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THE STATE OF FAITH: RELIGION AND RACE IN THE 1985 ALABAMA CASE OF
WALLACE V. JAFFREE

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ABSTRACT

This thesis investigates the 1985 Supreme Court decision *Wallace v. Jaffree*. The case originated in a lawsuit against the State of Alabama by Ishmael Jaffree, an agnostic African American who challenged Governor George Wallace and two Alabama school prayer statutes. The first, enacted in 1981, instructed public schools to allocate time during the school day for a moment of silence for “voluntary prayer.” The second, passed in 1982, instructed teachers to lead their classes in a specific prayer approved by the Alabama State Legislature. Jaffree argued that these laws violated the First Amendment rights of his children, who were students in the Mobile public school system. In a 6-3 decision, the Supreme Court declared the Alabama statutes unconstitutional under the Establishment Clause. The Court rejected Wallace’s states’ rights argument against the incorporation of the First Amendment. In an equally significant dissent, Associate Justice William Rehnquist critiqued the concept of a wall of Church-State separation.

My method combines constitutional history and intellectual history. My analysis focuses on religious advocacy, racial tension, and the personalities of the individuals involved. Religion and race were interconnected in the case, not only due to the racial differences of the contending parties, but more subtly through the states’ rights argument. In this case, Wallace applied the classic argument for state sovereignty, which he developed in the context of civil rights, to the issue of public religious observance. Religion, race, and civil authority converge in this case, giving it great historical significance.

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Chapter 1 The Foundations

On September 16, 1981, five-year-old Chioke Jaffree returned home from school in Mobile, Alabama, and complained to his father about a prayer his teacher led in class before meals. His father, Ishmael Jaffree, an agnostic African American attorney, viewed this prayer as a direct infringement upon his son's First Amendment rights.

What began as a simple complaint ballooned into complex legal procedure that brought the highest Alabama officials into the arguments, and ultimately landed in front of the Supreme Court. As the situation progressed, Jaffree came to directly challenge one particular Alabama state statute. This was originally coupled with two related statutes also addressed in the rulings, but the other two ultimately did not act as the main points of contention in arguments before the Supreme Court.

The initial statute, §16-1-20, passed in 1978, instructed that time be allocated from each school day for a moment of silence for meditation. The first amended version, §16-1-20.1, passed in 1981, became the main focus of the Supreme Court. It instructed public schools to allocate time out of the school day for a moment of silence for "meditation and voluntary prayer." A second amended version, §16-1-20.2, passed in 1982, instructed teachers to lead their classes in a prayer approved and adopted by the Alabama State Legislature.¹ This second amended version was so unanimously affirmed as unconstitutional during the Supreme Court proceedings that it did not warrant any debate.

Wallace v. Jaffree, as the case was eventually titled, was decided on June 4, 1985. In a 6-3 decision, the Supreme Court ruled in favor of Jaffree and declared the Alabama law code §16-1-20.1 unconstitutional under the First Amendment. Justices William Brennan, Thurgood

¹ Alabama law codes §16-1-20, §16-1-20.1, and §16-1-20.2.

Marshall, Harry Blackmun, Lewis Powell, and Sandra Day O'Connor joined Justice John Paul Stevens in the majority. In the Court's opinion, Justice Stevens analyzed the arguments of the State of Alabama's defense. These contended that the restriction of school prayer was an overreach of federal authority. Stevens ultimately concluded that the tradition of the First Amendment's incorporation in the states via the Fourteenth Amendment was well established and the defense's arguments were unfounded. The Court also concluded that the statute was imposed for "no secular legislative purpose" and was implemented solely for the endorsement of religion. Asserting that government must pursue complete neutrality towards religion, the Court nullified the state statute.²

In his dissent, Associate Justice William Rehnquist not only attacked the Court's reasoning on these First Amendment issues, but also Supreme Court precedent. At the core of his argument Rehnquist asserted that these decisions had been made on a misunderstanding of the interpretation of the amendment, and had falsely relied upon writings of Thomas Jefferson written years after the amendment was ratified. The Court had confused these writings, Rehnquist said, with a true understanding of what the amendment actually declared.³

The individuals involved in *Wallace v. Jaffree* impacted the case almost as much as the case impacted the accepted understanding of religion's place in the Alabama school system. Issues of race and religion converged in an already racially tense American South in a case that was partially shaped as a struggle over states rights. During the second half of the twentieth century Alabama used the argument of sovereignty of the states to defend both segregation and

² *Wallace v. Jaffree*, 472 U.S. 38, 1985, (Justice Stevens).

*All Supreme Court Opinions accessed via *Cornell Legal Information Institute* of the Cornell University Law School, unless otherwise noted.

³ *Ibid.* (Justice Rehnquist).

religion's presence in public schools. Jaffree's civil rights advocacy, as well as his race, also influenced the case in subtle ways. This case as a whole was a historically influential decision.

This study is situated at the juncture of constitutional history and intellectual history. Just as various social elements of the case converged in *Wallace v. Jaffree*, this study does the same with these two facets of history. Religious advocacy, racial tension, and those who carried principles into action will all be analyzed.

In this introduction, the history of the First Amendment will be presented to lay a firm foundation that grounds all subsequent arguments about its meaning. Through this history, other foundational First Amendment cases will be analyzed not only as precedents, but also to offer insight into how the First Amendment has been interpreted and understood, and how these interpretations have changed over the course of time.

In addition, a biographical analysis of the two key individuals, George Wallace and Ishmael Jaffree, will illuminate the background of these contested aspects of the First Amendment, as well as the issues of race and religion, and how each variable contributed to the case's development. Also, a biographical approach permits the case to be easily presented from opposing sides. This gives insight into the thoughts, actions, and logic of both parties, and helps present the progress of the case in a chronological way.

The thesis culminates in the final Court decision as well as the rhetoric of Rehnquist's dissenting opinion. Justice Rehnquist questioned foundational aspects of the reasoning not only of the majority opinion, but past courts as well. His opinion had implications that reached much farther than the matter of *Wallace v. Jaffree*. The dissent and its future implications must be examined because they reveal the varied aspects of the case and present the ruling in an alternative light.

The Establishment of the Establishment Clause

The term “religion” scarcely appears in the Constitution of the United States of America. Despite its rarity within the actual document, there has been no shortage of conflict about the relation of religion and the state in America’s short history as a nation. This uncertainty, stemming from religion’s place in public life, often culminates in appearances before the Supreme Court. The Court then procedurally looks back to the Constitution for guidance in rendering a decision. This cycle has been the motor churning frequent debate on the issue of Church-State relations in America.⁴

Religion is a key aspect of the First Amendment to the Constitution. The Establishment and Free Exercise Clauses of the First Amendment are the first statements within this amendment. “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”⁵ These few words have sparked countless debates and challenges as to their meaning and implications.

From the document’s creation, drafters of the Constitution had concerns regarding the establishment of a national religion. The notion of an established religion endorsed by government did not, however, begin on a national level. Many colonies, and soon thereafter states, maintained a state-sponsored religion before and after America’s declaration of independence. Around the time of the Declaration of Independence in 1776, Virginia was one such state that maintained an established religion. With religious groups observing faiths other than the official Church of England growing in numbers, dissenters confronted state political leaders. Citizens who adhered to the Baptist and Presbyterian faiths were two of the larger and

⁴ I will use the traditional terms “Church” and “State” throughout this thesis. I recognize, however, that in modern America, relevant religions include more than just Christian churches, as this inherited terminology implies.

⁵ U.S Constitution, First Amendment.

louder groups calling for a formal separation between the Church and State.⁶ If this were to be achieved, those religious groups would have the freedom they desired to profess and preach their respective faiths.

A major force driving such dissent, however, was more pragmatic than any abstract protest. Throughout the country in the years following the Declaration of Independence, states like Maryland, Georgia, and South Carolina, while not all having established a specific state-sponsored church, levied taxes on their citizens “for the support of the Christian religion.”⁷ Often, despite not being forced to attend any specific church, citizens funded these congregations by their taxes without any spiritual investment for themselves. These practical circumstances compounded already tense religious fervor and threatened religious and political conflict.

Recognizing this dissenting mood throughout the nation, Thomas Jefferson, James Madison, and the State of Virginia became models for the secularization of American government. Despite not being a member of any dissenting group, Thomas Jefferson first drafted a piece of legislation advocating the toleration of all religions in Virginia in 1777. The bill, titled the Bill for Establishing Religious Freedom, was presented to the state legislature on June 12, 1779. To his dismay, the House of Burgesses rejected the bill.⁸ Jefferson, though, did not resign himself to this defeat.

Nearly a decade later, the Virginia Act for Establishing Religious Freedom was presented to the Virginia House of Delegates. Almost an exact copy of the Bill for Establishing Religious

⁶ Clifton E. Olmstead, *History of Religion in America* (Englewood Cliffs: Prentice Hall) 1960, 212.

⁷ Amanda Porterfield and John Corrigan, eds. *Religion in American History* (Cambridge: Blackwell Publishing Ltd) 2010, 105.

⁸ “Act For Establishing Religious Freedom, January 16, 1786, *Virginia Memory*, The University of Virginia Libraries, http://www.virginiamemory.com/online_classroom/shaping_the_constitution/doc/religious_freedom, accessed 26 February 2013.

Freedom, the Virginia Act was formally presented in 1786. This bill aimed once and for all to separate any ties between religion and the Virginia government:

No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in nowise diminish, enlarge, or affect their civil capacities.⁹

Jefferson, who was then serving as a diplomatic minister to France, was unable to attend the presentation of his landmark bill. He instead relied on his peer and colleague James Madison formally to sponsor the legislation.

After circulating a petition to the people of the state, Madison drummed up enough support for the passage of the bill. Religion, he asserted in his 1785 proposal in support of Jefferson's legislation, was as pressing as any other essential right of the people, and therefore religious practice should not be subjected to governmental regulation; rather, religion should be "untouched and sacred" and left to the choice of the individual.¹⁰ With overwhelming public support, Madison successfully pushed Jefferson's bill through the legislature by a vote of 60-27.¹¹

This bill soon became a model for what eventually was adopted as the Establishment Clause of the First Amendment of the Constitution in 1791. Jefferson had set a precedent that has lasted centuries and made a large impact on countless Supreme Court decisions. Perhaps the

⁹ Thomas Jefferson, *The Virginia Statute for Religious Freedom*, 1786, accessed, *Bill of Rights in Action*, from The Constitutional Rights Foundation. Fall 2010. (Volume 26, No.1).

¹⁰ James Madison, *Memorial and Remonstrance Against Religious Assessments*, 1785, University of Virginia Libraries, http://religiousfreedom.lib.virginia.edu/sacred/madison_m&r_1785.html, accessed 21 February 2013.

¹¹ "The Virginia Statute for Religious Freedom: The Road to the First Amendment," *Bill of Rights in Action*, from The Constitutional Rights Foundation, Fall 2010, (Volume 26, No.1), <http://www.crf-usa.org/bill-of-rights-in-action/bria-26-1-the-virginia-statute-for-religious-freedom.html#UVsEUGlrOXw>, accessed 26 February 2013.

deepest impact Jefferson made on Church-State relations, however, was not with his Virginia Statute, but with the language he invoked in his 1802 letter to the Danbury [Connecticut] Baptist Association.

In response to the Baptists' concern for a lack of minority religious protection in the Connecticut Constitution, then-President Jefferson reassured the Baptists not to worry, and asserted:

Believing with you that religion is a matter which lies solely between man & his God ... that the legislative powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State.¹²

The wording "wall of separation" that Jefferson coined in this letter would serve as a much-contested foundation for interpreting future First Amendment cases.

This phrase, though, first appeared a decade after the First Amendment was ratified. While it is impossible to discern how much significance Jefferson intended this characterization of a Church-State wall to have, its impact going forward was considerable.

The notion of a wall did not appear in the actual amendment. The Establishment and Free Exercise Clauses of the amendment simply state, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." By this language, the prohibition of any religious establishment only applied at the federal level. Its application to the states was undetermined until the adoption of the Fourteenth Amendment, which was formally ratified in 1868. Even then, however, these clauses of the First Amendment specifically had not been applied to the states via the Fourteenth Amendment until almost a century later in 1947.¹³

¹² Thomas Jefferson, Letter to the Danbury Baptists, 1 January 1802, The Library of Congress, <http://www.loc.gov/loc/lcib/9806/danpre.html>, accessed 26 February 2013.

¹³ *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1, 1947.

Both before and after this date, however, states tangled with the federal government over the issue of the reach of its jurisdiction under the First Amendment. In these conflicts, the Supreme Court was the ultimate moderator and decision-making body.

Through foundational Supreme Court cases, the interpretations of the Establishment and Free Exercise Clauses will be seen to vary with the Justices' political leanings and understandings of past precedent. A major issue that seemed to encompass each landmark case, however, was the reliance upon extra-constitutional documents, specifically Thomas Jefferson's letter to the Danbury Baptists. Over time, Supreme Court Justices generally relied on the presumed existence of a "wall of separation" between the Church and State. Some Justices, however, pointed out that this wall has no basis in the amendment itself and therefore should not be used to rule one way or the other.

