

## Engel v. Vitale / Excerpts from the Dissenting Opinion—Answer Key

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**The following are excerpts of the dissenting opinion, written by Justice Potter Stewart:**

“[T]he Court says that, in permitting school children to say this simple prayer, the New York authorities have established ‘an official religion.’”

“With all respect, I think the Court has misapplied a great constitutional principle. 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.”

“[W]e deal here not with the establishment of a state church, which would, of course, be constitutionally impermissible, but with whether school children who want to begin their day by joining in prayer must be prohibited from doing so. . . . What is relevant to the issue here is not the history of an established church in sixteenth century England or in eighteenth century America, but the history of the religious traditions of our people, reflected in countless practices of the institutions and officials of our government.”

“At the opening of each day’s Session of this Court we stand, while one of our officials invokes the protection of God . . . . In 1954 Congress added a phrase to the Pledge of Allegiance to the Flag so that it now contains the words ‘one Nation *under God*, indivisible, with liberty and justice for all.’ . . . Since 1865 the words “IN GOD WE TRUST” have been impressed on our coins.”

“I do not believe that this Court, or the Congress, or the President has, by the actions and practices I have mentioned, established an ‘official religion’ in violation of the Constitution. And I do not believe the State of New York has done so in this case. What each has done has been to recognize and to follow the deeply entrenched and highly cherished spiritual traditions of our Nation -- traditions which come down to us from those who almost two hundred years ago avowed their ‘firm Reliance on the Protection of divine Providence’ when they proclaimed the freedom and independence of this brave new world.”

### Questions to Consider

1. What does Justice Stewart mean when he says, “I think the Court has misapplied a great constitutional principle?” To which principle is he referring?

Justice Stewart principle is referring to the Establishment Clause of the First Amendment. He believes the Establishment Clause only forbids the government from establishing an “official religion,” and sponsoring a program like the prayer does not amount to establishing an official religion.

2. How does Justice Stewart justify his thinking with regard to that principle?

He says that the prayer is voluntary, and because the students can choose not to say it, the prayer does not represent an “establishment of religion.”

3. Justice Stewart mentions the prayer that opens each Court session, the wording of the pledge of allegiance, and the words that appear on coins. In citing these examples, what argument is he advancing?

Justice Stewart mentions the prayer that opens each court session, the wording of the pledge of allegiance, and the words that appear on coins as a way of arguing that there are many other religious traditions that are reflected in American government and institutions.

4. What does Justice Stewart think of the long-standing religious traditions in our nation?

He thinks that none of these long-standing religious traditions established an official religion and neither does the school prayer. Rather, the long-standing religious traditions are a core part of American heritage, and the prayer would be one such tradition that students should be allowed to participate in: “. . . 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.”

5. What do you think Justice Stewart means when he says, “official religion?” What might be an example of a government action that Justice Stewart would believe violates the Constitution?

Student answers will vary, but the idea is that Justice Stewart’s bar for what counts as establishing an “official religion” (and thus violating the Establishment Clause) is higher than that of the majority. Justice Stewart would consider it unconstitutional for the government to announce an official church: “[W]e deal here not with the establishment of a state church, which would, of course, be constitutionally impermissible . . .” He does not say so explicitly, but it is also possible he would find the prayer unconstitutional if it was mandatory.