Chapter 2
Schools and The State

Concepts
Application Exercise
Collaborative Inquiry Activities
Exam Questions
Case Study and Internship

Concepts

I. Compulsory Attendance
   Public Schools, Private Schools, Home and Online Instruction, and Admission Issues
II. Religion in the Schools
   School Sponsored Religious Activity, Equal Access, Teaching of Evolution, Textbooks, Religious Literature, Released and Shared Time, and Religious Holidays
III. Use of Facilities
IV. Aid to Nonpublic Schools
V. School Fees
VI. Health Services

Application Exercises

Instructors may use the cases referring to Schools and The State to understand the complexities of analyzing the opinions that have been derived from the court decisions. Modeling the first case, Pierce v. Society of Sisters, which deals with compulsory school attendance, the instructor may use the case study graphic or the Analyzing a Court Decision in Appendix A of the textbook. Then, you would want the inquiry group to analyze the following cases and present findings to the class. The following cases are as a follows:

Engel v. Vitale
Murray v. Curlett
Lee v. Weisman
Edwards v. Aguillard
Good News Club v. Milford Central School
Nagy v. Evansville-Vanderburgh School Corporation
Berg v. Glen Cove City School District

In your discussion, the instructor may be able to shed light on vocabulary and the court system. Although it may be "new" to the learners, a Socratic questioning may be used to enhance the background of the cases and the implications on educators today.

For the modeling of Analysis of Pierce v. Society of Schools, 268 U.S. 510 (1925), the instructor may be guided by the following information, use of the case study graphic, and the Analyzing a Court Decision.

Analysis of *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925)

Title and **Citation**: Pierce is the appellant who "lost" in the lower court and has brought an appeal to the Supreme Court. The Society of Sisters are the appellees who "won" in the lower court. The U.S. in the citation signifies the name of the reporter, or set of law books, in which this case is published. The decision can be found in volume 268 at page 510 of the *United States Reports*. The Court rendered the decision in 1925. Including a 1925 decision in a case book such as this should alert the student that this decision represents "well-established" law, a legal precedent that has endured for many years, and is unlikely to be reversed lightly by the Court.

Level or Type of Court, in this decision, the U.S. in the citation reveals that this is a decision of the United States Supreme Court, which is the highest court in the land. Only U.S. Supreme Court opinions are published in the U.S. reporters.

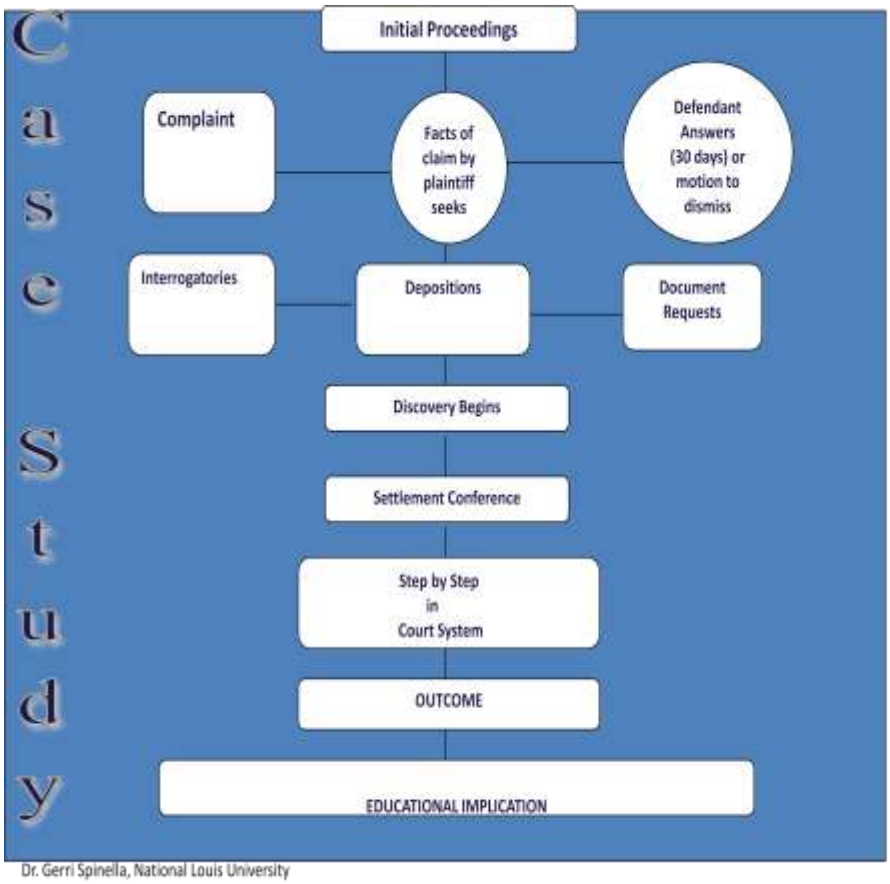
Facts: The facts in this decision are (briefly): Oregon passed a law entitled the Compulsory Education Act of 1922 under which the state's children ages eight to sixteen who have not completed the eighth grade must attend a public school. Only a public school was acceptable. The appellees, Society of Sisters and Hill Military Academy, who were the original plaintiffs, wanted an injunction to stop the state from enforcing this law, which would become effective in 1926, because enforcement of the law would: 1) deprive parents of the right to choose what they believed was an appropriate school for their children; and 2) result in irreparable harm to the plaintiffs because of the resulting loss of students. The private schools sought an injunction, because if they waited until the law would be enforced, their business would have deteriorated and have lost value because of a loss of students during that period. Therefore, they requested an injunction, which would stop enforcement of the law. The lower court granted the injunction and the Supreme Court upheld the lower court's decision.