It is quite apparent, in any case, that the interpretation of the First Amendment has changed throughout the passage of time. Such a metamorphosis is exemplified through cases that deal with this issue specifically.

Foundational Cases

In the 1878 case of *Reynolds v. United States*, the Supreme Court faced a question of the liability of an individual for a crime committed in the name of religion. The final decision declared that religious duty was an unacceptable defense against criminal indictment. George Reynolds, a Mormon, had been indicted for practicing bigamy, an action he defended as essential to his religious beliefs. While he argued that polygamy was protected under his Free Exercise rights, the Court examined if this was in fact a truly protected action.

Chief Justice Morrison Waite analyzed the application of religion to matters of the State. He held: “The word ‘religion’ is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted.”¹⁴ The Court turned to Thomas Jefferson and James Madison because they were seen as leading thinkers on the question of Church-State relations.

Taking into account both the First Amendment and the writings of Jefferson, Waite acknowledged Jeffersonian writings that read, “Religion is a matter which lies solely between man and his God,” and also, “legislative powers of the government reach actions only, and not opinions.”¹⁵ From this, Waite ruled that while Congress and the Court could not prohibit religious belief, the actions stemming from this belief were subject to the law.¹⁶ Waite was the first to articulate that “a wall of separation [exists] between church and State.” He went on to write, “Coming as this [phrase] does from an acknowledged leader ... [the wall of separation] may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured.”¹⁷ With this opinion, Waite and the Supreme Court established a precedent that would come to significantly influence future opinions of the Court.

Twentieth century cases built on the logic of *Reynolds*. In some rulings, however, the notion of a wall of separation was viewed as compatible with considerable state support of religion. On November 20, 1946, the Supreme Court heard arguments on the matter of *Everson v. Board of Education of the Township of Ewing*, New Jersey. In their final decision, Justices for

¹⁴ *Reynolds v. United States*, 98 U.S. 145, October 1878 (Justice Waite).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

both the majority and dissenting opinions invoked Jefferson's, and then Waite's, articulated notion of the "wall of separation" between Church and State.

In *Everson*, a New Jersey resident disputed the allocation of his tax dollars to provide transportation for students to private, largely Catholic parochial, schools. This allocation, he argued, was a breach of the First Amendment and should not be tolerated. As the case found its way to the Supreme Court, one key issue was the authority of the First Amendment over the states.

On February 10, 1947, in a contentious 5-4 vote, the Supreme Court ruled in favor of the school district, finding that the transportation policy was not in conflict with the Establishment Clause. In his majority opinion, Justice Hugo Black asserted, "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here."¹⁸ Black defended the use of the tax dollars in this way, contending that the reimbursements were given to all students, and further, were paid directly to individual parents, not specific religious institutions. Perhaps the most significant aspect of this case, however, was the definition of the Establishment Clause that Justice Black presented:

The "establishment of religion" clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another ... No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion ... In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State." *Reynolds v. United States, supra*, at 164.¹⁹

Justice Wiley Blount Rutledge and the other three dissenters did in fact agree with Justice Black's definition of the Establishment Clause. By this same logic, however, Rutledge argued

¹⁸ *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1, 1947 (Justice Black).

¹⁹ *Ibid.*

that the school district's practice should be struck down as unconstitutional. "The funds used here were raised by taxation. The Court does not dispute, nor could it, that their use does, in fact, give aid and encouragement to religious instruction. It only concludes that this aid is not 'support' in law."²⁰ According to Rutledge, Black's own definition made allocation most certainly a breach of the restrictions of the Establishment Clause. To strengthen this assertion, Rutledge invoked the writings of Thomas Jefferson:

I cannot believe that the great author of those words [of the Virginia Statute for Religious Freedom], or the men who made them law, could have joined in this decision. Neither so high nor so impregnable today as yesterday is the wall raised between church and state by Virginia's great statute of religious freedom and the First Amendment now made applicable to all the states by the Fourteenth.²¹

The Court's decision, however, perhaps made more of an impact on public support of religion, and the authority of the federal government over financial support by the states, than its actual use of the term, "wall of separation."

Everson marked the first instance in which the Establishment Clause was made applicable to the states via the Due Process Clause of the Fourteenth Amendment.²² Prior to this, the First Amendment only applied to the actions of the federal government. The impact of this new application of the First Amendment was far-reaching and led to numerous subsequent cases aimed at adjudicating Church-State relations.

A landmark in this new application occurred almost two decades later in 1962. *Engel v. Vitale* considered the place of prayer in public school systems. In a 6-1 decision, the Court ruled that a prayer provided by public officials to be recited in New York State public school systems

²⁰ Ibid. (Justice Rutledge).

²¹ Ibid.

²² "Judicial Interpretation of the Fourteenth Amendment," *United States Courts*, <http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks/JudicialInterpretationFourteenthAmendment.aspx>, accessed 26 February 2013.

violated the Establishment Clause of the First Amendment.²³ Following the introduction of the Regents' Prayer, parents of ten pupils claimed that this prayer was in direct contradiction of their religious beliefs, and clearly infringed upon their children's First Amendment rights. These individuals saw this expression as unnecessary and as having no place in public schools.²⁴ The majority ruled, "[The] 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."²⁵ While not citing Jefferson explicitly, the Court majority nevertheless embraced his "wall of separation" interpretative line.

Arguments in favor of New York asserted that this prayer was nondenominational in its nature, and furthermore, was completely voluntary. Because of these conditions, the defense argued, it was not a breach of anyone's freedom of religion.²⁶ These contentions, however, did not convince the majority of the Justices.

Associate Justice Potter Stewart, the lone dissenter, questioned the Court's holding. He claimed that the ruling's reliance on the metaphorical wall between Church and State was entirely unfounded. "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 be found in the Constitution."²⁷ Despite this reasoning, the majority ruled that the prayer, regardless of the allowance for abstention and its denominational neutrality, still violated the Establishment Clause, which was made applicable by the Fourteenth Amendment.

²³ Justice Frankfurter was not present because of health reasons. Justice Byron White did not sit for this case because he assumed his place on the Court after arguments had been made.

²⁴ *Engel v. Vitale*, 370 U.S. 421, 1962 (Justice Black).

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.* (Justice Stewart).

Engel marked the first sustained consideration of prayer in public school systems. Such a ruling was groundbreaking at the time. While previous cases had dealt with related areas, none of the previous rulings had such far-reaching consequences within public school systems. This is not to say that the majority opinion reflected the overwhelming opinion of the people of the time. It did not reflect even the opinions of all the Justices. This case, though, did not cover all practices regarding religion and its place in public schools. Subsequent cases prove this fact.

In *Lemon v. Kurtzman*, which occurred in 1971, the Court established what has become the measuring tool for all cases involving the state's relationship with religion. This case dealt with Pennsylvania's Nonpublic Elementary and Secondary Education Act passed in 1968. The legislation approved reimbursing any non-public education system, the majority of which were Catholic institutions, for salaries of the teachers who instructed secular, non-religious topics of study. Ultimately, the legislation was declared a violation of the First Amendment and therefore unconstitutional. *Lemon* also struck down the Rhode Island Salary Supplement Act, a law that endorsed a similar policy of compensation.

In an 8-0 vote, the Court held that "the cumulative impact of the entire relationship arising under the statutes involves excessive entanglement between government and religion."²⁸ In the majority opinion, though, Chief Justice Earl Warren echoed sentiments similar to those of Justice Stewart in the definition of a metaphorical wall of separation.

Our prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable... Judicial caveats against entanglement must recognize that the line of separation, far from being a "wall," is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.²⁹

²⁸ *Lemon v. Kurtzman*, 403 U.S. 602, 1971 (Justice Burger). Justice Thurgood Marshall filed a separate statement.

²⁹ *Ibid.*

Despite this sense of the “wall” being weaker than interpreted in recent cases, *Lemon* did in fact have an impact perhaps greater than questioning the wall’s strength.

The case set the legal standard for interpreting future instances of the relationship between Church and State. This standard became known as the “Lemon Test.” Taken from the language of the majority opinion of Chief Justice William Burger, the test had three criteria that must be met regarding a ruling on constitutionality under the Establishment Clause of the First Amendment. The first criterion was whether an act clearly had a secular legislative purpose. The second was whether its sole purpose was to advance or inhibit religion. The third was whether the statute fostered an excessive entanglement with government and religion. In all, the Lemon Test aimed to distinguish religious from secular legislation.

The test, however, elicited much criticism and is still subject to debate in numerous dissenting opinions of the Court. Both the Lemon Test and the notion of a wall are aspects of the tradition of the Court that find themselves under constant and intense scrutiny whenever invoked in judicial opinions. One similarity between these two concepts appears in arguments against their imposition on the states. As will become apparent in challenges to the federal government’s intervention on matters of civil rights, the issue of states’ rights connects past and future clashes of legal significance.

Religion, Race, and the American South

The landmark cases addressing religion and its place in school systems all have at least one commonality: their locations of origin in Pennsylvania, New York, and New Jersey. All of the cases originated in states in the American North. Church-State conflicts, though, were also

found in the American South. Civil rights issues focused on issues of race relations, however, overshadowed any questions of religious freedom in the southern part of the nation.

The South in the early and middle twentieth century most visibly struggled with race relations. Just as in the northern religious court cases, the southern constitutional debates also had a unifying factor. From the 1950s to the 1980s, the issues of religion and race converged together in the American South and revealed a distinctly southern struggle. The commonality in each of these conflicts, however, was the arguments against the intervention of the federal government in state lawmaking.

The seminal judgment was the 1954 Supreme Court ruling, *Brown v. Board of Education of Topeka, Kansas*, which declared that racial segregation of public school systems was unconstitutional. In its wake, massive white resistance occurred throughout the areas where segregation was practiced and was supported by state government. On September 4, 1957, for example, in Little Rock, Arkansas, Governor Orval E. Faubus ordered armed state militia to block entry of nine African American students to a previously all-white high school. Faubus later explained that racial integration forced by the Federal Court undoubtedly led to violence and bloodshed. He did not believe his well-known obstructive conduct constituted contempt of the Court.³⁰

This defiance of federal mandate characterized much of the southern resistance to integration. Most notably, this defiance came to light in cases in Mississippi and Alabama in later years. Racially conservative individuals in both states, when faced with the imminent integration of their school systems, outspokenly resisted and threatened to block it. In 1962, after Mississippi Governor Ross Barnett's public opposition to the integration of the University of Mississippi, violence broke out on the campus, resulting in two deaths and countless injuries.

³⁰ Benjamin Fine, "Arkansas Troops Bar Negro Pupils; Governor Defiant," *The New York Times*, 4 September 1957.

While not as devastating, a similar situation occurred one year later at the University of Alabama in Tuscaloosa.

In 1963, after frequent and adamant opposition to the integration of the University of Alabama, Governor George Wallace enacted political theatrics that would come in part to define his legacy. Fulfilling a campaign promise, Wallace stood in the doorway to the Foster Auditorium of the University, blocking the way for two black individuals to register as students at the school. Situations like these became typical of southern opposition to the integration of the public schools.

The commonality among the states' arguments against the *Brown* ruling was a perceived breach of a state's sovereignty and overextension of federal power. While the issues of segregation may appear separate from religious tensions, the legal arguments were uniformly centered on states' rights and local custom.

The line between the racial agenda and religious beliefs of white southerners at times was indistinguishable. Segregation, according to some, had foundational support in biblical scripture. Carey Daniel, a Baptist pastor from Texas and also a member of the White Citizens Council, defended segregation in his 1955 pamphlet, "God the Original Segregationist."³¹ Daniel relied on many biblical allusions to assert that God planned for segregation from the creation of humankind. The story of Noah's Ark was one such instance. "We have no reason to suppose that God did not make known to Noah and his children His divine plan of racial segregation immediately after the flood."³² Individuals like Daniel, however, were not the sole proponents of biblically endorsed segregation.

³¹ Paul Harvey, "God and Negroes and Sin and Salvation," in *Religion in the American South*, ed. Beth Schweiger and Donald Matthews (Chapel Hill: University of North Carolina Press, 2004).

³² Carey Daniel, "God the Original Segregationist," 1955, The University of Southern Mississippi Digital Collections, <http://digilib.usm.edu/cdm/compoundobject/collection/manu/id/2151>, accessed 29 March 2013.

In October 1957, the Summerton Baptist Church in South Carolina adopted a resolution opposing any type of integration. The reasons listed were:

1. God made men of different races and ordained basic differences between races.
2. Race has a purpose in the Divine plan, each race having a unique purpose and distinctive mission in God's plan.
3. God meant for people of different races to maintain the race purity and racial identity and seek the highest development of their racial group. God has determined the bounds of their habitation.³³

Other Baptist churches adopted similar stances on this ever-present issue of segregation.

Segregation, as these bodies and individuals asserted, was not only acceptable, but actually intended by God and prescribed by the Bible.

Relying on this form of Christian faith, racially conservative white southern Christians experienced distress as segregation in the school system was challenged and ultimately abolished by the Supreme Court in 1954. Initially, Southern Baptists were steadfast supporters of public education, as they contended that it “provided people with the skills to read and interpret the Bible.”³⁴ While most reacted to the *Brown* ruling with disdain, some religious leaders sought to preserve segregated education no matter the cost.

