognized that "teachers have a substantially different ideological character from books."[161] Specifically, "[i]n terms of potential for involving some aspect of faith or morals in secular subjects, a textbook's content is ascertainable, but a teacher's handling of a subject is not."[162] As such, the Court highlighted the significant danger that "a teacher under religious control and discipline poses to the separation of the religious from the purely secular aspects of precollege education."[163]

It is crucial to take these considerations into account especially in the present climate where political conversations are such a sensitive subject. This does not, however, mean that teachers should not discuss current or historical events, including the religious context necessary for students to understand these events. Rather, it means that teachers should not allow their personal religious beliefs to shine through when discussing religious context, even if they believe it may go against their closely held beliefs to act as if they are impartial. In discussing religion, teachers should act solely as transmitters of factual information.

D. Conclusion

[160] *Lemon*, 403 U.S. at 616.
[161] *Id.* at 617.
[162] *Id.*
[163] *Id.*

Overall, allowing religious lessons or expression in public schools is not only dangerous because it may appear that the government is endorsing a particular religion, or religion in general. The Court is far more cautious when ruling on religion in public schools, rather than legislative meetings for instance[164], due to the heightened sensitivity of children. As such, school officials are treated with much less discretion in administering and aiding religious dialogue since their audience includes young and impressionable children. Moreover, public schools have the singular role of preparing students for their future endeavors. However, part of growing students' minds includes helping them establish their identities, and religion is often a huge part of people's identities.

There can be arguments for teaching about religion in public schools despite the constitutional risks.[165] On the one hand, people spend a majority of their youth in school. It is where they develop socially, academically, and intellectually. There are several avenues that individuals take in their lives when it comes to religion. Sometimes individuals will conform to their parents' beliefs and never change their opinions on the matter. In other cases, individuals will conform to their parents' beliefs, but grow up and change their minds. If children are not learning about religion in public school, where can they learn about it? Thus, how can children be expected to formulate their own beliefs and identities without being taught about religion in school?

These are questions that are important to consider. From an ethical, social and psychological standpoint, the answers may differ from the constitutional answers. On the other

[164] *See Town of Greece v. Galloway, supra*.

[165] Some scholars are in favor of teaching about religion in public schools because religion plays a vastly important role in our society and it is important for students to understand the people they will interact with throughout their lives. Moreover, religion has played an essential role not just in the development of our nation, but in the path of numerous important events throughout history. *See* Cooley, L. *Accommodating Diversity: Teaching About Religion in Public Schools*, 12 RUTGERS J.L. & Religion, 347, 377 (2011). Others believe that if religion is wholly excluded, it may undermine the very principles of democracy the school system seeks to further. *See* Ned Fuller, *The Alienation of Americans from Their Public Schools*, 1994 B.Y.U. EDUC. & L.J. 87, 88 (1994).

hand, under the First Amendment, there is no room for the administration of prayers or religious teachings in public schools: "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[166] Moreover, according to Justice Douglas, "if the State is empowered, as parens patriae, to 'save' a child from himself or [his parents]" … "the State will in large measure influence, if not determine, the religious future of the child."[167]

Thus, it is not the public school's job to teach students about the various types of religion they could one day hold beliefs in. It is the public school's job to teach secular, foundational lessons which will hopefully prepare students for higher education. If a course taught happens to incorporate religious context that is necessary for the purposes of the lesson, then it is valid to incorporate it. However, implementing religious courses in public schools may not be necessary for building the academic foundation, especially in primary and secondary school where children should be learning the basics.

[166] *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972), citing *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535 (1925).
[167] *Id.* at 232.