Issues: The issues in this case were: 1) whether the liberty interest parents have under the Fourteenth Amendment to direct the education of their children would be violated if the law was enforced; and 2) whether the private schools due process rights were violated because their property would have considerably less value if students could not attend their schools.

Holding: The Supreme Court upheld the rights of both the parents and private schools. The Court held that "the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control." Under this law, the Court argued, parents would be forced to accept instruction only by public school teachers, and absent "some purpose within the competency of the State," the state's actions would unconstitutionally impinge on rights parents have under the U.S. Constitution. The Court also held that the private schools' rights were violated because they would lose property without having been given due process of law. Taking this property, the schools' financial interests in providing educational services to parents choosing these services, was an "arbitrary, unreasonable, and unlawful interference" with their patrons and the running of their business. Upholding the injunction, the Court reasoned, was necessary because by waiting for the law to actually be enforced would have resulted in irreparable injury to the private schools.

Legal Doctrine: The legal doctrine established by this case is that under the Fourteenth Amendment, parents have a liberty interest to direct the upbringing and education of their children, and that private schools have a valuable property interest that cannot be taken away unless requisite due process is given.

Significance: The significance of the decision is that private school attendance can satisfy a state's compulsory attendance law.



Background Notes on Cases

Engel v. Vitale (24)

Engel v. *Vitale*, 370 U.S. 421 (1962) the Court has consistently rejected **public school sponsored prayer**, noting that the First Amendment "tried to put an end to governmental control of religion and prayer." The Court has expressed special concerns about public school sponsored prayer, because the state has the authority to compel school attendance, and young children are uniquely impressionable. The Court further determined that the First Amendment sought to avoid resulting conflicts over the composition of government sponsored prayers. Even if a majority could agree that a prayer should be conducted in the classroom, what prayer should be selected? Although the options in selecting a prayer are seemingly infinite, all are potentially problematic. At one end of the spectrum of potential prayers are prayers that are more narrowly sectarian in nature, for example naming "Hashem," "Allah," "Jesus Christ, our Lord and Savior" or the "Blessed Mother Mary" would likely be objectionable to all persons that do not share that particular faith. At the other end of the spectrum of potential prayers are prayers that avoid any specific religious references at all. But these "generic prayers" may be offensive to all sincere believers, because these religiously neutral prayers are really no prayer at all and thereby tend to demean and trivialize sacred prayer. The more specific the prayer, the more likely it is to be divisive, the less specific the prayer, the less likely it is to satisfy the religious intentions of those that wanted the prayer adopted in the first place. The U.S. is the most religiously diverse nation on Earth, and that diversity is increasing.