In 1963, the Baptist State Convention of South Carolina was joined by the Southern Baptist Convention in maintaining that, “Every person should be able to read the Scriptures for himself and thus the ability to read the Bible becomes basic to the individuals learning about God for himself.”³⁵ Education, in this sense, was as much entwined with religion as it was secular teachings. It was indeed worth preserving even if segregation was compromised.

The interplay of religion and race in southern public schools was a hallmark of the region. At the core of the situation, proponents of segregation looked to religion for backing and

³³ Mark Newman, *Getting Right With God: Southern Baptists and Desegregation, 1945-1995* (Tuscaloosa: University of Alabama Press, 2001) 53.

³⁴ *Ibid.* 87.

³⁵ *Ibid.* 89.

justification for their stance against the federal government's imposition of integration. Later, the idea of states' rights, developed by opponents of the civil rights struggle, was used to defend religion in southern schools.

While this struggle persisted over many years, advocates for civil rights helped end the practice of segregation of the South. Religion, however, remained a steadfast presence within the educational system. A widespread sentiment that united all races held religious teachings in public education to be permissible.³⁶ Especially for southern whites, the argument of states' rights versus federal intervention linked the issues of racial integration and religious practice in public schools in the South.

Tradition is Challenged

The American South was rife with components to provoke political and judicial fireworks. As integration began in the region, so did many religious tensions. Specifically, Alabama and its political leaders were among the most determined opponents of the federally mandated school secularization through cases like *Engel* and *Lemon*. These leaders even went so far as to allow the noncompliance with these mandates within their local school systems.³⁷

George Wallace, in his second term as Governor of Alabama from 1971 to 1979, was perhaps the most vocal of southern opponents in his opposition to the secularization of the public school system. He and other Alabama lawmakers blatantly ignored the Court's previous rulings on the Establishment Clause and openly encouraged the teaching and daily practice of religious

³⁶ Author's Telephone Interview with Ishmael Jaffree, 11 October 2012.

³⁷ Frank S. Ravitch, *School Prayer and Discrimination: The Civil Rights of Religious Minorities*, (Boston: University Press of New England, 2001) 42.

doctrine in the public education system. This fervor for spreading religious ideals expanded as the years passed.³⁸

In 1978, Wallace and the Alabama legislature passed state statute §16-1-20, which allowed public school teachers to lead their students in a moment of silence for “meditation.” Gradually, the legislature became more religiously active and, in 1981, under then-Governor Fob James, it passed state statute §16-1-20.1, which stated that a “voluntary prayer” might be said in schools during this mandated moment of silence.

Fob James took this statute one step further. In response to a direct challenge to this religious practice in the public school system by Ishmael Jaffree, James called a special session of lawmakers to the state capital in Montgomery. The lawmakers drafted and passed a law allowing the teachers in Alabama schools to lead the students in a prayer endorsed by the legislature, with its author being his son, Fob James III.¹³ With the support of many lawmakers, the Alabama legislature assertively defied federal precedent and instituted these measures with the passage of the 1982 state statute §16-1-20.2. This all would soon, to the dismay of these elected officials, come to a sudden halt.

Ishmael Jaffree, an African-American resident of Mobile County, was the main opponent of these statutes. Jaffree had three children in the public education system of Alabama. He was an agnostic civil rights attorney and native of Cleveland, Ohio. Jaffree requested an end to “maintaining or allowing the maintenance of regular religious prayer services or other forms of religious observances in the Mobile County Public School.”³⁹ He argued that such a practice was

³⁸ Charles Westmoreland Jr., “Wallace v. Jaffree (1985),” *Encyclopedia of Alabama*, University of Mississippi, <http://www.encyclopediaofalabama.org/face/Article.jsp?id=h-1623>, accessed 9 November 2012.

³⁹ *Wallace v. Jaffree*, 472 U.S. 38, 1985 (Justice Stevens).

a clear violation of his children's First Amendment rights.⁴⁰ Jaffree further alleged that the teachers had subjected two of his children to religious indoctrination. When his children did decline participate in religious activities, as was an option under the law, Jaffree claimed his children had endured harassment from fellow classmates. After repeated attempts to end the prayers within the schools, Ishmael Jaffree finally resorted to the court system. This battle began under Governor James in 1982, continued through the reelection of Governor Wallace, and reached its end finally in 1985.

In the 1983 District Court ruling, the prayer was sustained as an appropriate and legal practice in Alabama public schools. Jaffree appealed the Southern Alabama District Court's ruling to the Eleventh Circuit Court. In 1984, the appeals court reversed the District Court's decision ruling on the grounds of unconstitutionality. Appealing the Eleventh Circuit Court's ruling on the prayers, Governor George Wallace and the State of Alabama appealed to the United States Supreme Court.

In a majority 6-3 decision, the Warren Burger Court ruled that the mandatory school-sponsored silence to be used specifically for prayer violated the Establishment Clause according to the Lemon Test. The Court concluded that this practice was a state endorsement of religion and aimed to "return voluntary prayer" to the school system.⁴¹ Even more to this point, Justice John Paul Stevens wrote, in the Court's majority opinion, that the imposition of this voluntary and nondenominational prayer by the state legislature was in complete violation of the Establishment Clause. He maintained, "The government must pursue a course of complete neutrality towards religion."⁴²

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

This reasoning by the Court’s majority mirrored almost the exact arguments that Ishmael Jaffree and his counsel had presented the Court. It also rebutted the arguments that George Wallace and the State of Alabama advocated. According to Wallace, the intervention of the Supreme Court was a breach of state bounds and an unnecessary imposition upon the sovereignty of the states. According to Wallace, despite rulings such as *Everson*, the Thirty-Ninth Congress never intended the Fourteenth Amendment to impose the First Amendment upon the states. The core of Wallace’s arguments echoed many that he offered before in support of segregation.

States’ rights took its place at the center of both disputes. The reach of federal jurisdiction, however, is one determined by interpretation of precedent—as Associate Justice William Rehnquist did in his dissenting opinion of *Wallace v. Jaffree*.

The Dissent

In his dissent, Rehnquist systematically sifted through the historical basis for the majority ruling in *Wallace*. He based his arguments on Thomas Jefferson and James Madison, and their roles in the Constitutional convention. More specifically, Rehnquist was interested in explaining their arguments in the constitutional debate regarding the freedom of religion and their stances on the subject.⁴³ He concluded they did not intend Church and State to be separated by a high wall.

Rehnquist cited the statements of James Madison regarding a governmentally established religion and his approval of The Virginia Act for Establishing Religious Freedom, originally drafted by Thomas Jefferson. He interpreted the quotations that are so often referenced in regards to the “wall of separation.” After study of the term’s origin, Rehnquist asserted that Jefferson and Madison’s early arguments surrounding the relationship government should take toward

⁴³ Ibid. (Justice Rehnquist).

religion held no such language. Rehnquist argued, “[Madison’s] original language ‘nor shall any national religion be established’ obviously does not conform to the ‘wall of separation’ between the Church and State idea which latter-day commentators have ascribed to him.”⁴⁴ Rehnquist then pointed to this fact as a basis for his own arguments.

According to Rehnquist, not only had the Court based many of its past decisions on a faulty phrase, but it had further blurred the line between Church and State. This, in turn, distorted the true role that the State should assume in its relationship with religion. This role, as history showed, was quite difficult to define. Arguments in and out of the chambers of the Supreme Court have attempted to locate the boundary. The conclusions reached were constantly challenged and redefined.

Grounding his argument in the claim that *Everson v. Board of Education* deemed this “wall” as legitimate, Rehnquist objected to strict separation, arguing that the wall has been entirely “blurred in manner” and “dimly perceived” by others who interpret it.⁴⁵ With this assertion of a hazy boundary, Rehnquist assailed the wall, a key factor in Supreme Court rulings that connect all previous and future rulings on Church-State relations.

Rehnquist’s dissent is perhaps the most critical in any recent case dealing with the place of religion in public schools. It questioned the foundational premise that almost every Supreme Court ruling has relied upon to render a decision to this day. As it will be analyzed in much greater detail, Justice Rehnquist’s dissent opened a new line of reasoning.

Wallace v. Jaffree is a case that has been shaped by the individuals involved in the proceedings just as much as it has shaped perception of religion in public schools. This case was a decisive chapter in official legal struggles over religion and its place in public school systems.

⁴⁴ Ibid.

⁴⁵ Ibid.

Through analysis of the major actors and their histories, the significance of the case will become apparent. Those who impacted the case impacted much more than themselves. They also influenced local and national thinking about the states' role in religious life.

Chapter 2 George Wallace: Standing Up For Alabama

Introduction

George Wallace ascended the steps of the Montgomery Capitol Complex on the morning of January 14, 1963, for the last time as an ordinary citizen. Flocks of Alabamians fought frigid weather on that January morning to witness George Wallace become the 45th governor of their state. That inauguration day marked one of the coldest of any in recent history, having the temperature only rise to around 17 degrees Fahrenheit.¹ Wallace combated these bitter temperatures with searing rhetoric throughout the entirety of his inauguration speech. This speech set the tone of prolonged, complex, and oftentimes ironic administrations that spanned numerous decades.

Let us rise to the call of freedom-loving blood that is in us and send our answer to the tyranny that clanks its chains upon the South. In the name of the greatest people that have ever trod this earth, I draw the line in the dust and toss the gauntlet before the feet of tyranny . . . and I say . . . segregation today . . . segregation tomorrow . . . segregation forever.²

In these few lines of his inaugural speech, Wallace invoked points that aimed to stir sentiments of fraternity among white southerners against the perceived threats being imposed on the region by the federal government. Racial intolerance was also quite apparent. Wallace's emphasis on segregation embodied the focus of his administration for many subsequent years, and also set the stage for his eventual shift from this original policy to an almost complete

¹ "Gubernatorial Inauguration Facts," Alabama Department of Archives and History, <http://www.archives.state.al.us/inaug.html>, accessed 20 October 2012.

² George Wallace, "1963 Inaugural Address," 14 January 1963, Wallace Clippings: 1950-1990, George C. and Lurleen B. Wallace Papers, Alabama Department of Archives and History, Montgomery, Alabama.

*All manuscripts cited are located in the George C. and Lurleen B. Wallace Papers, Alabama Department of Archives and History [ADAH], Montgomery, Alabama, unless otherwise noted.

³reversal. Towards the end of his third term as governor, Wallace became an advocate not of racial segregation, but a crusader for religious liberty that he hoped would united the races in his state.

“Segregation now...tomorrow...forever.” That is the line that would resonate with so many Americans at the mere mention of Wallace. The Governor launched his administration with policies restricting African Americans even after he had gained the endorsement of the NAACP in his previous run for office in 1958.⁴ As times and issues changed, so did the Governor. Moving his sights from race to religion, George Wallace shifted his priorities over the years of his tenure. One Supreme Court proceeding in particular was the catalyst of this change.

Now, Tomorrow, and Forever: Segregation Under Wallace

Governor Wallace can be characterized by a number of actions he took and statements he made throughout his multiple terms in office, but perhaps none of these is more memorable than the Stand in the Schoolhouse Door in 1963. This event, like many of his actions as Governor, centered on racial segregation.

The issue of race was plainly apparent in his term as chief executive from 1963 to 1967. Wallace firmly aligned himself on the side of segregation and intolerance for non-whites. The issues of race and segregation come to light when his stance in the 1962 election is compared to his opinion on this issue just four years earlier.

⁴ “George Wallace Inaugurated as Alabama Governor, Jan. 14 1963,” *This Day in History*, of *The History Channel*, <http://www.history.com/this-day-in-history/george-wallace-inaugurated-as-alabama-governor>, accessed 20 October 2012.

The George Wallace of 1958 was much different from the George Wallace of 1962. The George Wallace of 1958 was not a radical supporter of segregation and did not see it as a major issue facing the voters of Alabama. Wallace embraced a “dignified defense” of segregation and decided to focus more on infrastructure and education as his campaign issues of as a candidate for governor.⁵ His opponent, John Patterson, dubbed him a “racial moderate,” obviously sending a warning to the pro-segregationist white citizens of Alabama. Responding to this accusation, Wallace claimed Patterson was “secretly wrapped up in a bedsheet [*sic*] with the Grand Dragon of the [Ku Klux] Klan.”⁶ Segregation was obviously a heated political issue. It was Wallace’s political decisions on this issue that arguably cost him the election. This was a mistake, however, that he did not overlook and remedied in subsequent election years.

“Seymore,” Wallace declared to one of his high-ranking aides Seymore Trammell, “you know what defeated me for governor is the nigger question.”

“It did, no question about it,” Trammell replied.⁷ That night after the election in 1958, as these two men discussed the errors of their losing campaign, Wallace began to set the stage for another gubernatorial run in the following cycle. In this run, however, Wallace would not let the race question go unaddressed. Instead, he soon planted himself firmly on the hard-line segregation side of the question. Wallace’s 1962 run marked a turning point in his political career. No longer would Wallace let any issue that carried great weight in the minds of voters go unaddressed.

⁵ Dan Carter, *The Politics of Rage: George Wallace, the Origins of the New Conservatism, and the Transformation of American Politics* (Baton Rouge: Louisiana State University Press, 2000) 95.

