Applying Precedents Activity

Comparison case: *Town of Greece v. Galloway* (2014)

Precedent case: *Engel v. Vitale* (1962)

What you need to know before you begin: When the Supreme Court decides a case, it clarifies the law and serves as guidance for how future cases should be decided. Before the Supreme Court makes a decision, it looks to precedents—past Supreme Court decisions about the same topic—to help make the decision. A principle called *stare decisis* (literally "let the decision stand") requires that the precedent should be followed. If the case being decided is legally identical to a past decision, then the precedent is considered binding and the Supreme Court must decide the matter the same way (unless extraordinary circumstances justify "overruling" the precedent). However, cases that make it to the Supreme Court are typically not completely identical to past cases, and justices must consider the similarities and differences when deciding a case.

The process of comparing past decisions to new cases is called "applying precedent." Lawyers often argue for their side by showing how previous decisions would support the Supreme Court deciding in their favor. This might mean showing how a previous decision that supports their side is analogous (similar) to the case at hand. It can also involve showing that a previous decision that does not support their side is distinguishable (different) from the case they are arguing.

How it's done: In this exercise, you will analyze a precedent and compare it to *Engel v. Vitale*. You have been provided with information about two cases: **1)** the facts, issue, and constitutional provisions/precedents of the comparison case (*Town of Greece v. Galloway*) and **2)** a full summary of a precedent case (*Engel v. Vitale).*

After reading about the cases, you will look for evidence that *Town of Greece v. Galloway* is analogous (similar) to the precedent case and evidence that the cases are distinguished (different) from each other. After considering both possibilities, you must decide whether the precedent is analogous enough to command the same outcome in the comparison case, or whether the comparison case is different enough to distinguish itself from the precedent.

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1. Using factual and legal similarities, show how *Town of Greece v. Galloway* is **analogous** (similar) to the precedent case (*Engel v. Vitale*):

2. Show how *Town of Greece v. Galloway* is **distinguished** (different) from the precedent case (*Engel v. Vitale*) by pointing out factual and legal differences:

3. We found that *Town of Greece v. Galloway* is _____ (**analogous to** or **distinguished from**) the precedent case (*Engel v. Vitale*) because (choose the most convincing similarities or differences from questions 1 and 2):

4. Based on the application of the precedent, how should *Town of Greece v. Galloway* be decided?

   _____ Decision for Town of Greece

   _____ Decision for Galloway

Comparison Case: *Town of Greece v. Galloway* (2014)

Argued: November 6, 2013

Decided: May 5, 2014

Background

The First Amendment to the Constitution protects the fundamental right of religious freedom: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." The first part, the Establishment Clause, prevents the government from giving special preference to any particular religion. The second part, the Free Exercise Clause, prohibits the government from interfering with a person's practice of their religion, in most instances.

This is a case about whether prayer before a legislative session violates the Establishment Clause of the First Amendment.

Facts

Before 1999, the Town of Greece, NY, would open its Town Board meetings with a moment of silence. Beginning in that year, however, the town began to invite local clergy to offer an opening prayer. The prayer is delivered over the Board's public address system. Prayer-leaders have often asked audience members to participate by bowing their heads, standing, or joining in the prayer. The prayer is followed by the Town Board's normal activity, including a public forum and a portion of the meeting where business owners and residents apply for zoning changes or various permits.

The town has no formal policy for inviting prayer-givers, for the content of the prayers, or for any other aspect of its prayer practice. The town says that it would permit any type of invocation and that it has never denied a request to lead a prayer. The town does not publicize these facts to residents, however. Town staff invites religious leaders to offer the prayers, selecting from congregations listed in a local directory. Because the vast majority of local congregations are Christian, the vast majority of prayers given are as well. From 1999 to 2007, all of the clergy members who delivered the opening prayer were Christian. Between 2007 and 2010, four prayers were delivered by non-Christian individuals. Of the invocations that took place from 1999 to 2010, two-thirds included uniquely Christian language (words like "Jesus," "Christ," or "Holy Spirit"), and the remaining one-third spoke in more generally theistic terms.

Susan Galloway and Linda Stephens attended numerous Town Board meetings since 1999 and began to complain about the prayer practice in 2007. In 2008, they sued the town for violating the Establishment Clause of the First Amendment.

Issue

Did the Town of Greece's practice of opening board meetings with a prayer violate the First Amendment?