View the YouTube video on School Prayer: http://www.youtube.com/watch?v=3TyVW8nA_4M

Abington Township v. Schempp and Murray v. Curlett (29)

In *Abington* v. *Schempp*, 374 U.S. 203 (1963) the U.S. Supreme Court stated "it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. 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 consistent with the First Amendment." Text from the Bible is frequently included in musical or artistic works, that public school children commonly sing in public schools, for example, the Hallelujah Chorus from Handel's "Messiah" includes text from the Books of Isaiah and the New Testament Gospels:

> The kingdom of this world
> Is become the kingdom of our Lord,
> And of His Christ, and of His Christ;
> And He shall reign for ever and ever,
> For ever and ever, forever and ever,
> King of kings, and Lord of lords,
> King of kings, and Lord of lords,
> And Lord of lords,
> And He shall reign,
> And He shall reign forever and ever,
> King of kings, forever and ever,
> And Lord of lords,
> Hallelujah! Hallelujah!

As long the materials included in the curriculum are genuinely part of a secular program of education, and are included for their literary, historical, artistic or other educational value, the inclusion of materials with religious content or origins does not violate the Establishment Clause.

"And anytime my head I bow, Becomes a Federal matter now."

The Constitution only applies to the actions of government officials while acting in their official capacity. For persons acting in a private capacity (including all students, and teachers and administrators when acting only as private citizens) there is no prohibition against praying in school or elsewhere.

Further, in *Abington* v. *Schempp*, 374 U.S. 203 (1963) the U.S. Supreme Court stated "it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. 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 consistent with the First Amendment."

Lee v. Weisman

"The law is specific, the law is precise, Prayers spoken aloud are a serious vice."

The law in this area is clearly not specific or precise. To the contrary, the common criticism is that church-state law is notoriously subjective and sometimes seemingly arbitrary, in large part because the First Amendment requires government officials to maintain a neutral balance between two polar opposite principles: the positive mandate to respect the free exercise of religion, and the negative prohibition against any establishment of religion. The proper balance in these cases is often unclear, and the Court is unlikely to develop any test that is much more precise than the *Lemon* test as guidance in these cases. Church-state cases are necessarily deeply rooted in judgments about context and interpretation. But this often leads to criticisms of the Court's cases in this area as unclear and subjective. Justice Scalia, for example, criticized the Court for this apparent arbitrariness in church-state cases, stating in his dissenting opinion in *Lee* v. *Weisman, "*I find it sufficient embarrassment that our Establishment Clause jurisprudence regarding holiday displays . . . has come to require scrutiny more commonly associated with interior decorators than with the judiciary . . . But interior decorating is a rock-hard science compared to psychology practiced by amateurs."

Spoken prayer, by private citizens including students and educators acting only in their private capacity, is protected under both the free exercise and free speech clauses of the First Amendment.

"For praying in a public hall, Might offend someone with no faith at all."

School facilities and other public buildings are commonly used by community groups engaged in free speech, including constitutionally protected religious speech such as prayer.

While all persons have a right to free speech, no one has a right *not* to be offended by the free speech of others. Occasionally being subjected to offensive speech is part of the price of living in a free society.

Edwards v. Aguillard

The United States Supreme Court declared the practice of teaching of evolution as violating the First Amendment's prohibition against establishment of religion.

Good News Club v. Milford Central School

The court relied on the viewpoint discrimination test by allowing a religious club that engaged in religious activities to meet after school.

Nagy v. Evansville-Vanderburgh School Corporation

Nagy v. *Evansville-Vanderburgh School Corporation* provides examples of language used in different states regarding **fees**.

> Ark. Const. Art. 14, § 1 ("The State shall ever maintain a general, suitable and efficient system of free public schools . . . ."); Colo. Const. Art. 9, § 2 ("The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state . . . ."); Conn. Const. Art. 8, § 1 ("There shall always be free public elementary and secondary schools in the state."); Del. Ann. Const. Art. 10, § 1 ("The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools . . . ."); Ga. Const. Art. 8, § 1, para. 1 ("Public education for the citizens prior to the college or postsecondary level shall be free and shall be provided for by taxation."); Idaho Const. Art. 9, § 1 ("legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools"); Ill. Const. Art. 10, § 1 ("Education in public schools through the secondary level shall be free."); Md. Const. Art. 8, § 1 ("The General Assembly . . . shall . . . establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance."); Mont. Const. Art. 10, § 1 ("The legislature shall provide a basic system of free quality public elementary and secondary schools."); Tenn. Const. Art. 11, § 12 ("The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools.").

Berg v. Glen Cove City School District

Every state has immunization requirements for children entering schools.