⁶ Editor, *The Birmingham Post-Herald*, “Here’s How 2 Governors Acted on Segregation,” 18 January 1971, 4, Wallace Clippings, 1950s-1990s.

⁷ Carter, *The Politics of Rage*, 98.

Following the loss to Ku Klux Klan-endorsed John Patterson, Wallace began to align himself with more radical segregationist ideals. This realignment was not just the result of political instinct, but actual interaction with those who saw it as a crucial issue facing the state of Alabama. “I started off talking about schools and highways and prisons and taxes—I couldn’t make [his constituents] listen. Then I began talking about niggers—and they stomped the floor,” Wallace recalled in a 1964 interview with the *Florence Times*.⁸

These racially charged sentiments were explicitly relayed in letters then-Governor-Elect Wallace received from concerned citizens before his 1963 inauguration. Following the election, on November 16, 1962, George Wallace received one of his first communications as Governor-Elect from a resident of Mobile, Alabama. Urging the soon-to-be-executive of the state to do “everything in [his] power to prevent a reoccurrence in Alabama of the events that took place when the University of Mississippi was integrated,” this citizen saw segregation as the foundation for keeping order within the Alabama system of education.⁹ “Be more sympathetic to the desires of the majority of people in the southern states to maintain control of our educational system.”¹⁰ The incident to which this citizen referred occurred during the integration of the University of Mississippi, and is known as the Ole Miss Riots of 1962.

In Mississippi, after another “stand in the door” posturing by Governor Ross Barnett, a mass riot broke out among staunch supporters of segregation.¹¹ This incident resonated in neighboring Alabama, and many saw the violence as a harbinger for things to come if the University of Alabama were soon be integrated. The letter from the Mobile correspondent was

⁸ Ibid. 109.

⁹ Letter from Michael Agnew to Governor-Elect Wallace, 16 November 1962, Segregation Files, 1962-1965.

¹⁰ Ibid.

¹¹ Stephan Leshner, *George Wallace: American Populist* (Cambridge: De Capo Books, 1995) 201.

certainly not the only instance of portions of the Alabama population advocating for the continuance of segregation.

Early on in his term as governor, George Wallace also kept an open and active relationship with ecclesiastical leaders of the Christian faith in Alabama. At the forefront of the attention of many in the evangelical community were the issues of race and racial relations.

In a letter from the Pine Grove-Ebenezer Methodist Church, minister Jerry Tanton described the unanimous decision made by the congregation to send Wallace a letter. In it, the congregation implored Wallace to “use reasonable governance and the courts to resist integration.”¹² Additionally, Wallace received another letter, this time from the Central Park Methodist Church. As in the case of Pine Grove-Ebenezer, Central Park Methodist “concur[red] with [Governor Wallace’s] statements and actions in regard to maintaining segregation in our schools.”¹³ Recalling his campaign promise to “stand in the schoolhouse door” if any integration were attempted in Alabama, Pine Grove-Ebenezer may have unknowingly predicted events to come as the church praised the Governor for his firm stance on the issue of segregation.

The Stand in the Schoolhouse Door

Following the 1954 ruling of *Brown v. Board of Education of Topeka, Kansas*, the deliberate segregation of schools, including the University of Alabama, was no longer be tolerated under federal law. Until 1963, hundreds of African Americans applied for admission to UA, and all were subsequently denied.¹⁴ Finally in 1963, two qualified students, Vivian Malone and James Hood, were offered admission. A much-angered Wallace ordered complete and

¹² “Letter to Governor-Elect Wallace from Pine Grove-Ebenezer Methodist Church,” November 1962, Segregation Files, 1962-1965.

¹³ “Letter to Governor Wallace from Central Park Methodist Church,” 23 August 1963, Ibid.

¹⁴ Richard Schwartz, “1950s Civil Rights Developments,” from *The 1950s*, New York: Facts on File, 2003, http://comptalk.fiu.edu/1950s_civil_rights_developments.htm, accessed 23 October 2012.

thorough background checks of both students, in the hopes of uncovering anything that could deny their admission.¹⁵

This system of exclusion proved successful in the past, but in this instance the reports came back free of anything that could disqualify the applicants. Wallace's rage boiled as he was given the report. "If you can't get something on them, dig up something on their daddies and mamas," he commanded.¹⁶ Again, no evidence was discovered. Vivian Malone and the others were set to walk into the doors of Foster Auditorium on the campus of the University of Alabama on June 11 for registration to attend the summer term at the school.

When asked about the actions Wallace had planned for this day, he responded, "I shall stand in the door as I stated in my campaign for Governor."¹⁷ Seybourne Lynn, a federal judge by whose authority this integration was ordered, stated, in reference to Wallace, "The governor of a sovereign state has no authority to obstruct or prevent the execution the lawful orders of a court of the United States."¹⁸

Governor Wallace at this point recognized the inevitability of the integration and decided to play the event to his political advantage. On June 5, Wallace sent Bull Connor, a close political associate, to a White Citizen's Council meeting in Tuscaloosa. Connor relayed to the council Wallace's wishes for private citizens, as well as known Klansmen, to stay away from the campus on June 11.¹⁹ Wallace wished to avoid any violence and avoid any parallels to the tragic riots at Ole Miss that occurred just a year prior. With the national media documenting every movement on June 11, Wallace took this occasion as an opportunity to be seen, and he worked to avoid any type of distraction that might take the focus off him.

¹⁵ Dan Carter, *The Politics of Rage*, 131.

¹⁶ *Ibid.* 132.

¹⁷ *Ibid.* 137.

¹⁸ Douglas Martin, "Seybourne Lynne, 93, Ruled in Civil Rights," *The New York Times*, 12 September 2000.

¹⁹ Carter, *The Politics of Rage*, 145.

On the morning of June 11, 1963, among a sea of media and onlookers, George Wallace planted himself at the threshold of the Foster Auditorium, waiting for confrontation. As the motorcade holding the students arrived on campus, Deputy Attorney General Nicholas Katzenbach stepped out of the car alongside Alabama National Guardsmen present at the request of the Kennedy administration to contain any threat of danger. “It was much better for the confrontation to be between federal and state authority [than a] racial one,” Katzenbach confided in his staff.²⁰

Wallace confronted Katzenbach at the door and took advantage of the situation by performing a political spectacle. In acknowledgment of Wallace’s adamant and stubborn stance, Katzenbach declared, “I have a proclamation from the President of the United States ordering you to cease and desist from unlawful obstructions.”²¹ Presenting the issue as a struggle between state sovereignty and the power of the federal government, Wallace claimed these actions as “illegal usurpation[s] of power by the Central Government.”²² Resolutely concluding his discourse on Alabama’s sovereignty, Wallace declared, “[I] do hereby denounce and forbid this illegal and unwarranted action by the Central Government.”²³ Katzenbach, unfazed and on orders from the Kennedy administration, returned to the car, emerged with Vivian Malone and led her past Governor Wallace onto her new college campus.

Wallace could not prevent the admission of Malone and the others, a fact of which he was quite aware. He could, however, use this as fuel to power his political prominence. Molding this situation into a nonviolent protest and political theatre, Wallace had achieved precisely what he desired. Wallace had visibly displayed his stance on the racial question and garnered the

²⁰ Ibid. 147.

²¹ Leshar, *George Wallace*, 228.

²² Ibid. 229.

²³ Carter, *The Politics of Rage*, 149.

backing of all of those who stood with him on the issue, as evidenced in personal communications to and from his constituents.

Segregation in the school system was an issue that plagued almost the entirety of the governor's first four-year term. Even as Alabama crept closer to a new decade, the question of integration in the classroom and related racial issues were still major points of controversy. School segregation was certainly not, however, the only issue.

The State of Faith: Early Issues

Governor George Wallace dealt with many issues during his multiple terms as chief executive of Alabama and used many of these same issues to his political advantage. As his dramatic stance on segregation at the University of Alabama came and went, another equally pressing issue began to emerge for the Governor. This issue was the place of religion in the public education of Alabama.

The date June 17, 1963, marked the Supreme Court's decision on the matter of *The School District of Abington Township, Pennsylvania vs. Schempp*. In an 8-1 decision, the Court ruled the reading of biblical verses in public schools to be a violation of the Establishment Clause of the First Amendment and therefore unconstitutional. Despite the existence of a policy where students had the option to leave during the readings, the Court still ruled in favor of banning Bible reading altogether. Echoing the 1962 ruling of *Engel v. Vitale*, which had banned school prayer, the Court effectively set a second precedent for subsequent Establishment Clause challenges.

This decision certainly did not go unnoticed around the country. Many in Alabama in particular took note of the ruling. Constituents again voiced their concerns to Governor Wallace about this perceived overreach of federal government influence.

In the same letter from the Central Park Methodist Church to Governor Wallace concerning segregation, the congregation also commended the governor for his handling of religion and its place in the public education system.

We wholeheartedly agree with you and your statements in regard to the continuation of the reading of the Bible in the public schools of Alabama and we commend you for the position you have taken in the matter²⁴

As evidenced in the correspondence of the church officials to Wallace, the Governor had made his stance on the issue quite clear. At a time when defense of the public presence of religion was beginning to emerge as one of great significance to the people and regions of Alabama, Wallace began to affirm a position on the side of support of his interpretation of evangelical teachings. A devout Methodist, Wallace began to establish his record as defender of the religious values that, he believed, deserved a place in the Alabama educational system.²⁵

In the most politically calculated of Wallace's speeches to this point, the Governor delivered a 1964 speech in defiance of the recently passed Civil Rights Bill provocatively entitled, "The Civil Rights Movement: A Fraud, Sham, and Hoax." In the speech, Wallace referred to the recent ruling of *Schempp v. Abington Township*. His speech recalled many of the rhetorical tactics that Wallace employed in the "Stand in the Schoolhouse Door." Accusing the federal government of again overstepping its bounds, Wallace spoke in direct defiance of the federal ruling:

²⁴ "Letter from Central Park Methodist Church to Governor Wallace," 23 August 1963. Segregation Files, 1962-1965.

²⁵ Carter, *The Politics of Rage*, 137.

The Federal court rules that your children shall not be permitted to read the Bible in our public school systems. Let me tell you this, though. We still read the Bible in Alabama schools and as long as I am governor we will continue to read the Bible no matter what the Supreme Court says.²⁶

This direct defiance to federal power set the tone for Wallace's subsequent actions. This speech in particular, however, held even more political significance. It was here that George Wallace first declared that, "Certainly, I am a candidate for President of the United States."²⁷ Weaving together this groundbreaking announcement with such harsh rhetoric and direct resistance to the federal government, Wallace defined himself as a confident individual committed to his convictions and a governor staunchly in support of the religious struggle that seemed to be looming within his state as well as across the nation.

Discontent with the Court's decisions on religious issues, however, was not limited to George Wallace. Support for the expansion and recognition of religious, and specifically Christian, values became apparent among many individuals holding public office. After passing the governor's chair to his wife Lurleen in 1967, the Montgomery state house was taken back by George Wallace from 1971 to 1979, followed by Fob James, Alabama's 48th governor, in 1979.

According to the Constitution of the State of Alabama, governors may serve two consecutive four-year terms, but then must relinquish the office at least for a time. The individual may run again for governor after a hiatus from the office. Wallace took full advantage of this law. He vacated the office for the like-minded Fob James in 1979, who some called "George Wallace Lite," because James espoused essentially the same ideals as his predecessor.²⁸

²⁶ George Wallace, "The Civil Rights Movement: A Fraud, Sham, and Hoax," Part 13 Lines 2-3, 4 July 1964, accessed, University of Virginia Electronic Library, <http://etext.lib.virginia.edu/etcbin/toccer-new2?id=WalCivi.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=1&division=div1>, 26 October 2012.

²⁷ Ibid. Part 15, Line 17.

²⁸ Dana Beyerle, "Fob James Called George Wallace 'Lite,'" *The Tuscaloosa News*, 20 September 1998, <http://news.google.com/newspapers?nid=1817&dat=19980920&id=6EogAAAAIbAJ&sjid=Z6YEAAAAIbAJ&pg=5688.3296565>, accessed, 1 April 2013.

Wallace then retook the seat from James just four years later when James decided not to seek reelection.

Shifting Ideals: The Place of Religion in the Minds of the Alabama Legislature

Under Governor James, the place of religion in Alabama schools expanded. Inch by inch, the Alabama legislature pushed religious observance further into the state's public school system. In 1981 the state legislature adopted statute §16-1-20.1, adding a "voluntary prayer" option to the already mandatory time for a "moment of silence" stipulated in 1978 statute §16-1-20. Governor Fob James then enacted even further regulations in response to a direct challenge from Ishmael Jaffree. In 1982, after Jaffree's lawsuit questioned the place of religion in the public school system, Governor James convened a special legislative session to implement a new practice in the schools of Alabama. Once passed, this new legislation, §16-1-20.2, mandated that teachers lead their classes in a prayer that was in fact composed by the Governor's son, a young Mobile attorney, Fob James III.²⁹

This move, seemingly controversial when viewed through a modern lens, went initially unquestioned at the time. The importance of religion in the lives of Alabamians began to carry more weight in the legislature in Montgomery, a shift from a past focused on the fundamental issue of racial segregation. The realignment was especially apparent in the issues addressed by George Wallace as he ran for and retook the governor's office just months after the enactment of §16-1-20.2.