Supreme Court Precedents

- *Marsh v. Chambers* **(1983)**

  The Nebraska Legislature had a long-standing tradition to open its session with a non-sectarian prayer led by a state-employed chaplain. The Supreme Court ruled that this opening prayer tradition did not violate the Establishment Clause because such prayer has been the official practice of the U.S. House of Representatives and Senate since before the First Amendment was ratified. In light of that history, the Court said that Nebraska's prayer was constitutional as long as it did not proselytize, disparage any religion, or advance any one faith or belief.

- *Lynch v. Donnelly* **(1984)**

  A city in Rhode Island put up a Christmas display. It included a nativity scene, a Santa Claus, reindeer, and candy canes. The Supreme Court decided that this city-sponsored display did not violate the Establishment Clause. They said a government action is invalid if it creates a perception in the mind of a reasonable observer that the government is either endorsing or disapproving of religion. Viewed in the context of the holiday display, they did not believe the nativity scene advocated a particular religious message.

- *County of Allegheny v. ACLU* **(1989)**

  Five years after *Lynch*, the Supreme Court ruled that a nativity display in a county courthouse was unconstitutional. The nativity scene was displayed alone, and prominently said "Glory to God for the birth of Jesus Christ." They decided that the nativity display affiliated the government with one specific faith (Christianity). The Court said that "history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed."

- *Lee v. Weisman* **(1992)**

  A middle school invited a Jewish rabbi to deliver a prayer at the graduation ceremony. The prayer referred to "God" and "Lord" in general terms. The Supreme Court ruled that this prayer violated the Establishment Clause. They explained that the government violates the Establishment Clause if it (1) provides direct aid to religion in a way that would tend to establish a state church, or (2) coerces people to support or participate in religion against their will. They believed that students could feel coerced to participate in an officially-sponsored prayer at graduation.

Precedent Case: *Engel v. Vitale* (1962)

Argued: April 3, 1962

Decided: June 25, 1962

Background

The First Amendment to the Constitution protects the right to religious worship, yet it also shields Americans from the establishment of state-sponsored religion. Courts are often asked to decide tough cases about the convergence of those two elements—the Free Exercise and Establishment Clauses of the First Amendment.

The United States has a long history of infusing religious acts into its political practices. For instance, "In God We Trust" is printed on currency. Congress opens each session with a prayer. Before testifying in court, witnesses typically pledge an oath to God that they will tell the truth. Traditionally, presidents are sworn in by placing a hand on a Bible. Congress employs a chaplain, and Supreme Court sessions are opened with the invocation "God save the United States and this Honorable Court."

Public schools are bedrock institutions of U.S. democracy, where the teaching of citizenship, rights, and freedoms are common. This is a case about whether public schools may also play a role in promoting those values through the daily recitation of prayer.

Facts

Each day, after the bell opened the school day, students in New York classrooms would salute the U.S. flag. After the salute, students and teachers voluntarily recited this school-provided prayer, which had been drafted by the state education agency, the New York State Board of Regents: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country." The prayer was said aloud in the presence of a teacher, who either led the recitation or selected a student to do so. Students were not required to say this prayer out loud; they could choose to remain silent. Two Jewish families (including Steven Engel), a member of the American Ethical Union, a Unitarian, and a non-religious person sued the local school board, which required public schools in the district to have the prayer recited. The plaintiffs argued that reciting the daily prayer at the opening of the school day in a public school violated the First Amendment's Establishment Clause. After the New York courts upheld the prayer, the objecting families asked the U.S. Supreme Court to review the case, and the Court agreed to hear it.

Issue

Does the recitation of a government -composed prayer in public schools violate the Establishment Clause of the First Amendment?

Constitutional Amendment and Supreme Court Precedents

- **First Amendment to the U.S. Constitution**

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

- ***West Virginia State Board of Education v. Barnette*** **(1943)**

  The West Virginia Board of Education required that all public schools include a salute of the American flag as a part of their activities. Everyone, including teachers and pupils, was required to salute the flag. If they did not, they could be charged with "insubordination" and punished. Students who were members of a religious sect, the Jehovah's Witnesses, cited a religious objection to saluting the flag, claiming that it was equivalent to "idolatry." Their parents sued the state board of education asserting that the compulsory flag salute was a violation of the Establishment Clause. The Supreme Court ruled that the mandatory salute was unconstitutional. They said that a flag salute was a form of speech because it was a way to communicate ideas. In *West Virginia State Board of Education v. Barnette,* the Court ruled that in most cases the government cannot require people to express ideas that they disagree with, especially when the ideas conflict with their own religious beliefs.