Collaborative Inquiry Application Exercise

In your inquiry groups, each should acquire the following roles to interpret the appropriateness of the "New School Prayer." The roles may include parents, students, religious leaders, school board officials, school board lawyer, principal, and teachers. Using the format, role-play the set of perceptions, discuss the premise behind including these lines, and make recommendations to the School Board. You may include supporting court case evidence.

The "New School Prayer" Exercise
Student Copy

You are a school board member. The following poem was recited over the intercom by a high school principal in your district. Based on numerous complaints from students and parents, your board has been asked to review this situation. The principal's defense is that "every line of what I said is true, and I have a right to say the truth." Decide: 1) Is every line true?; 2) Does the principal have a right to read this to the students?

Now I sit me down in school
Where praying is against the rule.
For this great nation under God
Finds mention of him very odd.

If Scripture now the class recites,
It violates the Bill of Rights.
And anytime my head I bow
Becomes a Federal matter now.

Our hair can be purple. orange or green,
That's no offense; it's a freedom scene.
The law is specific, the law is precise.
Prayers spoken aloud are a serious vice.

For praying in a public hall
Might offend someone with no faith at all.
In silence alone we must meditate,
God's name is prohibited by the state.

We're allowed to cuss and dress like freaks,
And pierce our noses, tongues and cheeks.
They've outlawed guns but FIRST the Bible.
To quote the Good Book makes me liable.

We can elect a pregnant Senior Queen,
And the "unwed daddy" our Senior King.
It's "inappropriate" to teach right from wrong,
We're taught that such "judgments" do not belong.

We can get our condoms and birth controls,
Study witchcraft, vampires and totem poles.
But the Ten Commandments are not allowed,
No word of God must reach this crowd.

It's scary here I must confess,

When chaos reigns, the school's a mess.
So, Lord, this silent plea I make:
Should I be shot, my soul please take!
Amen.

The "New School Prayer" Exercise
Instructor Copy

You are a school board member. The following poem was recited over the intercom by a high school principal in your district. Based on numerous complaints from students and parents, your board has been asked to review this situation. The principal's defense is that "every line of what I said is true, and I have a right to say the truth." Decide: 1) Is every line true?; 2) Does the principal have a right to read this to the students?

This exercise is based on an actual event, in which a principal read this poem over the school intercom, resulting in significant complaints from students, parents, and community members, and a subsequent battle fought out in both School Board meetings and the local new media. Various versions of this anonymous poem have been in circulation since at least 1985. Should the principal have read this poem over the intercom? Did doing so give the appearance of endorsing a particular brand of religion?

1) Is every line true?

"Where praying is against the rule"

The Constitution only applies to the actions of government officials while acting in their official capacity. For persons acting in a private capacity (including all students, and teachers and administrators when acting only as private citizens) there is no prohibition against praying in school or elsewhere. To the contrary, the Constitution *protects* the rights of private citizens to engage in the free exercise of religion, including prayer. The only additional limitations in schools are that for students, they may be subject to reasonable time, place and manner restrictions (for example, so that audible prayer does not disrupt class), and for educators, they cannot give the appearance of endorsing religion while acting in their official capacity.

"For this great nation under God, Finds mention of him very odd."

> The phrase "In God We Trust" appears on U.S. currency, and elected officials commonly mention God in speeches. In *Marsh* v. *Chambers*, 463 U.S. 783 (1983), in a 6-3 opinion, the U.S. Supreme Court upheld the practice of opening legislative sessions with a prayer. Further, In Abington v. Schempp, 374 U.S. 203 (1963), the Court stated "It is true that religion has been closely identified with our history and government. As we said in *Engel* v. *Vitale*, 370 U.S. 421 (1962), 'The history of man is inseparable from the history of religion. And since the beginning of that history many people have devoutly believed that 'More things are wrought by prayer than this world dreams of.' In *Zorach* v. *Clauson*, 343 U.S. 306 (1952), we gave specific recognition to the proposition that '(w)e are a religious people whose institutions presuppose a Supreme Being.' The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself. This background is evidenced today in our public life through the continuance in our oaths of office from the Presidency to the Alderman of the final supplication, 'So help me God.' Likewise each House of the Congress provides through its Chaplain an opening prayer, and the sessions of this Court are declared open by the crier in a short ceremony, the final phrase of which invokes the grace of God."

“If Scripture now the class recites, It violates the Bill of Rights.”