Always mindful of the political weight that every action carried, Wallace calculated his movements carefully as he ran for a third term as Governor of Alabama. In the fall of 1982

²⁹ "Wallace v. Jaffree (1985)," *Encyclopedia of Alabama*, University of Mississippi, <http://www.encyclopediaofalabama.org/face/Article.jsp?id=h-1623>, accessed 26 October 2012.

political issues were far different than those of his first run twenty years earlier. Wallace reflected on and rectified his prior stance on racial issues. In the race in 1982, Jack House, a strategist on Wallace's reelection campaign, noted in a letter concerning campaign strategy that "Gov[ernor] Wallace will need a good black vote to win."³⁰ House described a number of strategies to gain the support of African Americans. His suggestions included running ads directed exclusively at African Americans and having "Gov. Wallace photographed with some black leaders that are supporting his run." He asserted, "This will be a 'first' never before done anywhere, I don't imagine."³¹ All of these plans came after the Governor's formal apology to the African American community for his extreme stance on race in earlier decades. In a 1979 address to the congregation at the iconic Dexter Avenue Baptist Church in Montgomery, Alabama, Wallace asserted,

I have learned what suffering means. In a way that was impossible, I think I can understand something of the pain black people have come to endure. I know I contributed to that pain, and I can only ask your forgiveness.³²

All of these actions succeeded politically, and Wallace glided into his third term with the overwhelming support of black voters. During this third term, Wallace's previously scathing words in support of segregation gave way to a policy of making the most appointments of African Americans to political offices in Alabama history.³³

By 1982, a major political issue was the place of religion in public life, and in particular, in the educational system of Alabama. Wallace perceived the political weight that this issue carried and quickly jumped in defense of public expressions of religious belief. Although this

³⁰ "Letter from Jack House to Elvin," 14 December 1981, Wallace Clippings, 1950-1990.

³¹ Ibid.

³² George Wallace, "Address to Dexter Avenue Baptist Church," accessed, Dan Sewell, "George Wallace's Last Campaign Aims to Reshape His Legacy," *Los Angeles Times*, 18 February 1996.

³³ Eric Foner and John Arthur Garraty, eds. "George Wallace," *The Reader's Companion to American History* (Boston: Houghton Mifflin, 1997) 1127.

was not the first time Wallace dealt with the issue of religion in the school system, as is illustrated in his response to *Abington v. Schempp*, Wallace soon encountered a direct challenge to his adamant stance on the issue. As Wallace met this challenge, he attacked the issue in a very familiar way. Just as he had with the issue of segregation and earlier instances of public religious practice, Wallace denounced the imposition of the federal government's opinion on such matters as a direct challenge to Alabama's sovereignty, an invasion of states' rights that would not be tolerated by his administration.

We will not allow God and religion to be suppressed, outlawed, and banned from the institutions created by the people. Nor will we permit the state or any branch of our government to order God out of our neighborhood schools. We will stand up for God! We will stand up for America!³⁴

With rhetoric that echoed his inaugural address in 1963, George Wallace positioned himself as an advocate for the protection of religion in the public school system. The blatant disregard for federal law that the Governor espoused would situate him for perhaps the defining legal battle of his political career.

Wallace v. Jaffree: The Foundations

The Alabama law codes §16-1-20.1 and §16-1-20.2, passed under James, popularly known as the “Alabama school prayer statutes,” expanded §16.1.20, passed under Wallace, and they laid the groundwork for all types of religious worship in the educational system. Until about 1982, they were widely accepted as legitimate by both black and white Alabamians, as most were devoutly Christian.³⁵

§16-20-1 stated:

³⁴ George Wallace, “Statement to the House Judiciary Committee,” 30 April 1964, Legal Files: Jaffree v. Mobile County.

³⁵ Author's Telephone Interview with Ishmael Jaffree, 11 October 2012.

At the commencement of the first class each day in the first through the sixth grades in all public schools, the teacher in charge of the room in which each such class is held shall announce that a period of silence, not to exceed one minute in duration, shall be observed for meditation, and during any such period silence shall be maintained and no activities engaged in.

§16-1-20.1 stated:

At the commencement of the first class of each day in all grades in all public schools, the teacher in charge of the room in which each such class is held may announce that a period of silence not to exceed one minute in duration shall be observed for meditation or voluntary prayer, and during any such period no other activities shall be engaged in.³⁶

§16-1-20.2 stated:

From henceforth, any teacher or professor in any public educational institution within the State of Alabama, recognizing that the Lord God is one, at the beginning of any homeroom or any class, may lead the willing students in the following prayer to God:

Almighty God, You alone are our God. We acknowledge You as the Creator and Supreme Judge of the world. May Your justice, Your truth, and Your peace abound this day in the hearts of our countrymen, in the counsels of our government, in the sanctity of our homes and in the classrooms of our schools. In the name of our Lord. Amen.³⁷

The first, §16-1-20, was implemented under Wallace in his second term, and later pushed further by James by the two additional statutes. When James occupied the governor's mansion on May 28, 1982, the first challenge to the presence of religion in the school system was delivered.

This was the beginning of a legal battle that eventually consumed Governor Wallace and reached the Supreme Court of the United States. On that date, Ishmael Jaffree formally filed a lawsuit against Mobile County School District for its religious practices in the public school system. He requested a declaratory judgment and an injunction on the implementation of any religious actions in the school system.³⁸ This suit was later amended on June 30, 1982, naming

³⁶ *Ishmael Jaffree v. Board of School Commissioners of Mobile County*, 705 F.d1526, 1983 (Judge Hatchett).

³⁷ *Ibid.*

³⁸ *Ibid.*

both the Governor and the State on the suit in response to the late addition of §16-1-20.2 enacted during the special session of Congress called by James.

Upon Jaffree's request, Judge Brevard Hand of the District Court for Southern Alabama issued a preliminary injunction in August of 1982, barring any state officials--which included teachers, administrators and superintendents--from exercising these codes. While this may appear as a routine measure of legal protocol in any matter of this nature, proponents of the "school prayer statutes" did not receive the action warmly, with the Governor of Alabama leading the opposition.

In the waning weeks of his time as governor, Fob James responded vehemently to the injunction. "I am today encouraging all Alabama school officials, as well as the people of Alabama, to stand for their constitutional rights, to ignore this federal court injunction, and to proceed with prayer in the classrooms, with blessings at meal times, and with any other heartfelt prayer which the citizens of Alabama wish to say."³⁹ To James, this injunction marked the tipping point of a twenty-year history of the Court's overreaching of influence on the matter of Church-State relations, beginning in 1962 with the *Engel v. Vitale* ruling.⁴⁰

The Governor filed a writ of mandamus in the Supreme Court, which directed Judge Hand to yield jurisdiction over Alabama school prayer cases. James claimed that the Supreme Court, in its decision on *Engel*, never considered the "intent" of the framers of the American Constitution and their views on the First Amendment. The Court consequently made a "tragic error" in its declaration of the unconstitutionality of prayer in the school systems.⁴¹

³⁹ George Wallace, "Statement in Reaction to Judge Hand's Injunction, Washington D.C.," 15 September 1982, Legal Files: Jaffree v. Mobile County.

⁴⁰ *Ibid.* 1.

⁴¹ George Wallace, "Statement in Reaction to Judge Hand's Injunction, Washington D.C.," 15 September 1982, Legal Files: Jaffree v. Mobile County.

James invoked the same primary argument in this religious case that George Wallace reverted to so many times before in his defense of the legality of segregation. The overreaching power of the Supreme Court and influence of the federal government on the so-said sovereignty of Alabama and other states was the true issue at hand in the Governor's argument, not the issue of religion. This "usurpation of power" and disregard for basic constitutional rights by the Supreme Court, James asserted, had the consequent result of undercutting the basic foundations of the American government.

Common sense tells us that if the judges can ignore this Constitution and create a new one by judicial fiat, then we are a government of men and not of laws, a government by the consent of the judges rather than the consent of the governed.⁴²

The Governor went on to comment in his extended statement on a nearly identical situation initiated by President Reagan. The Reagan administration positioned itself to propose a constitutional amendment to permit voluntary vocal prayer in public schools. In a radio address, President Reagan asserted, "Sometimes I can't help but feel the First Amendment is being turned on its head...we're told our children have no right to pray in school. Nonsense. The pendulum has swung too far toward intolerance against genuine religious freedom. It's time to redress the balance."⁴³

Reagan's proposed amendment would also not require a student's participation, much like the Alabama statute. While this proposition would seem to further the Governor James's cause, he spoke in defiance of any such constitutional amendment. Again citing to the overextension of federal power, James stressed that this proposed amendment, if passed, would "set a dangerous precedent" and allow the federal government far too much influence in the

⁴² Ibid. 3.

⁴³ Ronald Reagan, "Radio Address to the Nation on Prayer in Schools," 25 February 1984, accessed, *The Presidency Project* of the University of California, Santa Barbara, <http://www.presidency.ucsb.edu/ws/index.php?pid=395659> November 2012.

actions of schools in individual states.⁴⁴ Reagan's proposal, though, never made it past the Senate.

George Wallace, who retook the governor's seat just months after these statements were made, aligned himself with James's assertions. The defense of state sovereignty in James's statement echoed the sentiments of Wallace in his defense of segregation and would characterize his future arguments in defense of religion's presence in the public school system. Additionally, in an ironic political move, Wallace sought the aid of the Supreme Court to curb the overextension of federal power. As the *Jaffree* proceeding progressed, Wallace sought President Reagan as an ally and requested his intervention in the matter, a venture that proved to be unsuccessful.

First Wallace and the state of Alabama brought two major arguments to the Southern Alabama District Court. In the first, Wallace argued about the grounds of the interpretation of the First Amendment of the Constitution.⁴⁵ Wallace and the State argued that the Establishment Clause only barred the federal government from implementing any religious worship and that the amendment did not apply to any actions of individual states. In Wallace's view, the states reserved the right, as prescribed by the framers of the Constitution, to address the issue of religion on a state-by-state basis.⁴⁶

Second, Wallace asserted that the restrictions of the First Amendment were not fully incorporated to apply to individual states through the Fourteenth Amendment. According to court records, Wallace and the defendants supplied the Court with a large number of historical

⁴⁴ George Wallace, "Statement in Reaction to Judge Hand's Injunction, Washington D.C.," 15 September 1982, Legal Files: *Jaffree v. Mobile County*.

⁴⁵ "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

⁴⁶ *Jaffree v. Board of School Commissioners of Mobile County*, 554 F. Supp. 1104, 1983.

documents suggesting that the Thirty-Ninth Congress narrowly focused the scope of the Fourteenth Amendment to a point where the First Amendment was not to be imposed upon individual states.⁴⁷ However, if the First Amendment did in fact forbid the states from establishing a religion, Wallace and the defendants declared that this prohibition would endorse secular humanism, a religion in itself, and one that must also be purged.⁴⁸ Viewing the purging of “secular humanism” as impossible, the defense argued that Mobile County remained eligible to offer “alternative religious views to be presented so that students might make more meaningful choices.”⁴⁹

The arguments presented by Wallace and the defense for the case can be characterized as convoluted, but apparently sufficiently persuasive to convince Judge Hand, who ruled in favor of the defense. On January 14, 1983, he ruled,

- (1) First Amendment in large part was guarantee to states which insured that states would be able to continue whatever church-state relationship existed in 1791, and
- (2) Because the Establishment Clause of First Amendment does not prohibit the state from establishing a religion, prayers offered by the teachers in the case were not unconstitutional.⁵⁰

The District Court found that its “independent review of the relevant historical documents and its reading of the scholarly analysis convinces it that the United States Supreme Court has erred in its reading of history.”⁵¹ In his interpretation of history, Judge Hand and the District Court set a precedent that directly contradicted previous Supreme Court rulings. Decisions like *Engel* and *Lemon* clearly defined aspects of religion and their place in public life. Allowing

⁴⁷ “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

⁴⁸ *Jaffree v. Board of School Commissioners of Mobile County*, 554 F. Supp. 1104, 1983.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

expressions of prayer in the Alabama school system opposed such rulings and challenged the precedents that they set.

While this decision represented victory for Wallace, it was not long before the ruling came into question. Ishmael Jaffree rejected the decision and immediately filed for an appeal of the ruling in the Eleventh Circuit Court of Appeals. On February 2, 1983, Jaffree filed for an appeal hearing, which was to be heard by Judge Hatchett, Judge for the Eleventh Circuit. In review of the prior proceedings, Justice Hatchett overturned the District Court's findings.

We hold that the Mobile County school prayer activities, Ala.Code § 16-1-20.1 and Ala.Code § 16-1-20.2, are in violation of the Establishment Clause of the First Amendment to the Constitution of the United States. We do not decide today whether prayer in public schools is the proper policy to follow. This court merely applies the principles established by the Supreme Court.⁵²

Further expanding upon this assertion, the District Court explained its reasoning behind its eventual finding of unconstitutionality. A precedent was set in a previous Fifth Circuit ruling in the case of *Karen B. v. David Treen*, a decision concerning guidelines for students' participation in school prayer. The precedent asserted, "Prayer is perhaps the quintessential religious practice . . . since prayer is a primary religious activity in itself, its observance in public school classrooms [implies a religious purpose]."⁵³ The Appeals Court used this declaration as a guide in rendering their ruling on the *Jaffree* dispute.

