

# AMERICAN TRUSTEES

## Marian Ward



*Doe v. Santa Fe* held that pre-game prayer is unconstitutional and violates the separation of church and state. Marian Ward challenged this ruling. School districts may never promote, sponsor or support prayer at sporting events, but Marian's activism added to the debate on whether student-initiated, student-led prayer at high school football games are within the law.

## Lessons for Marian Ward

### Learning the Establishment Clause

**Trustees:** Marian Ward

**Grade Level:** 10-12

**Time:** Two to three 45-minute classes

**Description:**

The students will analyze the Religion Clauses of the First Amendment, learn about two Supreme Court cases on establishment of religion, and write their own opinion on *Doe v. Santa Fe*.



# AMERICAN TRUSTEES

## Learning the Establishment Clause



**Title:** Learning the Establishment Clause

**Subject:** Civic Education, Government

**Topic:** Establishment of Religion

**Grade Level:** 10-12

**Time:** Two to three 45-minute class periods

**Materials:**

- Computer with internet access, external speakers, and a LCD projector OR access to a computer lab with Internet access and headphones for each student
- Notebook or paper
- Blackboard/whiteboard with markers or overhead
- Poster board (if using for student presentations, optional)
- Student worksheets

**Learning Objectives:**

Students will:

1. define and discuss establishment of religion, freedom of religion, and separation of church and state;
2. conduct library and/or internet research about Supreme Court cases;
3. explain and defend a point of view from a court case; and
4. write their own Supreme Court opinion on *Doe v. Santa Fe ISD*.



# AMERICAN TRUSTEES

## Learning the Establishment Clause (ctd.)

### PREVIEWING (25 minutes)

1. Pass out **WORKSHEET 1** to students. Have each student complete all parts of the worksheet in pairs or small groups (about 10 minutes). Students may use a U.S. History textbook for question 2.

Possible answers:

- For question 1, there can be many different answers. For instance, students may argue that the Religion Clauses dictate that the church and state act independently of one another, and therefore the two phrases have the same meaning. On the other hand, some students may argue that because the government also acts as the defender of religion (in terms of the Free Exercise Clause), church and state are not completely separate and do maintain some kind of relationship.
- In regards to question 2, historical explanations for their decision could be that the Pilgrims originally left England in order to practice their religion freely or the persecution of Catholics, Jews, Quakers, and dissidents such as Roger Williams and Anne Hutchinson in colonial America.

2. Once students have finished the worksheet, call on a volunteer to “translate” the Establishment Clause into modern day language (what does it mean to them?). Ask another volunteer to do the same for the Free Exercise Clause. Then, based on the answers that students have developed individually, initiate a class discussion about the Religion Clauses, how they relate to “separation of church and state,” and why the Founding Fathers felt that they had to include both the Religion Clauses (for example, the Founding Fathers wanted to prevent the persecution of religious minorities). List the students’ responses on the whiteboard or overhead. This should take about ten minutes.

### VIEWING AND INTRODUCTION TO APPLICATION (10 minutes)

1. As a class, view the brief video about Marian Ward, which can be accessed online at [www.americantrusteesproject.org](http://www.americantrusteesproject.org). This viewing will take approximately eight minutes.

2. After the video is over, explain to the students that they will be researching two other Supreme Court cases that deal with the establishment of religion: *Engel v. Vitale* and *Lynch v. Donnelly*. Tell them that in one of these cases, the Supreme Court ruled that the defendant *had* violated the Establishment Clause and in the other case, the Court rules that the defendant had *not* violated the Establishment Clause.

### APPLICATION (60-80 minutes)

#### PART 1 (30-40 minutes)

1. Divide students into two groups (or 4 or 6 if the class is too large), one half of the class for each Supreme Court case. The students will be working in this group throughout the entire lesson. Give **WORKSHEET 2A** to all students in the *Engel v. Vitale* group, and give **WORKSHEET 2B** to all students in the *Lynch v. Donnelly* group. Ask students to write a summary of the case and provide arguments from both sides of the case. They can present their research to the class in many ways: orally, using poster board, the whiteboard, etc. Tech-based presentation methods include PowerPoint, Prezi, Glogster EDU, Zoho Show 2.0, and others. Students will be given five minutes to present their court case. In addition to using the worksheet, students are encouraged to do additional research online using reputable (academic) sources.