In *Abington* v. *Schempp*, 374 U.S. 203 (1963) the U.S. Supreme Court stated “it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. 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 consistent with the First Amendment.” Text from the Bible is frequently included in musical or artistic works, that public school children commonly sing in public schools, for example, the Hallelujah Chorus from Handel’s “Messiah” includes text from the Books of Isaiah and the New Testament Gospels:

> The kingdom of this world
> Is become the kingdom of our Lord,
> And of His Christ, and of His Christ;
> And He shall reign for ever and ever,
> For ever and ever, forever and ever,
> King of kings, and Lord of lords,
> King of kings, and Lord of lords,
> And Lord of lords,
> And He shall reign,
> And He shall reign forever and ever,
> King of kings, forever and ever,
> And Lord of lords,
> Hallelujah! Hallelujah!

As long the materials included in the curriculum are genuinely part of a secular program of education, and are included for their literary, historical, artistic or other educational value, the inclusion of materials with religious content or origins does not violate the Establishment Clause.

“And anytime my head I bow, Becomes a Federal matter now.”

The Constitution only applies to the actions of government officials while acting in their official capacity. For persons acting in a private capacity (including all students, and teachers and administrators when acting only as private citizens) there is no prohibition against praying in school or elsewhere.

“Our hair can be purple, orange or green, That's no offense; it's a freedom scene.”

The U.S. Supreme Court has not definitively ruled on student dress and grooming matters. Until the Court does, student grooming matters are governed by decisions from the various U.S. Courts of Appeals. In general, however, courts have tended to be very deferential to school officials in establishing reasonable student dress and grooming standards. While the law appropriately protects the constitutional freedoms of all persons, including students, from arbitrary or discriminatory government rules and regulations, school officials enjoy broad discretion in setting reasonable student dress and grooming standards. Federal judges generally avoid any appearance of acting as a “super school board” and absent some clear violation of law or a constitutional right, school officials are free to establish reasonable dress and grooming standards for their schools.

"The law is specific, the law is precise, Prayers spoken aloud are a serious vice."

> The law in this area is clearly not specific or precise. To the contrary, the common criticism is that church-state law is notoriously subjective and sometimes seemingly arbitrary, in large part because the First Amendment requires government officials to maintain a neutral balance between two polar opposite principles: the positive mandate to respect the free exercise of religion, and the negative prohibition against any establishment of religion. The proper balance in these cases is often unclear, and the Court is unlikely to develop any test that is much more precise than the *Lemon* test as guidance in these cases. Church-state cases are necessarily deeply rooted in judgments about context and interpretation. But this often leads to criticisms of the Court's cases in this area as unclear and subjective. Justice Scalia, for example, criticized the Court for this apparent arbitrariness in church-state cases, stating in his dissenting opinion in *Lee* v. *Weisman, "*I find it sufficient embarrassment that our Establishment Clause jurisprudence regarding holiday displays . . . has come to require scrutiny more commonly associated with interior decorators than with the judiciary . . . But interior decorating is a rock-hard science compared to psychology practiced by amateurs." Spoken prayer, by private citizens including students and educators acting only in their private capacity, is protected under both the free exercise and free speech clauses of the First Amendment.

"For praying in a public hall, Might offend someone with no faith at all."

> School facilities and other public buildings are commonly used by community groups engaged in free speech, including constitutionally protected religious speech such as prayer.
>
> While all persons have a right to free speech, no one has a right *not* to be offended by the free speech of others. Occasionally being subjected to offensive speech is part of the price of living in a free society.

"In silence alone we must meditate, God's name is prohibited by the state."

> Subject only to reasonable time, place, and manner restrictions (such as not speaking in a manner that disrupts class), all persons acting in their private capacity (students are always private citizens) may pray, meditate, etc., in any manner they choose. As noted above, not only is God's name not prohibited by the state, the phrase "In God We Trust" appears on U.S. currency, and elected officials commonly mention God in speeches, etc.

"We're allowed to cuss and dress like freaks, And pierce our noses, tongues and cheeks."

> There is no legal authority for asserting that students have a right to "cuss" in school. School officials may always apply reasonable time, place, and manner restrictions to student speech, and punish students for inappropriate speech. *See, Bethel* v. *Fraser,* 487 U.S. 675 (1986) ("The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers -- and indeed the older students -- demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in and out of class. Inescapably, like parents, they are role models. The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct"). While some schools may choose to have dress and grooming policies that could allow these more radical dress and grooming practices, as noted above, courts are generally very deferential to school officials in establishing reasonable dress and grooming standards for students.