Recognizing that prayer is the quintessential religious practice implies that no secular purpose can be satisfied. The primary effect of prayer is the advancement of ones religious beliefs. It acknowledges the existence of a Supreme Being. The involvement of the Mobile County school system in such activity involves the state in advancing the affairs of religion.

The record indicates that the teachers' prayer activities were conducted in the classrooms and did not appear to be secularly motivated. We,

⁵² *Ishmael Jaffree, Et Al., Plaintiffs-Appellants, v. George C. Wallace, Et Al.* 705 F.2d 1526, 1983.

⁵³ *Karen B. v. David Treen*, 653 F.2d at 901 No. 80-4003, 5 August 1981.

therefore, conclude that the Mobile County school activities are in violation of the Establishment Clause.⁵⁴

Essentially, the Eleventh Circuit Court ruled that the Supreme Court had already reviewed the entire historical implications relevant to these rulings and the First and Fourteenth Amendments. The Court had already established precedent through rulings such as *Engel*, *Lemon*, and the *Treen* case, all decisions that influenced the ruling in this appeals decision.⁵⁵ With its own research backed up by precedent, the Circuit Court ruled as it saw appropriate, and reversed the District Court's initial rendering.

George Wallace and the State of Alabama, however, again appealed this decision, an action that took the case to its eventual review by the Supreme Court.

Wallace v. Jaffree: The Findings and Fallout

By this point in 1984, the *Jaffree* case had become a defining aspect of Governor George Wallace's third term as chief executive of Alabama. He, along with other public officials of the state, testified in defense of the prayer statutes. Jaffree had at this point dropped statute §16-1-20 from his suit, and, with the Supreme Court already affirming that Alabama Statute §16-1-20.2 was unconstitutional, the Court declared that "the narrow question for decision is whether §16-1-20.1, which authorizes a period of silence for 'meditation or voluntary prayer,' is a law respecting the establishment of religion within the meaning of the First Amendment."⁵⁶ While this perhaps appears to be the less explicit of the two codes, the Court held that "Our unanimous affirmance of the Court of Appeals' judgment concerning §16-1-20.2 makes it unnecessary to comment at length on the District Court's remarkable conclusion that the Federal Constitution

⁵⁴ *Ishmael Jaffree, Et Al., Plaintiffs-Appellants, v. George C. Wallace, Et Al.* 705 F.2d 1526, 1983.

⁵⁵ *Ibid.*

⁵⁶ *Wallace v. Jaffree*, 472 U.S. 38 (Justice Stevens).

imposes no obstacle to Alabama’s establishment of a state religion.”⁵⁷ What made the decision the hallmark that it is held as today was in fact the narrower question that §16-1-20.1 presented the Court.

Alabama State Senator Donald Holmes testified as the “prime sponsor” of Alabama code §16-1-20.1. Repeating an earlier statement, Holmes claimed the state statutes were an “effort to return voluntary prayer to our public schools . . . it is a beginning and a step in the right direction.”⁵⁸ This direction, as it was revealed through subsequent questioning had no purpose but to incorporate prayer in the education system. “I did not have no other purpose in mind.”⁵⁹

With these statements on the record, Wallace confirmed the state’s opinion on the matter in his testimony in favor of the code. In a choice set of words, Wallace described §16-1-20.1 as being “best understood as a permissible accommodation of religion.” He declared that the code “conform[ed] to acceptable constitutional criteria.”⁶⁰

The Governor took a proactive role in the court proceedings. He saw this as not only a decision that would impact Alabama, but also one that would reverberate across the nation. Wallace recognized the sympathetic position President Reagan took towards the inclusion of religion in public education and looked to take advantage of the President’s power. In a mailgram to President Reagan, Wallace requested the intervention of Reagan in the *Wallace v. Jaffree* case.

I respectfully request, both personally and on behalf of the citizens of the State of Alabama that you take an active part in this litigation by involvement of the Justice Department with its great expertise and manpower. I feel that there will be no more important decision made by you during your administration than to participate in this litigation on the side of the Appelles [sic]/Defendants.⁶¹

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ George Wallace, “Mailgram to President Reagan,” Wallace Clippings.

Throughout the communication, Wallace echoed Reagan's clear and firm stance in support of religious exercises in the classroom. The Governor made every effort to connect Alabama case with the President's view and to assert that this case was of national importance with consequences that would remain for years to come.

Despite his efforts, no presidential intervention was ever occurred. The issue of prayer in public education was one that affected not only Alabama but also the entire country, as previously evidenced in President Reagan's actions in support of the constitutional amendment. The decision of this case would be one that would echo across a country that appeared to be divided on the issue. President Reagan declined, however, to become publicly involved.

When the Supreme Court's decision was rendered, there were reactions throughout the state of Alabama. In his typically outspoken way, Wallace articulated his opinion firmly against the ruling that these religious acts as unconstitutional. In a press release stating his view of the decision, Wallace expressed his emotions as "sincerely disturbed and disappointed" by the outcome.⁶²

Wallace positioned himself as the defender of true religious liberty for all Alabamians against an imposition of a Court-prescribed-type of religious freedom.

I believe I speak for the vast majority of Alabamians in stating that I feel the Supreme Court is in error in this ruling... This court appears to be imposing upon the individual states its own brand of 'religious freedom,' which I believe most Alabamians and most citizens of the United States totally reject.⁶³

Wallace here interwove the attacks on the Court by accusing it of overstepping its bounds and imposing upon the sovereignty of the states, with a specific threat against the religious freedom of the residents of Alabama. Wallace reassured the public that he would fight to protect

⁶² George Wallace, "Press Release on Supreme Court Ruling," 4 June 1985, Legal File: Jaffree v. Mobile County.

⁶³ Ibid.

their religious liberty. “You may be assured that the Governor of the State of Alabama intends to protect the religious freedoms of all citizens of the state.”⁶⁴

Conclusion

Although religion in the public school system was not solely a concern in Alabama, as evidenced by Reagan’s proposed constitutional amendment, authority in the matter, according to the Governor, properly lay in the hands of the states. The opinion of the federal government should not be imposed upon individual states. The sovereignty of the state at the heart of almost every significant argument Wallace made against federal intervention, often emphasized in dramatic displays of political theatre.

Beginning with his initial run for Governor of Alabama, George Wallace shifted his stance on the issue of race and segregation from a simple “dignified defense” of the act towards an extreme, staunch support of segregation now, tomorrow, and forever. As the issue of race began to be eclipsed by other disputed policies, so did the Governor’s priorities. Religion began to occupy not only Alabamians, but also the minds of Americans as a whole. Recognizing this, the Governor amplified his support for the inclusion of religious doctrine in the educational system of Alabama.

In this way, the *Wallace v. Jaffree* illuminates George Wallace’s tendency to adapt his political stances to the times and to take extreme positions. While the issue of religion and its place in the schooling of Alabama children was one such stance, religion itself was a factor in the life of the Governor that had and continued to exist beyond politics. On January 8 1985, in the midst of the *Wallace v. Jaffree* proceedings, the Governor received a letter from his friend, Billy Graham. The well-known minister wrote Wallace to thank him for contributing to his ministry.

⁶⁴ Ibid. 3.

“You are so generous and you probably could not realize what an encouragement it is to know that you support what we are trying to do around the world.”⁶⁵ In response Wallace said:

Billy please know that I have felt so much better spiritually since seeing you, knowing that I am saved. I have always been so in awe of you that I am hard pressed to be able to write a letter to you. However, I will not lament about the fact at this time.⁶⁶

Clearly emotional, Wallace expressed his deep belief and faith in not only Reverend Graham, but in Christianity itself. A Methodist, Wallace retained his faith throughout his terms as chief executive. Although these beliefs were always there, they are highlighted in instances like that of *Jaffree*.

As a political figure, George Wallace conducted his public career by adapting his opinions and capitalizing on opportunity. While his stands were sometimes contradictory, Wallace orchestrated every political move after observing political opinion, attempting to garner the greatest amount of public support.

A defining case of his adaptability was his role in *Wallace v. Jaffree*. Just as with the issue of segregation, Wallace recognized shifting public opinion towards the enhancement of religion in the public school system. He promised to keep religion’s presence in public schools, regardless of any legal mandate of the federal government. Stances on issues like these defined the Governor, just as the Governor defined these issues.

⁶⁵ Letter from Billy Graham to George Wallace, 8 January 1985, Wallace Clippings.

⁶⁶ Letter from George Wallace to Billy Graham, 24 January 1985, Wallace Clippings.

Chapter 3 Ishmael Jaffree: An Agnostic Crusader

Introduction

“I encourage people to think for themselves and not allow others to do their thinking for them. And to my dying breath I shall always attempt to do just that.”¹ This declaration of Ishmael Jaffree encapsulates the purpose he brought to his actions over the course of his lifetime.

This purpose informed one court case in particular. *Wallace v. Jaffree* altered the path of Jaffree’s life and gave new purpose to his pursuit of establishing tolerance of freethinking. Jaffree did not accept the endorsement of religion and prayer in the public educational system in which his children were enrolled. Freethinking was impossible when students were being indoctrinated with specific religious instruction.² It was this situation that was unacceptable to Jaffree and came to define his role as a social and political activist. His decisions certainly did not come without consequences.

To be an African American in the American South in the 1970s and 1980s, and to challenge the socially accepted status quo, were not greeted warmly by many Alabamians. Both the white and the African American communities in the state publicly chastised him, his family, and his ideals. These responses caused emotional struggles that ultimately led Jaffree to question the necessity of his desire to change public religious practices.³ He persevered, however, and came to change not only state law, but history as well.

Father, husband, lawyer, activist—Jaffree can be characterized by many names and titles. Regardless of these designations, though, it is clear that the issue of religion and its place in public schools defined him and gave deeper meaning to each of the titles he embraced. Jaffree

¹ Ishmael Jaffree quoted in “The Quest for Humanist Values,” from *African-American Humanism: An Anthology* (New York: Prometheus Books, 1991) ed. Norm. R. Allen, 188.

² Author’s Telephone Interview with Ishmael Jaffree, 11 October 2012.

³ Ibid.

became a symbol for the case and his actions reverberated across the country. Just as the country had experienced transformation as the Supreme Court handed down its ultimate decision, Ishmael Jaffree had experienced and embraced personal and social transformation throughout his life. *Wallace v. Jaffree* exemplified this transformation.

Early Life

Ishmael Jaffree, whose birth name was Frederick William Hobbs, was born in Canton, Ohio, on March 28, 1944. Growing up in a single-parent home, Jaffree was raised by his Baptist mother to be devout in the Christian faith.⁴ Embracing his mother's teachings, Jaffree even assumed the role of a preacher as a child, spreading evangelical beliefs on the street corners of Cleveland during his childhood.⁵

Jaffree soon, though, began to adapt to other ideals. Around age ten, Jaffree joined a street gang. Jaffree described himself at that time as a petty thief, stealing from department stores.⁶ His actions led him into a youth delinquency center in the city before his twelfth birthday.⁷ These actions were the first of those that illustrate a theme that runs throughout Jaffree's life.

During his childhood, through college, and culminating in his appearance before the Supreme Court, Ishmael Jaffree prided himself on his independence. "I never wanted to sacrifice my individuality, my inquiring mind, never wanted to accept something on authority."⁸ In high school, Jaffree continued with these values, and was eventually expelled for his noncompliance

⁴ Peter Irons, "Ishmael Jaffree v. George Wallace," *The Courage of Their Convictions: Sixteen Americans Who Fought Their Way to the Supreme Court* (New York: Penguin Books, 1990) 357.

⁵ "Jason Whitehead, "Ishmael Jaffree," *100 Americans Making Constitutional History*, ed. Melvin Urofsky (Thousand Oaks, CA: CQ Press, 2004) 105.

⁶ Ibid.

⁷ Author's Interview with Ishmael Jaffree, 11 October 2012.

⁸ Whitehead, *100 Americans Making Constitutional History*, 105.

with school policies—specifically wearing hairstyles in defiance of school dress code. During these years, however, Jaffree realized that this route would not allow him to attain the career for which he strove. Jaffree wanted to become an attorney, and he knew that completing high school was the first step in that journey.⁹

Jaffree entered a program that allowed him to reenter into high school and graduate in 1968. Building upon this new academic success, Jaffree gained admittance into a junior college that same year, and later to a four-year college—Cleveland State University—in 1970.¹⁰

This was a time charged politically and culturally with tensions and conflict. In an interview with Jaffree, he recalled the atmosphere of protests during the Vietnam War as well as the Kent State shootings, both of which sparked unrest at his junior college. These civic protests were compounded by the entirely new and diverse nature of the student body of which Jaffree was a part. He interacted with atheist students and professors. These contacts set off a gradual process of self-evaluation for Jaffree, one that would have a significant result. As students around him engaged in activism, Jaffree began his own journey as an activist.