2. After 20-30 minutes, bring students back together as a class to share their findings. Students should be



# AMERICAN TRUSTEES

## Learning the Establishment Clause (ctd.)

able to explain their court ruling with reference to the First Amendment. Students should take notes during the discussion and should be able to ask questions of their peers after the presentation is over. It does not matter which group presents first. Presentations and questions should last about 10 minutes in total.

### PART 2 (30-40 minutes)

3. After the two groups present their cases, have the *Engel v. Vitale* group examine and argue Marian's point of view from *Doe v. Santa Fe* and have the *Lynch v. Donnelly* group examine and argue Santa Fe ISD's point of view. Both groups should receive a copy of **WORKSHEET 3**. In addition, give the *Engel v. Vitale* group **WORKSHEET 4A**, and give the *Lynch v. Donnelly* group **WORKSHEET 4B**. Allow the students 20-30 minutes to work in their groups, allowing them enough time to re-watch the video.

4. After 20-25 minutes, invite the groups to present to the class once more with their findings and legal opinions, again referencing the Religion Clauses of the First Amendment in each of their explanations. It does not matter which side of the argument (Lynch or Engel) goes first. Again, students should take notes and ask questions. Presentations and questions should last about 10 minutes in total.

### HOMEWORK

Have students write their own opinions on *Doe v. Santa Fe* as if they were a Supreme Court judge, using the exact words from the First Amendment to defend their opinions and create counterarguments against the other point of view. Give them **WORKSHEET 5** to use as a sample and **WORKSHEET 6** to use as a guide. Also encourage them to use their notes from class presentations as guides.

### ASSESSMENT

Students may be assessed on:

1. Worksheet 1;
2. their research skills;
3. participation in presentation and defense of court opinions; and
4. completion of homework assignment.



# AMERICAN TRUSTEES

Name: \_\_\_\_\_

Date: \_\_\_\_\_

## Worksheet 1: Learning the Establishment Clause

### The First Amendment: Religion Clauses

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

*The first half of the sentence (“Congress shall make no law respecting an establishment of religion”) is called the Establishment Clause. The second half of the sentence (“Or prohibiting the free exercise thereof”) is called the Free Exercise Clause.*

### Compare and Contrast

Compare and contrast the Religion Clauses of the First Amendment to the phrase “separation of church and state.” Do they mean the same thing? Or do they mean different things? Explain.

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Why do you think the Founding Fathers felt that they needed to include both the Establishment Clause and the Free Exercise Clause? Can you think of any events in early U.S. History that may have influenced them?

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# AMERICAN TRUSTEES

## Worksheet 2a: Engel v. Vitale Summary

**Petitioner:** Engel

**Respondent:** Vitale [Board of Regents]

**Decided By:** Warren Court (1962)

**Argued:** Tuesday, April 3, 1962

**Decided:** Monday, June 25, 1962

**Facts of the Case:** The Board of Regents for the State of New York authorized a short, voluntary prayer for recitation at the start of each school day. This was an attempt to defuse the politically potent issue by taking it out of the hands of local communities. The blandest of invocations read as follows: "Almighty God, we acknowledge our dependence upon Thee, and beg Thy blessings upon us, our teachers, and our country."

**Question:** Does the reading of a nondenominational prayer at the start of the school day violate the "establishment of religion" clause of the First Amendment?

**Decision:** 6 votes for Engel, 1 vote(s) against

**Legal provision:** Establishment of Religion

**Conclusion:** Yes. Neither the prayer's nondenominational character nor its voluntary character saves it from unconstitutionality. By providing the prayer, New York officially approved religion. This was the first in a series of cases in which the Court used the establishment clause to eliminate religious activities of all sorts, which had traditionally been a part of public ceremonies. Despite the passage of time, the decision is still unpopular with a majority of Americans.