“They've outlawed guns but FIRST the Bible, To quote the Good Book makes me liable.”

> The Second Amendment protects the right to bear arms, and although state laws vary considerably in the scope of regulations concerning weapons, a right to bear arms is recognized throughout the U.S., sometimes quite broadly. For example, *see* Georgia Code § 16-11-127.1 (generally prohibiting weapons in schools, but allowing exceptions including firearms used by students in military or law enforcement training; weapons held by any person authorized to do so by school officials; and weapons held by “Teachers and other school personnel who are otherwise authorized to possess or carry weapons, provided that any such weapon is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle”).
>
> The “Good Book” or Bible is broadly infused throughout our culture, in literature, art, music, and even popular entertainment. It is neither unconstitutional nor uncommon to hear persons talking about others “reaping what they have sown” or other similar phrases that have become so ubiquitous that their use does not convey any sectarian religious message. Further, in *Abington* v. *Schempp*, 374 U.S. 203 (1963) the U.S. Supreme Court stated “it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. 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 affected consistent with the First Amendment.”

We can elect a pregnant Senior Queen, And the "unwed daddy" our Senior King, It's "inappropriate" to teach right from wrong, We're taught that such "judgments" do not belong”

> It is not “inappropriate” to teach right from wrong in schools. To the contrary, as the Court recognized in *Bethel* v. *Fraser, “*schools must teach by example the shared values of a civilized social order.”
>
> However, to punish girls simply because they are pregnant is both inappropriate and unlawful. Inappropriate because school officials do not know the totality of factual circumstances that resulted in the pregnancy (including the possibility of rape or incest). Unless they have any reason to suspect a crime or child abuse, for students that are legally old enough to consent to sexual relationships, school officials should generally respect their privacy and leave these private matters to parents, clergy, counselors and others the students may choose to discuss these issues with. Further, punishing students for being pregnant is unlawful, in part because this generally means punishing females disproportionately for conduct that requires the participation of both a female and a male. Further, punishing students for being pregnant is made expressly unlawful under Title IX, which prohibits any discrimination on the basis pregnancy.

2) Does the principal have a right to read this to the students?

> No. Further, the principal’s actions in this case appear to violate the Establishment Clause of the First Amendment, as reasonable community members could legitimately perceive that the principal was, in his official capacity, endorsing a particular religious perspective by reading this poem to impressionable children subject to compulsory attendance.

Chapter 2 Exam
Student Copy

For each case scenario below, please answer Plaintiff (P) or Defendant (D) according to which of these parties is *most likely* to prevail (the school is the Defendant (D) in each case):

1) ___ A student is objecting to a brief, non-denominational prayer written by the principal and recited periodically on the public school intercom system.

2) ___ Every Tuesday and Thursday at 2:00 some public school students leave the school to attend religious instruction in a recreational vehicle parked just off public school property. A parent claims the school is unconstitutionally advancing religion, and sues the school to stop the practice of release time for religious instruction during school hours.

3) ___ 14 year-old Amish children who have completed the 8th grade are claiming a free exercise exemption from public school attendance laws and stop attending school, although statutes require attendance till age 16. The children are charged with truancy, and sue the school.

4) ___ The school allows all community groups to use the public school auditorium for meetings in the evenings and weekends, but requires that all groups comply with reasonable health and safety regulations. A group of parents who will use poisonous snakes, toxic chemicals, and fire in their religious ceremony also want to use the school facilities. These practices are based on their sincerely held religious beliefs, and the group presents the following to support their practice: "And these signs shall follow them that believe: In my name shall they cast out devils; they shall speak with new tongues. They shall take up serpents; and if they drink any deadly thing, it shall not hurt them; they shall lay hands on the sick, and they shall recover." Mark 16:17-18. "Behold, I give unto you power to tread on serpents and scorpions, and over all the power of the enemy: and nothing shall by any means hurt you." Luke 10:19. The principal denies their request and the group sues.

5) __ At this year's Winter Concert, the high school band, orchestra, and choir performed songs including "Mary Had a Baby," and "Silent Night", and then joined together in a grand finale featuring the "Hallelujah Chorus" from Handel's Messiah. Because the lyrics include clear religious references such as "Christ" and "our Lord" a community member sues claiming these actions are not religiously neutral and violate the establishment clause.

6) ___ A principal has asked a group of students to stop saying grace in the school cafeteria because of the legal mandate of church-state separation. The students sue.