His contributions began in the academic realm. Jaffree recognized a need for a change in the approach to teaching and proposed an alternative educational strategy at Cleveland State. His plan embraced essentially having students teach fellow students on certain issues that were not necessarily covered in traditional educational programs. Jaffree himself instructed groups of students on the topics of poverty and racism.¹¹ His quest for reform, however, did not end with the classes in junior college.

⁹ Author's Interview with Ishmael Jaffree, 11 October 2012.

¹⁰ Ibid.

¹¹ Author's Interview with Ishmael Jaffree, 11 October 2012.

Eight years had gone by since Jaffree's reentrance into high school. His purpose was to one day gain admittance into law school.¹² As he prepared to graduate from Cleveland State, he readied for his next step towards attaining his goal of law school. His status as a minority, however, as he soon realized, restricted him from climbing that last rung on the ladder. Jaffree refused to let this obstacle end his eight-year journey. Just as he had done before in junior college, Jaffree sought a resolution to this problem that inhibited him.¹³

His law school of interest was the Cleveland-Marshall College of Law. The school was a new hybrid, following the merger of Cleveland State Law and John Marshall College of Law. Jaffree, along with others, repeatedly petitioned and urged the school to allow minority students admittance. After much protest, Jaffree finally received notice of his acceptance to the school. His admittance, as he recalled, was principally caused by his acts of protest.

The school had historically small minority populations. Jaffree recognized this fact and used it to his advantage. The school then resolved to begin a new special program for disadvantaged youths, where Jaffree was one of the first to gain admittance.¹⁴

Jaffree's individuality and rebelliousness were both characteristics that combined to result in a series of events that would later go on to characterize his life and lead him to his defining act of nonconformity. Before this time, however, there was another transformation.

Civic Engagement and A Self-Awakening

Jaffree acted on behalf of the well-being of others. In the mid-1970s, Jaffree entered the world of Ohio politics. His experience led him to become a member of Carl Stokes' mayoral

¹² Irons, *The Courage of Their Convictions*, 371.

¹³ Author's Interview with Ishmael Jaffree, 11 October 2012.

¹⁴ Ibid.

campaign in the city of Cleveland. Stokes was the soon-to-be first African American mayor of the city.

Politics was a life that Jaffree embraced. He described his goal in the political realm as simply wanting to help others engage in the political process.¹⁵ Throughout the Stokes campaign, however, Jaffree never lost his individuality.

I had this aversion to joining groups. I didn't want to sacrifice my own individuality. Most groups had leaders and the rest of the people were followers...I don't want to be simply part of a movement and have somebody tell me what I should do, what I should believe, how I should think.¹⁶

Jaffree carried his sense of his individuality throughout his life. It did not, though, prohibit him from engaging in such activities as politics. The Stokes campaign perhaps acted as a first step to a possible career in political organization, as Jaffree recalled. "I probably would have migrated to politics if the [*Wallace v. Jaffree*] case hadn't happened."¹⁷

This case, though, did in fact occur. Centering on the issue of religion, the key issue strongly resonated within Ishmael Jaffree. It rang especially loudly for Jaffree perhaps due to the transformation, as he described it, which reached its apex in the early 1970s, before his involvement with Stokes.

It was during his time in higher education that Jaffree experienced an awakening and self-realization. Going into college at Cleveland State, Jaffree still ascribed to Christian beliefs, just as he was raised. His interactions with atheist peers and professors, though, initiated a process in which Jaffree began a slow and gradual study of himself and his beliefs.

¹⁵ Ibid.

¹⁶ Whitehead, *100 Americans Making Constitutional History*, 105.

¹⁷ Author's Interview with Ishmael Jaffree, 11 October 2012.

Eventually, after study and analysis, Jaffree became an agnostic, renouncing his previous Christian beliefs, as well as religion itself, as a “primitive way of coping with fear of the unknown.”¹⁸

I didn't come to that position because I was influenced by people or writers. It was a gradual process...I realized that the mere fact somebody taught me something doesn't mean its true. The fact that a large number of people believe something doesn't mean its true.¹⁹

While this represents a major turning point in his life, the key awakening occurred in 1971. In that year, Jaffree formally changed his name from his birth name, Frederick William Hobbs, to Ishmael Jaffree—an action that Jaffree himself described as a “philosophical and political metamorphosis.”²⁰ Naming himself was a measure that Jaffree had previously contemplated, but was reluctant to carry out because he anticipated the emotional damage it could inflict on his mother. In the end, Jaffree removed the name “Hobbs” from his identity, one that most likely originated as a surname of a slave owner.²¹ “Ishmael” instead referenced the biblical Ishmael, son of Abraham, often a name associated with an outcast or outsider—perhaps an attempt to exemplify the individuality Jaffree embraced. Additionally, “Jaffree” was the surname of a professor at Cleveland State University who Ishmael greatly admired.²² The combination of these two led Jaffree to a new identity and his transformation and embrace of individuality.

An Agnostic Crusader for the Greater Good

Ishmael Jaffree began his life consumed in religion, embracing his role as child preacher and the tenets of his mother. As was a theme throughout Jaffree's life, though, the

¹⁸ Whitehead, *100 Americans Making Constitutional History*, 105.

¹⁹ Ibid.

²⁰ Author's Interview with Ishmael Jaffree, 11 October 2012.

²¹ Ibid.

²² Irons, *The Courage of Their Convictions*, 371.

nonconformist in him emerged and transformed his entire philosophical outlook, from politics to religion. Jaffree recalled one incident that seems to embody this gradual, yet persistent transformation.

In his junior college sociology class, a discussion of the formation of values led to the question of belief in God. Those who did raised their hand, an act resulting in almost every student participating, including Jaffree himself. Conversely, the opposite question was asked, with one sole woman raising her hand in acknowledgment that she in fact was an atheist.

I remember that I instantly hated this woman and I couldn't understand her. I wondered how could she possibly raise her hand to deny the existence of a God that was responsible for her being her, for her breathing. How could she turn her back on God and admit publicly that she did not believe?²³

Jaffree experienced extremely strong feelings towards her declaration at that time. Later, though, he began to sort through why in fact he held such adamant opinions towards her for the mere fact that she thought differently than he. As he progressed through college, so did his concept of religion. His questioning of his own reaction led to the question of how religious ideas and conceptualizations of God become formulated at all. Religion began to appear as a way of coping with the unknown.

[Much like] how an early Cro-Magnon person was afraid of fire because he couldn't understand it and ascribed supernatural qualities to it. I started thinking about how we got to where we are. Once I did that I became an agnostic, and I began to question everything.²⁴

Jaffree simultaneously applied his views to the way he lived his life. He felt as though it was not the place of his high school to dictate his hairstyle, so he defied its policies; he felt as though minorities deserved a place in law schools, so he made one; he dared to question his faith,

²³ Ibid.

²⁴ Ibid.

so he altered it. The common thread that linked all of these actions together began to emerge as each is placed next to each other. Each exemplified Jaffree's qualities of individuality and nonconformity. Each also implied a much greater notion. All of these actions, while superficially appearing to be self-interested, in reality worked for the benefit of other individuals. His stance on religion in particular demonstrated this goal through the eventual Supreme Court decision that would arise from his protest against faith.

Jaffree's desire to aid those in need was not, however, entirely unconscious. During his time in law school, he resolved never to charge any individual who was truly in need of legal representation.²⁵ He sought to fulfill this promise through work in legal services available through the government, a program that aimed to help low-income individuals with matters such as housing and employment.²⁶

This pledge was fulfilled as he made the move from Cleveland, Ohio, to Huntsville, Alabama in 1976. He was recently married, and Jaffree's wife Mozelle had attended school in Huntsville. From law school, Jaffree had been made aware of the Reginald Heber Smith fellowship for post law-school graduates to work in legal services for an entire year. Once he secured this fellowship, Jaffree resolved to move south and begin to live out his goal of providing legal aid to those most in need. "I was tired of Cleveland, and I thought the civil-rights movement was moving to the South, and that's where all the action was going to be."²⁷

Huntsville, as Jaffree described, was an attractive city, yet offered little in the way of legal challenges. The fact that the political and social activity was somewhat dormant, coupled with the small number of African Americans, prompted Jaffree to move offices to Mobile, Alabama, in 1977. "I heard that they had a voting-rights case that was very attractive, and that

²⁵ Irons, *The Courage of Their Convictions*, 373.

²⁶ *Ibid.* 357.

²⁷ Jaffree, *The Courage of Their Convictions*, 373.

they had a few black attorneys.”²⁸ Once in Mobile, Jaffree would soon encountered a much larger situation that required his legal intervention.

Chioke and the Foundations of the Lawsuit

When Jaffree and his wife Mozelle wed, their perspectives on theology and their level of personal devotion to faith contrasted each other’s views. Mozelle, a subscriber to the Baha’i faith, one with Middle Eastern roots that teaches tolerance and spiritual harmony, and Jaffree, an agnostic, resolved to allow their children to choose their own faith individually, and not force them to accept beliefs of their parent’s choosing.²⁹ Jaffree adamantly believed, as he exhibited throughout his life, that the discovery of religion should be a personal process for each individual, not one that is determined by any outside party.

This key aspect to Jaffree’s upbringing of his children -- of exposing his children to varieties of beliefs -- was directly challenged in Mobile. On September 16, 1981, Chioke Jaffree, Ishmael’s five-year-old son, returned home from kindergarten and complained to his father about a particular exercise in which the teacher led the class before meals. Charlene Boyd, a young African American teacher, led the kindergarten class of the Dickson School in a musical prayer before meals which was sung:

God is great, God is good,
Let us thank Him for our food;
Bow our heads we all are fed,
Give us Lord our daily bread. Amen!³⁰

This prayer made Chioke uncomfortable, as he had not experienced such blatant advocacy of religion by a teacher before. Chioke approached his father and expressed his

²⁸ Ibid.

²⁹ Author’s Interview with Ishmael Jaffree, 11 October 2012.

³⁰ Irons, *The Courage of Their Convictions*, 357.

discomfort. Jaffree told Chioke that what his teacher was doing is illegal and to tell her that the Supreme Court itself had declared this fact.³¹ Despite Chioke's protest, Boyd continued to lead the class in this prayer. She did, though, give Chioke the option not to participate.

Recalling this situation, Jaffree expressed his surprise as he was told of this prayer and its presence in the school system. "I just assumed, naively, that schools kept their hands off of religion."³² After his two other children, who both were attending elementary school in other schools in Mobile, confirmed that prayer was being said in their schools as well, Jaffree resolved to take greater action.

The first action Jaffree took was to handle the matter internally, approaching Boyd and Betty Lee, the principal of the Dickson School.³³ In his letter to Boyd, Jaffree declared the prayers said before lunch were illegal actions and requested a meeting to further discuss this issue. Boyd went directly to the principal with this request and was instructed to continue on with the prayers as Lee consulted other administrators of the issue. This letter went unanswered and prompted Jaffree to further request an answer from the administrators.³⁴

Two weeks passed and Jaffree still had yet to receive a response from either the principal or teacher. Jaffree then learned from Chioke that the prayer continued in his school. This impelled Jaffree to confront Boyd and the principal in person about the issue. He explained the situation to Boyd, as he faced her in person, that this was not only an act in direct opposition to the Supreme Court ruling in *Engel*, but also that it adversely affected his children as individuals.

I told her that I had reached an agreement with Mozelle that we are not trying to promote religion in our household. Mozelle is Baha'i and she's very religious, and I don't subscribe to any religion, but I don't influence my children to my way of thinking. Here you are undermining that

³¹ Ibid.

³² Author's Interview with Ishmael Jaffree, 11 October 2012.

³³ Irons, *The Courage of Their Convictions*, 358.

³⁴ Ibid.

neutrality in our household by promoting your brand of religion, and its really unlawful.³⁵

He described her attitude towards his confrontation as one of astonishment. “Her attitude was one of shock that I would even complain about [the prayer].”³⁶ Boyd’s reaction anticipated the common response that Jaffree encountered towards his later legal actions.

Jaffree, however, did not stop with Boyd. He went directly to Principal Lee and demanded to speak with her about the issue. This conversation only resulted in Lee telling Jaffree that she had to speak with the Mobile superintendant on the issue. After this, Jaffree went to the principals of his other two children’s schools, only to be met with the same response.³⁷ Perhaps in an attempt to expedite the process, Jaffree contacted Superintendent Abe Lincoln Hammons himself.

In his letter to Hammons, Jaffree echoed much of the same sentiment he expressed in his previous one to Boyd, but expanded upon the legal nature of the issue and how the schools were in conflict with the precedent of separation of Church and State. Again, Jaffree was met with opposition and a response that simply ignored his requests on grounds that further investigation was needed to properly address the issue.³⁸ After a series of phone calls to the superintendant’s office, however, Jaffree finally received a response. Following an investigation, the legal counsel for the Mobile school system determined that the teachers leading the voluntary prayer were not in violation of any Supreme Court rulings. The Jaffree children were free to be excused from the prayers; however, the prayer would continue to be said.³⁹

³⁵ Jaffree, *The Courage of Their Convictions*, 374.

³⁶ Ibid.

³⁷ Irons, *The Courage of Their Convictions*, 360.

³⁸ Ibid.

³⁹ Ibid. 359.