**Source:** [http://www.oyez.org/cases/1960-1969/1961/1961\\_468/](http://www.oyez.org/cases/1960-1969/1961/1961_468/)



# AMERICAN TRUSTEES

## Worksheet 2b: Lynch v. Donnelly Summary

**Petitioner:** Lynch

**Respondent:** Donnelly

**Decided By:** Burger Court (1981-1986)

**Argued:** Tuesday, October 4, 1983

**Decided:** Monday, March 5, 1984

**Facts of the Case:** The city of Pawtucket, Rhode Island, annually erected a Christmas display located in the city's shopping district. The display included such objects as a Santa Claus house, a Christmas tree, a banner reading "Seasons Greetings," and a nativity scene. The creche had been included in the display for over 40 years. Daniel Donnelly objected to the display and took action against Dennis Lynch, the Mayor of Pawtucket.

**Question:** Did the inclusion of a nativity scene in the city's display violate the Establishment Clause of the First Amendment?

**Decision:** 5 votes for Lynch, 4 vote(s) against

**Legal provision:** Establishment of Religion

**Conclusion:** No. In a 5-to-4 decision, the Court held that notwithstanding the religious significance of the creche, the city had not violated the Establishment Clause. The Court found that the display, viewed in the context of the holiday season, was not a purposeful or surreptitious effort to advocate a particular religious message. The Court found that the display merely depicted the historical origins of the Holiday and had "legitimate secular purposes." The Court held that the symbols posed no danger of establishing a state church and that it was "far too late in the day to impose a crabbed reading of the [Establishment] Clause on the country."

**Source:** [http://www.oyez.org/cases/1980-1989/1983/1983\\_82\\_1256](http://www.oyez.org/cases/1980-1989/1983/1983_82_1256)



# AMERICAN TRUSTEES

## Worksheet 3: Santa Fe ISD v. Doe Summary

**Petitioner:** Santa Fe Independent School Dist.

**Respondent:** Doe

**Decided By:** Rehnquist Court (1994-2005)

**Argued:** Wednesday, March 29, 2000

**Decided:** Monday, June 19, 2000

**Facts of the Case:** Prior to 1995, a student elected as Santa Fe High School's student council chaplain delivered a prayer, described as overtly Christian, over the public address system before each home varsity football game. One Mormon and one Catholic family filed suit challenging this practice and others under the Establishment Clause of the First Amendment. The District Court enjoined the public Santa Fe Independent School District (the District) from implementing its policy as it stood. While the suit was pending, the District adopted a new policy, which permitted, but did not require, student-initiated and student-led prayer at all the home games and which authorized two student elections, the first to determine whether "invocations" should be delivered at games, and the second to select the spokesperson to deliver them. After the students authorized such prayers and selected a spokesperson, the District Court entered an order modifying the policy to permit only nonsectarian, nonproselytizing prayer. The Court of Appeals held that, even as modified by the District Court, the football prayer policy was invalid. The District petitioned for a writ of certiorari, claiming its policy did not violate the Establishment Clause because the football game messages were private student speech, not public speech.

**Question:** Does the Santa Fe Independent School District's policy permitting student-led, student-initiated prayer at football games violate the Establishment Clause of the First Amendment?

**Decision:** 6 votes for Doe, 3 vote(s) against

**Legal provision:** Establishment of Religion

**Conclusion:** Yes. In a 6-3 opinion delivered by Justice John Paul Stevens, the Court held that the District's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause. The Court concluded that the football game prayers were public speech authorized by a government policy and taking place on government property at government-sponsored school-related events and that the District's policy involved both perceived and actual government endorsement of the delivery of prayer at important school events. Such speech is not properly characterized as "private," wrote Justice Stevens for the majority. In dissent, Chief Justice William H. Rehnquist, joined by Justices Antonin Scalia and Clarence Thomas, noted the "disturbing" tone of the Court's opinion that "bristle[d] with hostility to all things religious in public life."

