

SUPREME COURT OF THE UNITED STATES

Nos. 142 AND 119.—OCTOBER TERM, 1962.

School District of Abington Township, Pennsylvania, et al., Appellants, 142 <i>v.</i> Edward Lewis Schempp et al.	}	On Appeal From the United States District Court for the Eastern District of Pennsyl- vania.
William J. Murray III, etc., et al., Petitioners, 119 <i>v.</i> John N. Curlett, President, et al., Individually, and Con- stituting the Board of School Commissioners of Baltimore City.	}	On Writ of Certiorari to the Court of Appeals of Maryland.

[May —, 1963.]

MR. JUSTICE CLARK delivered the opinion of the Court.

No. 142. The Commonwealth of Pennsylvania by law, 24 Pa. Stat. § 15-1516, as amended, Pub. Law 1928 (Supp. 1960) Dec. 17, 1959, requires that "At least ten verses from the Holy Bible shall be read without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian." The Schempp family, husband and wife and two minor children, brought suit to enjoin enforcement of the statute, contending that their rights under the Fourteenth Amendment of the Constitution of the United States are, have been and will continue to be violated unless this statute be declared unconstitutional as an establishment of religion and a prohibiting of the free exercise thereof under the First Amendment to

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the Constitution of the United States.¹ They sought to enjoin the appellant school district, wherein the Schempp children attend school, and its officers and the Superintendent of Public Instruction of the Commonwealth from continuing to conduct such readings and recitation of the Lord's Prayer in the public schools of the district pursuant to the statute. A three-judge statutory District Court for the Eastern District of Pennsylvania held that the statute is violative of the Establishment Clause of the First Amendment as applied to the States by the Due Process Clause of the Fourteenth Amendment and directed that appropriate injunctive relief issue. 201 F. Supp. 815.² On appeal by the District, its officials and the Superintendent, under 28 U. S. C. § 1253, we noted probable jurisdiction. 371 U. S. 807.

No. 119. In 1905 the Board of School Commissioners of Baltimore City adopted a rule pursuant to Art. 77, § 202 of the Annotated Code of Maryland. The rule provides for the holding of opening exercises in the schools of the city consisting primarily of the "reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer." The rule was amended in 1960 to permit any objectors to be excused from attending the

¹"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"

²The action was brought in 1958, prior to the amendment of the statute which authorized a child's nonattendance at the exercises upon parental request. The three-judge court held the statute and the practices complained of unconstitutional under both the Establishment Clause and the Free Exercise Clause. 177 F. Supp. 398. Pending appeal to this Court by the school district, the statute was so amended, and we vacated the judgment and remanded for further proceedings. 364 U. S. 298. The three-judge court granted appellees' motion to amend the pleadings, 195 F. Supp. 518, held a hearing on the amended pleadings and rendered the judgment, 201 F. Supp. 815, from which appeal is now taken.

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exercises.³ Thereafter the petitioners, after exhausting administrative remedies, filed a complaint in the Superior Court seeking a mandamus commanding the Board to rescind the rule. A demurrer was sustained by that court without leave to amend. The Maryland Court of Appeals affirmed, the majority of four justices holding the exercise not in violation of the First and Fourteenth Amendments, with three justices dissenting. 228 Md. 239, 179 A. 2d 698. We granted certiorari. 371 U. S. 809.

Because of the striking similarity in the facts and the identity of the basic issue under the First and Fourteenth Amendments, the cases were argued together and are here adjudicated together. We hold that the practices at issue and the laws requiring those practices are unconstitutional under the Establishment Clause of the First Amendment, as applied to the States through the Due Process Clause of the Fourteenth Amendment.

I.

The appellees in No. 142, Edward Lewis Schempp, his wife Sidney, and their children, Roger and Donna, are of the Unitarian faith and are members of the Unitarian Church in Germantown, Philadelphia, Pennsylvania, where they regularly attend religious services with Roger and Donna, as well as their son, Ellory. The latter was originally a party but having graduated from appellant

³ The rule as amended provides as follows:

"Opening Exercise. Each school, either collectively or in classes, shall be opened by the reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer. The Douay version may be used by those pupils who prefer it. Appropriate patriotic exercises should be held as a part of the general opening exercise of the school or class. Any child shall be excused from participating in the opening exercises or from attending the opening exercises upon written request of his parent or guardian."

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school *pendente lite* was voluntarily dismissed from the action. The other children attend the Abington Senior High School, which is a public school operated by appellant district.