7) ___ A new state statute requires all children and teachers to observe a moment of silence at the beginning of the school day. Because of his sincere belief that this moment of silence is in fact an attempt by the legislature to slide prayer back into schools "through the back door" the teacher begins teaching class immediately each day, refusing to observe the moment of silence. The teacher is fired for insubordination and sues the school for reinstatement and damages.

8) ___ A Native American student attempts to enroll in your school, but has never received any type of vaccination. Based on sincerely held religious beliefs, his Tribe does not allow vaccinations of any kind. Citing long-standing regulations and health concerns, the school denies him admission. He sues the school.

9) ___ A teacher in your school is also an ordained minister, serving a small church in your community on Sundays, and teaching in your school Monday–Friday to supplement his income. Several students and their families attend his church. He also holds a short before school prayer in the teacher's lounge for any teachers that want to join in the prayer. Learning of these events, your new superintendent fires the teacher for willfully violating the establishment clause.

10) ___ A new state statute has just been enacted, authorizing state funded vouchers for attendance at any public or private school in the state. Because the state funded voucher program also allows students and their families to use the voucher to pay for instruction in religious schools, a group of local parents sues your school and the state claiming a violation of the 1st Amendment's Establishment Clause.

Chapter 2 Exam
Instructor Copy

For each case scenario below, please answer Plaintiff (P) or Defendant (D) according to which of these parties is *most likely* to prevail (the school is the Defendant (D) in each case):

1) _P_ A student is objecting to a brief, non-denominational prayer written by the principal and recited periodically on the public school intercom system. *See, Engel* v. *Vitale*, government agents composing and adopting prayers for use in public schools are practices "wholly inconsistent with the Establishment Clause."

2) _D_ Every Tuesday and Thursday at 2:00 some public school students leave the school to attend religious instruction in a recreational vehicle parked just off public school property. A parent claims the school is unconstitutionally advancing religion, and sues the school to stop the practice of release time for religious instruction during school hours. Release time is a reasonable accommodation for free exercise of religion so long as the school remains neutral. *See, Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, "Accommodation of Prayer During Instructional Time" section.

3) _P_ 14 year-old Amish children who have completed the 8th grade are claiming a free exercise exemption from public school attendance laws and stop attending school, although statutes require attendance till age 16. The children are charged with truancy, and sue the school. *See, Yoder* v. *Wisconsin*, 406 U.S. 205 (1972): "The evidence showed that the Amish provide continuing informal vocational education to their children designed to prepare them for life in the rural Amish community. The evidence also showed that respondents sincerely believed that high school attendance was contrary to the Amish religion and way of life and that they would endanger their own salvation and that of their children by complying with the law."

4) _D_ The school allows all community groups to use the public school auditorium for meetings in the evenings and weekends, but requires that all groups comply with reasonable health and safety regulations. A group of parents who will use poisonous snakes, toxic chemicals, and fire in their religious ceremony also want to use the school facilities. These practices are based on their sincerely held religious beliefs, and the group presents the following to support their practice: "And these signs shall follow them that believe: In my name shall they cast out devils; they shall speak with new tongues. They shall take up serpents; and if they drink any deadly thing, it shall not hurt them; they shall lay hands on the sick, and they shall recover." Mark 16:17-18. "Behold, I give unto you power to tread on serpents and scorpions, and over all the power of the enemy: and nothing shall by any means hurt you." Luke 10:19. The principal denies their request and the group sues.

   Under the Court's decision in *Lamb's Chapel* v. *Center Moriches*, the state cannot discriminate on the basis of the religious content of speech in granting access to facilities available to the public. Nonetheless, the state can still apply reasonable time, place, and manner restrictions, including prohibitions against inherently dangerous things like fire, toxic chemical, and poisonous snakes, as these restrictions are simply content neutral time, place, and manner regulations equally applied to all regardless of religious belief. School officials may lawfully limit the use of their facilities to only groups that agree to comply with reasonable health and safety regulations. The group only has an equal right to use the facilities if it agrees to hold only snake, chemical, and fire free meetings in the public school facility, a religiously neutral rule applied to all. They can talk about snakes, fire, and toxic chemicals, but they cannot bring them into the facility if the facility rules prohibit these things and other inherently dangerous items.