**Source:** [http://www.oyez.org/cases/1990-1999/1999/1999\\_99\\_62](http://www.oyez.org/cases/1990-1999/1999/1999_99_62)





# AMERICAN TRUSTEES

## Worksheet 4a: Guiding Questions for Engel v. Vitale Group

1. Is the outcome in *Santa Fe ISD v. Doe* the same as or different from *Engel v. Vitale*? In other words, was the Establishment Clause violated or not?
2. What similarities do these two cases have that might have contributed to the outcomes? Think about the setting of the cases (public or private, classroom versus football field), the participants in each case (are students leading the prayer or being asked to say it?), and the nature of participation (voluntary or involuntary).
3. Now, challenge yourselves to think of Marian's point-of-view. She was asked to give a "message" of her choosing, and she chose to give a religious message. Her attorney claimed that having a policy that *prevented* a religious message was just as unconstitutional as *forcing* students to take part in a prayer at school. "Neither of those policies are neutral," he said, "And schools must be neutral in matters of religion." Reread the Religion Clauses and use the Clauses to defend his point-of-view. Explain how the Free Exercise Clause might give Marian, as a student and individual, the right to give her religious message at the football game.



# AMERICAN TRUSTEES

## Worksheet 4b: Guiding Questions for Lynch v. Donnelly Group

1. Is the outcome in *Santa Fe ISD v. Doe* the same as or different from *Lynch v. Donnelly*? In other words, was the Establishment Clause violated or not?
2. What differences do these two cases have that might have contributed to their outcomes? Think about the setting of the cases (school versus shopping district), the participants in each case (students leading prayer and shoppers at a mall), and the nature of participation (voluntary or involuntary).
3. Now, challenge yourself to think of Santa Fe ISD's point-of-view. Government endorsement of religion is prohibited in the Establishment Clause, and Santa Fe ISD is a public school district under the government. In the video, Professor Powe said that the only way Santa Fe ISD can be neutral is to disallow any and all religious speech and only give the game's "play-by-play." Since the district provided the football field, PA system, and crowd for Marian's message, any religious speech given in that setting would be government endorsement of religion, according to Powe. Reread the Religion Clauses and use the Clauses to defend his point-of-view. Explain how the Establishment Clause prohibits Marian from making her speech at the school football game.



# AMERICAN TRUSTEES

## Worksheet 5: Opinion from *Engel v. Vitale*

### MR. JUSTICE BLACK delivered the opinion of the Court.

The respondent Board of Education of Union Free School District No. 9, New Hyde Park, New York, acting in its official capacity under state law, directed the School District's principal to cause the following prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day:

*Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.*

This daily procedure was adopted on the recommendation of the State Board of Regents, a governmental agency created by the State Constitution to which the New York Legislature has granted broad supervisory, executive, and legislative powers over the State's public school system. These state officials composed the prayer which they recommended and published as a part of their "Statement on Moral and Spiritual Training in the Schools," saying:

We believe that this Statement will be subscribed to by all men and women of good will, and we call upon all of them to aid in giving life to our program.

Shortly after the practice of reciting the Regents' prayer was adopted by the School District, the parents of ten pupils brought this action in a New York State Court insisting that use of this official prayer in the public schools was contrary to the beliefs, religions, or religious practices of both themselves and their children. Among other things, these parents challenged the constitutionality of both the state law authorizing the School District to direct the use of prayer in public schools and the School District's regulation ordering the recitation of this particular prayer on the ground that these actions of official governmental agencies violate that part of the First Amendment of the Federal Constitution which commands that "Congress shall make no law respecting an establishment of religion" -- a command which was "made applicable to the State of New York by the Fourteenth Amendment of the said Constitution." The New York Court of Appeals, over the dissents of Judges Dye and Fuld, sustained an order of the lower state courts which had upheld the power of New York to use the Regents' prayer as a part of the daily procedures of its public schools so long as the schools did not compel any pupil to join in the prayer over his or his parents' objection. We granted certiorari to review this important decision involving rights protected by the First and Fourteenth Amendments.

We think that, by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause. There can, of course, be no doubt that New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer is a religious activity. It is a solemn avowal of divine faith and supplication for the blessings of the Almighty. The nature of such a prayer has always been religious, none of the respondents has denied this, and the trial court expressly so found:

The religious nature of prayer was recognized by Jefferson, and has been concurred in by theological writers, the United States Supreme Court, and State courts and administrative officials, including New York's Commissioner of Education. A committee of the New York Legislature has agreed.