On each school day at the Abington Senior High School between 8:15 and 8:30 a. m., while the pupils are attending their home rooms or advisory sections, opening exercises are conducted pursuant to the statute. The exercises are broadcast into each room in the school building through an intercommunications system and are conducted under the supervision of a teacher by students attending the school's radio and television workshop. Selected students from this course gather each morning in the school's workshop studio for the exercises, which include readings by one of the students of 10 verses of the Holy Bible, broadcast to each room in the building. This is followed by the recitation of the Lord's Prayer, likewise over the intercommunications system, but also by the students in the various classrooms, who are asked to stand and join in repeating the prayer in unison. The exercises are closed with the flag salute and such pertinent announcements as are of interest to the students. Participation in the opening exercises, as directed by the statute, is voluntary. The student reading the verses from the Bible may select the passages and read from any version he chooses, although the only copies furnished by the school are the King James version, copies of which were circulated to each teacher by the school district. During the period in which the exercises have been conducted the King James, the Douay and the Revised Standard versions of the Bible have been used, as well as the Jewish Holy Scriptures. There are no prefatory statements, no questions asked or solicited, no comments or explanations made and no interpretations given at or during the exercises. The students and parents are advised that the student may absent himself from the class-

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room or, should he elect to remain, not participate in the exercises.

It appears from the record that in schools not having an intercommunications system the Bible reading and the recitation of the Lord's Prayer were conducted by the home-room teacher,⁴ who chose the text of the verses and read them herself or had students read them in rotation or by volunteers. This was followed by a standing recitation of the Lord's Prayer, together with the Pledge of Allegiance to the flag by the class in unison and a closing announcement of routine school items of interest.

At the first trial Edward Schempp and the children testified as to 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." 177 F. Supp. 398, 400. The children testified that all of the doctrines to which they referred were read to them at various times as part of the exercises. Edward Schempp testified at the second trial that he had considered having Roger and Donna excused from attendance at the exercises but decided against it for several reasons, including his belief that the children's relationships with their teachers and classmates would be adversely affected.⁵

⁴The statute as amended imposes no penalty upon a teacher refusing to obey its mandate. However, one refusing may have his contract of employment terminated pursuant to Pennsylvania law. 24 Pa. Stat. (Supp. 1960) § 11-1122.

⁵The trial court summarized his testimony as follows:

"Edward Schempp, the children's father, testified that after careful consideration he had decided that he should not have Roger or Donna excused from attendance at these morning ceremonies. Among his reasons were the following. He said that he thought his children would be 'labeled as "odd balls"' before their teachers and classmates every school day; that children, like Roger's and Donna's classmates, were liable 'to lump all particular religious difference[s] or religious objections [together] as "atheism"' and that today the

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Expert testimony was introduced by both appellants and appellees at the first trial, which testimony was summarized by the trial court as follows:

"Dr. Solomon Grayzel testified that there were marked differences between the Jewish Holy Scriptures and the Christian Holy Bible, the most obvious of which was the absence of the New Testament in the Jewish Holy Scriptures. Dr. Grayzel testified that portions of the New Testament were offensive to Jewish tradition and that, from the standpoint of Jewish faith, the concept of Jesus Christ as the Son of God was 'practically blasphemous.' He cited instances in the New Testament which, assertedly, were not only sectarian in nature but tended to bring the Jews into ridicule or scorn. Dr. Grayzel gave as his expert opinion that such material from the New Testament could be explained to Jewish children in such a way as to do no harm to them. But if portions of the New Testament were read without explanation, they could be, and in his specific experience with children Dr. Grayzel observed, had been, psychologically harmful to the child and had caused a divisive force within the social media of the school.

"Dr. Grayzel also testified that there was significant difference in attitude with regard to the respec-

word 'atheism' is often connected with 'atheistic communism,' and has 'very bad' connotations, such as 'un-American' or 'anti-Red,' with overtones of possible immorality. Mr. Schempp pointed out that due to the events of the morning exercises following in rapid succession, the Bible reading, the Lord's Prayer, the Flag Salute, and the announcements, that excusing his children from the Bible reading would mean that probably they would miss hearing the announcements so important to children. He testified also that if Roger and Donna were excused from Bible reading they would have to stand in the hall outside their 'homeroom' and that this carried with it the imputation of punishment for bad conduct." 201 F. Supp., at 818.

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tive Books of the Jewish and Christian Religions in that Judaism attaches no special significance to the reading of the Bible *per se* and that the Jewish Holy Scriptures are source materials to be studied. But Dr. Grayzel did state that many portions of the New, as well as of the Old, Testament contained passages of great literary and moral value.

"Dr. Luther A. Weigle, an expert witness for the defense, testified in some detail as to the reasons for and the methods employed in developing the King James and the Revised Standard Versions of the Bible. On direct examination, Dr. Weigle stated that the Bible was non-sectarian. He later stated that the phrase 'non-sectarian' meant to him non-sectarian within the Christian faiths. Dr. Weigle stated that his definition of the Holy Bible would include the Jewish Holy Scriptures, but also stated that the 'Holy Bible' would not be complete without the New Testament. He stated that the New Testament 'conveyed the message of Christians.' In his opinion, reading of the Holy Scriptures to the exclusion of the New Testament would be a sectarian practice. Dr. Weigle stated that the Bible was of great moral, historical and literary value. This is conceded by all the parties and is also the view of the court." 177 F. Supp. 398, 401-402.