5) _D_ At this year's Winter Concert, the high school band, orchestra, and choir performed songs including "Mary Had a Baby," and "Silent Night", and then joined together in a grand finale featuring the "Hallelujah Chorus" from Handel's Messiah. Because the lyrics include clear religious references such as "Christ" and "our Lord" a community member sues claiming these actions are not religiously neutral and violate the establishment clause. *See Bauchman* v. *Westside High School* (D. Utah, 1996), ("the singing of Christmas carols and religious songs at Christmas time--not in conjunction with religious services--does not constitute the establishment of religion from the objective standpoint of a reasonable observer").

6) _P_ A principal has asked a group of students to stop saying grace in the school cafeteria because of the legal mandate of church-state separation. The students sue. *See, Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools,* "Prayer During Noninstructional Time" section: "Students may pray when not engaged in school activities or instruction" subject only to reasonable disciplinary and time, place, and manner restrictions. The principal clearly has a serious misunderstanding of the First Amendment, resulting in a violation of the free speech and free exercise rights of students in this scenario.

7) _D_ A new state statute requires all children and teachers to observe a moment of silence at the beginning of the school day. Because of his sincere belief that this moment of silence is in fact an attempt by the legislature to slide prayer back into schools "through the back door" the teacher begins teaching class immediately each day, refusing to observe the moment of silence. The teacher is fired for insubordination and sues the school for reinstatement and damages. *See, Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools,* "Moment of Silence" section. S*ee also, Bown* v. *Gwinnett County School District*, 112 F.3d 1464 (11th Cir. 1997) (upholding state's moment of silence statute and dismissal of teacher for failure to observe state mandated moment of silence). If the teacher sincerely believes that he is being asked to do something that is unconstitutional, he has two choices: 1) Note his objection and take appropriate actions (including political action and legal challenges) to have the law changed while otherwise complying with the law; or 2) refuse to comply with the law and face the consequences of non-compliance. If the law is in fact unconstitutional, he would likely receive reinstatement and appropriate legal compensation. If the law is upheld, he is left only with the consequences of non-compliance with a valid law.

8) _P_ A Native American student attempts to enroll in your school, but has never received any type of vaccination. Based on sincerely held religious beliefs, his Tribe does not allow vaccinations of any kind. Citing long-standing regulations and health concerns, the school denies him admission. He sues the school. Although the U.S. Supreme Court's decision in *Employment Division of Oregon* v. *Smith* (1990) (holding that free exercise rights under the U.S. Constitution are only violated when the plaintiff can establish that the government in fact targeted a religious practice for discrimination, rather than the religious burden being merely an incidental burden imposed by a generally applicable regulation), the decision in the textbook read by students, *Berg* v. *Glen*, decided after *Smith*, by a federal court in 1994, strongly suggests that schools should not deny admission under these circumstances. Further, even if this student's free exercise of religion is not protected under the federal constitution, it is very likely protected more fully under the state constitution.

9) _P_ A teacher in your school is also an ordained clergyman serving a small church in your community on Sundays, and teaching in your school Monday-Friday to supplement his income. Several students and their families attend his church. He also holds a short before school prayer in the teacher's lounge for any teachers that want to join in the prayer. Learning of these events, your new superintendent fires the teacher for willfully violating the establishment clause.

10) _D_ A new state statute has just been enacted, authorizing state funded vouchers for attendance at any public or private school in the state. Because the state funded voucher program also allows students and their families to use the voucher to pay for instruction in religious schools, a group of local parents sues your school and the state claiming a violation of the First Amendment's Establishment Clause. *See, Zelman* v. *Simmons-Harris* (2002) (upholding a similar state funded voucher program). In this case scenario, the plaintiffs only sued under the First Amendment of the U.S. Constitution. It is, however, possible that a similar voucher program may violate provisions of your state constitution, such as a "Blaine Amendment" if your state has one of these provisions. To learn more about Blaine Amendments and see if your state is one of the 37 states with this provision in your State's Constitution, *see* http://www.blaineamendments.org/].

Case Study and Internship

1. Examine the policies regarding prayer during graduation or promotion exercises in your school district. Discuss your findings and the relationship that it has to current legal precedents within your text or with Legal Clips, sponsored by the National School Board Association.

2. From your readings, school personnel interviews, and administrative policies within your school district or by the State Board of Education, develop a debate entitled "Evolution v. Intelligent Design." Each inquiry group would outline the arguments and counter-arguments on both sides of this debate. Determine your objective statement, based upon applicable law, for your school board presentation.