- ***McCollum v. Board of Education*** **(1948)**

  In *McCollum v. Board of Education,* the Court said a public school violated the Establishment Clause when it allowed the school to teach religious instruction during school hours on school property. The schools set aside time for religious instruction, organized selection of religious community members to teach the school children, and administered the instruction. The Court ruled in an 8–1 decision this violated the Establishment Clause by establishing a government preference for certain religions.

Arguments for Engel (petitioner)

- This school-sponsored prayer violates the Establishment Clause of the First Amendment as applied to the states. Public schools are part of the government, and the Establishment Clause says that the government cannot favor any one religion over another. The prayer includes the words "Almighty God" and thus favors monotheistic religions.
- It also violates the Free Exercise part of the First Amendment, because it has the effect of coercing children to participate in a religious proceeding. Children are required to attend school; they cannot choose to skip school even if the prayer conflicts with their beliefs.
- A teacher leads the students in prayer and cooperates in carrying out the mandate requiring religious training in the public schools. This prayer is religious instruction and teachers are state officials; therefore, the government is forcing a belief in organized religion.

- Although the prayer is voluntary, few parents or students would choose not to participate, because students would be singled out for their religious (or non-religious) beliefs.
- In earlier cases like *Barnette* and *McCollum,* the Supreme Court made it clear that public schools cannot promote specific religions over others and cannot force children to participate in activities that violate their religious beliefs.

Arguments for Vitale (respondent)

- This prayer safeguards the religious heritage of the nation. Beginning with the Mayflower Compact, the country's founders have publicly and repeatedly recognized the existence of a supreme being or God. In the Declaration of Independence, there are four references to the Creator who endowed humans with "unalienable rights." Congress opens its session with a prayer, and presidents often conclude speeches with "God bless the United States of America."
- The New York schools' prayer is a recognition of this broad religious tradition. It is non-denominational and does not imply preference of any one religion over others.
- Schools fulfill a function of character- and citizenship-education, supplementing the training that often occurs at home. A short, nondenominational prayer aligns with this character education function.
- The New York Regents' prayer is voluntary, not mandatory. Any child could remain silent or be excused by parental request with the principal's approval.
- The Pledge of Allegiance includes the word "God" and is widely accepted and recited in schools. In previous cases the Supreme Court did not strike down references to God as violations of the First Amendment.

Decision

The Supreme Court ruled, 6–1, in favor of the objecting parents. Justice Black wrote the majority opinion and was joined by Chief Justice Warren and Justices Douglas, Clark, Harlan, and Brennan. Justices Frankfurter and White did not participate. Justice Douglas filed his own concurring opinion. Justice Stewart dissented.

Majority

The Court ruled that the school-sponsored prayer was unconstitutional because it violated the Establishment Clause. The prayer was found to be a religious activity composed by government officials (school administrators) and used as a part of a government program (school instruction) to advance religious beliefs. The Court rejected the argument that the state-sponsored prayer was not an "establishment of religion" simply because the prayer was nondenominational and voluntary. The Court's opinion provided an example from history: "…this very practice of establishing

governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America." The Court also explained that, while the most obvious effect of the Establishment Clause was to prevent the government from setting up a particular religious sect or church as the "official" church, its underlying objective is broader:

> "Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs. That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith."

The Court also said that preventing the government from sponsoring prayer does not indicate hostility toward religion.

Dissent

Justice Stewart argued in his dissent that the majority opinion misapplied the Constitution in this case. He emphasized that the prayer was voluntary and that students were free to choose not to say it. "I cannot see how an 'official religion' is established by letting those who want to say a prayer say it. On the contrary, I think that to deny the wish of these school children to join in reciting this prayer is to deny them the opportunity of sharing in the spiritual heritage of our Nation." As part of his argument, Justice Stewart described the history of religious traditions in American government, from opening with "God save the United States and this Honorable Court" at the beginning of each Supreme Court session to the references to God in the "Star-Spangled Banner" and on U.S. currency. According to Justice Stewart, neither these practices nor New York's school prayer established an "official religion." They merely continued long-standing American traditions. Justice Stewart argued that the Establishment Clause was meant to keep the government from forming a state-sponsored church (like the Church of England), not to prohibit all government involvement with religion.