The Board of Regents as amicus curiae, the respondents, and intervenors all concede the religious nature of prayer, but seek to distinguish this prayer because it is based on our spiritual heritage. . . .



# AMERICAN TRUSTEES

## Worksheet 5: Opinion from *Engel v. Vitale* (ctd.)

The petitioners contend, among other things, that the state laws requiring or permitting use of the Regents' prayer must be struck down as a violation of the Establishment Clause because that prayer was composed by governmental officials as a part of a governmental program to further religious beliefs. For this reason, petitioners argue, the State's use of the Regents' prayer in its public school system breaches the constitutional wall of separation between Church and State. We agree with that contention, since we think that the constitutional prohibition against laws respecting an establishment of religion must at least mean that, in this country, 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...

### **MR. JUSTICE STEWART, dissenting.**

A local school board in New York has provided that those pupils who wish to do so may join in a brief prayer at the beginning of each school day, acknowledging their dependence upon God and asking His blessing upon them and upon their parents, their teachers, and their country. The Court today decides that, in permitting this brief nondenominational prayer, the school board has violated the Constitution of the United States. I think this decision is wrong.

The Court does not hold, nor could it, that New York has interfered with the free exercise of anybody's religion. For the state courts have made clear that those who object to reciting the prayer must be entirely free of any compulsion to do so, including any "embarrassments and pressures." ... But the 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.

The Court's historical review of the quarrels over the Book of Common Prayer in England throws no light for me on the issue before us in this case. England had then and has now an established church. Equally unenlightening, I think, is the history of the early establishment and later rejection of an official church in our own States. For we 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. Moreover, I think that the Court's task, in this as in all areas of constitutional adjudication is not responsibly aided by the uncritical invocation of metaphors like the "wall of separation," a phrase nowhere to [p446] be found in the Constitution. 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. Since the days of John Marshall, our Crier has said, "God save the United States and this Honorable Court." Both the Senate and the House of Representatives open their daily Sessions with prayer. Each of our Presidents, from George Washington to John F. Kennedy, has, upon assuming his Office, asked the protection and help of God.

The Court today says that the state and federal governments are without constitutional power to prescribe any particular form of words to be recited by any group of the American people on any subject touching religion. One of the stanzas of "The Star-Spangled Banner" made our National Anthem by Act of Congress in 1931, contains these verses:



# AMERICAN TRUSTEES

## Worksheet 5: Opinion from *Engel v. Vitale* (ctd.)

*Blest with victory and peace, may the heav'n rescued land  
Praise the Pow'r that hath made and preserved us a nation,  
Then conquer we must, when our cause it is just.  
And this be our motto "In God is our Trust."*

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." In 1952, Congress enacted legislation calling upon the President each year to proclaim a National Day of Prayer. Since 1865, the words "IN GOD WE TRUST" have been impressed on our coins.

Countless similar examples could be listed, but there is no need to belabor the obvious. It was all summed up by this Court just ten years ago in a single sentence: "We are a religious people whose institutions presuppose a Supreme Being." ...

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.

I dissent.

**Source:** [http://www.law.cornell.edu/supremecourt/text/370/421#writing-USSC\\_CR\\_0370\\_0421\\_ZO](http://www.law.cornell.edu/supremecourt/text/370/421#writing-USSC_CR_0370_0421_ZO)



# AMERICAN TRUSTEES

## Worksheet 6: Guide to Writing Supreme Court Opinions

Your opinion does not have to be a certain length. Take these four steps and explain your argument very clearly. Make sure to address counterarguments to your opinion.

- 1) Summarize the facts of the case—who, what, when, where, and why?

*“The respondent Board of Education of Union Free School District No. 9 ...directed the School District's principal to cause the following prayer to be said aloud by each class in the presence of a teacher at the beginning of each school day...”*

- 2) Give your opinion on whether or not this case violates the Establishment Clause and use the Religion Clauses to support your argument.

*“We think that, by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause.”*

- 3) Explain why the other point-of-view is incorrect under the Constitution.

*“...the 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.”*

- 4) Provide a conclusion that sums up the rest of your argument.

*“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. I dissent.”*