“I realized that it was getting close to the end of the school year. I was getting angry, so I decided to file a lawsuit.”⁴⁰ Jaffree recruited Ron Williams, an attorney who previously worked in Legal Services but by then was in private practice, to represent him in the suit. The two agreed that Williams would represent him in court, but Jaffree would be responsible for the legal and factual research.⁴¹ On May 28, 1982, the suit was filed in federal court, arguing that the Mobile School District’s actions constituted an “establishment of religion” with the prayers that violated both the First and Fourteenth Amendments. Citing the school board members, principals, and teachers as defendants, Jaffree began what was to become a prolonged and complex series of proceedings.⁴²

Wallace v. Jaffree: The Initial Stages

“I was naïve at the time and thought that once [the lawsuit] reached the federal level the prayers would stop.”⁴³ The lawsuit, though, did not end as an internal issue within the school district—quite the opposite happened. Fob James, the Governor of Alabama at the time, took notice to the particular lawsuit and responded with the full power of the state government.

In 1982, just months after Jaffree filed the initial suit, Governor James called lawmakers, reporters, and other media outlets to the capital in Montgomery for a special session of the legislature. In a televised address to the citizens of Alabama, James publicly denounced Jaffree’s suit against Mobile County School District and urged legislators to officially make a place for prayer in the public school system. Fob James III, the son of the Governor and also an attorney from Mobile, drafted a prayer that would soon be adopted as law by the legislature:

⁴⁰ Jaffree, *The Courage of Their Convictions*, 374.

⁴¹ Whitehead, *100 Americans Making Constitutional History*, 105.

⁴² Irons, *The Courage of Their Convictions*, 359, 374.

⁴³ Author’s Interview with Ishmael Jaffree, 11 October 2012.

From henceforth, any teacher or professor in any public educational institution within the State of Alabama, recognizing that the Lord God is one, at the beginning of any homeroom or any class, may lead the willing students in the following prayer to God:

Almighty God, You alone are our God. We acknowledge You as the Creator and Supreme Judge of the world. May Your justice, Your truth, and Your peace abound this day in the hearts of our countrymen, in the counsels of our government, in the sanctity of our homes and in the classrooms of our schools. In the name of our Lord. Amen.⁴⁴

Known now as Alabama law code §16-1-20.2, this statute was coupled with its complementary §16-1-20.1, the moment of silence statute, which was passed in 1981, and instructed teachers:

At the commencement of the first class of each day in all grades in all public schools, the teacher in charge of the room in which each such class is held may announce that a period of silence not to exceed one minute in duration shall be observed for meditation or voluntary prayer, and during any such period no other activities shall be engaged in.⁴⁵

These were both statutes that compounded upon the original 1978 statute passed under George Wallace, §16-1-20, which allocated time for a moment of silence for meditation. Jaffree recognized this as a direct action against his suit. On June 30, 1982, he amended his complaint to include the governor of Alabama, various state officials, and statutes §16-1-20, §16-1-20.1 and §16-1-20.2.

This action directed great attention to the lawsuit and Jaffree—both publicly and privately. Judge Brevard Hand, the judge who was to hear the case, first issued a preliminary injunction on August 2, 1982 barring any public employee from initiating the prayers in the school system. This case, however, was not Hand's first encounter with the Establishment Clause in his courtroom. In his first case on the subject, Hand ruled in favor of the supposed promotion of religion, but his opinion was quickly reversed.

⁴⁴ *Ishmael Jaffree v. Board of School Commissioners of Mobile County*, 705F.2d 1526, 1983 (Judge Hatchett).

⁴⁵ *Ibid.*

In a separate case involving the recitation of biblical verses over a school's intercom, Judge Hand had dismissed the case and allowed for the continuance of the practice. His action, though, was again reversed by the Court of Appeals. Having known this fact, Jaffree justifiably assumed Hand had learned from his apparent mistake and would quickly rule in his favor.⁴⁶ The proceedings, though, moved in a way far from what Jaffree had foreseen.

Wallace v. Jaffree: Judge Hand and the District Court's Findings on Appeal

The suit first reached Judge Hand's courtroom in the Southern District of Alabama on August 2, 1982. It was here that Judge Hand issued the preliminary injunction on the state statues until the actual trial, set for November of the same year. Once the trial date finally arrived, Jaffree and his legal team would participate in a trial that would last for four days.

Brevard Hand, or "the last surviving Confederate," as he was sometimes referred to, ran his courtroom in a manner that defied any expectation Jaffree held coming into the proceedings.⁴⁷ Once outsiders began to hear of this case, members of the Christian right felt the need to intervene and attended the hearings in the courthouse of the Southern District of Alabama. Specifically, members of the Cottage Hill Baptist Church, the largest in Mobile, requested to be included as defendants in the case. Williams, Jaffree's attorney, resolutely objected to the presence of the prayer supporters. This action, however, was unsuccessful as Judge Hand allowed their presence and testimony.⁴⁸

Judge Hand heard the numerous claims of these intervenors, arguments that now seem to resonate in Hand's final holding. Their argument against Jaffree was grounded in the assertion

⁴⁶ Ibid. 376.

⁴⁷ Whitehead, *100 Americans Making Constitutional History*, 106.

⁴⁸ Irons, *The Courage of Their Convictions*, 376.

that if Mobile schools were denied the right to teach religion, then the schools would be promoting secular humanism, a religion in itself.⁴⁹

Such a purge [of religion] is nigh impossible because such teachings have become so entwined in every phase of the curriculum that it is like a pervasive cancer. If this must continue, say the defendant-intervenors, the only tenable alternative is for the public schools to allow the alternative religious views to be presented so that the students might better make more meaningful choices.⁵⁰

Drawing on the 1961 Supreme Court decision in *Torcaso v. Watkins*, a case that barred any type of religious test for public office, the defendant-intervenors argued that secular humanism was in fact a religion. Upon review, however, the only mention of the term “secular humanism” was in Footnote 11 of Justice Black’s Opinion of the Court in reference to religions based on beliefs in something other than a God-figure:

Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others.⁵¹

Before this ruling, the term “secular humanism” had never been used in judicial opinion.⁵² Most basically, it refers to a non-religious-belief and is often coupled with the teachings of the sciences. Regardless of the term’s rarity, the intervenors latched onto it and attempted to sway the proceedings of the trial.

In the text of the final decision, secular humanism can be seen as a factor that carried much weight in the ruling. Judge Hand declared secular humanism a religion, just as Justice Black had done two decades earlier, and noted the effect it could have on the courts, if further challenged. “The Court will be called upon to determine whether each book or any statement

⁴⁹ *Jaffree v. Board of School Commissioners of Mobile County*, 554 F. Supp. 1104, 1983.

⁵⁰ *Ibid.*

⁵¹ *Torcaso v. Watkins*, 367 U.S. 488, 1961, (Justice Black).

⁵² Howard B. Radest, *The Devil and Secular Humanism: The Children of the Enlightenment* (Praeger Publishers: New York, 1990), 18.

therein advances secular humanism in a religious sense, a never-ending task.”⁵³ A significant part of Judge Hand’s argument stressed that if the Court did in fact strike down the Alabama prayer laws, this would necessitate, in response, even further investigation and scrutiny of the so-called religion of secular humanism. This, however, was not his only argument against the repeal of the laws.

Perhaps influenced by the state’s arguments, Hand also concurred that the Establishment Clause did not apply to the actions of the State. According to Court records, Governor George Wallace supplied the Court with large amounts of historical documents suggesting that the Thirty-Ninth Congress narrowly focused the scope of the Fourteenth Amendment to a point where the First Amendment was not to be imposed upon individual states.⁵⁴ Both of these issues were enough to result in Judge Hand’s final decision to uphold the Alabama prayer laws.

In his January 14, 1983, written opinion, Judge Hand declared:

If we, who today rule, do not follow the teachings of history then surely the very weight of what we are about will bring down the house upon our head, and the public having rightly lost respect in the integrity of the institution, will ultimately bring about its change or even its demise.⁵⁵

Despite his decision, which took issue with the precedent set by the Supreme Court in 1962, Judge Hand held history as a key piece of evidence in his determination and declared that “the United States Supreme Court has erred in its reading” of it.⁵⁶ Perhaps in an effort to right what he saw as a wrong established in *Engel*, Hand only motivated Jaffree more to continue his quest to right the wrong Jaffree saw in the prayer laws.

Upon this decision being handed down, Jaffree immediately sought further action. On February 2, 1983, Jaffree filed for another stay in the Eleventh Circuit Court of Appeals.

⁵³ *Jaffree v. Board of School Commissioners of Mobile County*, 554 F. Supp. 1104, 1983.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Jaffree v. Board of School Commissioners of Mobile County*, 554 F. Supp. 1104, 1983.

Initially denied, Jaffree petitioned Supreme Court Justice Lewis Powell, in his role as Justice for the Eleventh Circuit, for an injunction on the District Court's ruling. Upon his own review of the lower court's decision, Powell recognized that this initial decision contradicted numerous precedents set in the past, and wrote:

In *Engel v. Vitale*, the Court held that the Establishment Clause of the First Amendment, made applicable to the States by the Fourteenth Amendment, prohibits a State from authorizing prayer in the public schools. The following Term, in *Murray v. Curlett*, decided with *School District of Abington Township v. Schempp*, the Court explicitly invalidated a school district's rule providing for the reading of the Lord's Prayer as part of a school's opening exercises, despite the fact that participation in those exercises was voluntary.

Unless and until the [Supreme] Court reconsiders the foregoing decisions, they appear to control this case. In my view, the District Court was obligated to follow them. Similarly, my own authority as Circuit Justice is limited by controlling decisions of the full Court.⁵⁷

Once Powell granted this injunction, the appellate court continued to review the decision of Judge Hand and the District Court. One of the major arguments that swayed the District Court to rule as it did was the inclusion of the Fourteenth Amendment and its application to the Establishment Clause of the First Amendment. After its own historical investigation, the Appellate Court concluded that,

The Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion⁵⁸

⁵⁷ *Ishmael Jaffree, Et Al., Plaintiffs-Appellants, v. George C. Wallace, Et Al.* 705 F.2d 1526, 1983.

⁵⁸ *Ibid.*

Additionally, through Supreme Court decisions such as *Engel v. Vitale* (1965) and *Lemon v. Kurtzman* (1971), “the Supreme Court has concluded that its present interpretation of the First and Fourteenth amendments is consistent with the historical evidence.”⁵⁹

In its final decision, the Eleventh Circuit Court wrote extensively on past precedent, statutes, and cases regarding the Establishment Clause, religion, and its place in the American educational system. Essentially striking at the heart of the State’s arguments in favor of the prayer laws, the Appellate Court reversed the previous ruling.

Supreme Court and Eleventh Circuit precedent regarding prayer in public schools is abundantly clear. No new issues were presented to the district court. In keeping with this precedent, we hold that the Mobile County school prayer activities, Ala.Code § 16-1-20.1 and Ala.Code § 16-1-20.2, are in violation of the establishment clause of the first amendment to the Constitution of the United States.⁶⁰

While this ruling represented a victory for Jaffree, it was certainly not the end of the battle he waged with the State of Alabama and proponents of the prayer laws. His case soon moved to the floor of the United States Supreme Court. The State of Alabama and its governor, George Wallace, a previously outspoken adversary of the Court and its power, appealed to this body in response to the Circuit Court’s decision. Wallace now needed the Supreme Court’s power to defeat Jaffree and keep prayer in his schools.

Wallace v. Jaffree: The Supreme Court

On December 4, 1984, arguments in front of the Supreme Court began in the dispute of *Wallace v. Jaffree*. The case argued on that date had greatly evolved from its initial status as Jaffree’s complaint to Chioke’s teacher in 1981. By this time §16-1-20 had been dropped from Jaffree’s suit, and after the Eleventh Circuit Court’s findings, the challenge to the Supreme Court

⁵⁹ Ibid.

⁶⁰ Ibid.

was to examine Alabama statutes §16-1-20.1 and §16-1-20.2. The Court quickly and unanimously affirmed the nullification of statute §16-1-20.2 by the Circuit Court and declared that the expeditious and self-evident nature of this affirmation “makes it unnecessary to comment at length on the District Court’s remarkable conclusion that the Federal Constitution imposes no obstacle to Alabama’s establishment of a state religion.”⁶¹

The true question that the Court faced concerned §16-1-20.1, “the moment of silence” statute. To do so, the Supreme Court heard arguments, and investigated historically relevant decisions and precedents. The State again pursued its same argument where it asserted that the sovereignty of the states permits them to do as they wish regarding the establishment of religion. The states are not bound by the First Amendment and its Establishment Clause, as the Fourteenth Amendment fails to apply to such a situation.⁶²

The Court acknowledged the fact that there was a point in time when this application of the First Amendment did not extend to the actions of the states, but only to actions of Congress. This time, though, had long passed by the time that *Wallace v. Jaffree* was heard.

But when the Constitution was amended to prohibit any State from depriving any person of liberty without due process of law, that [Fourteenth] Amendment imposed the same substantive limitations on the States’ power to legislate that the First Amendment had always imposed on the Congress’ power. This Court has confirmed and endorsed this elementary proposition of law time and time again.⁶³

On its second matter of examination, the Supreme Court looked to its 1971 *Lemon v. Kurtzman* decision that laid out a multiple-prong test to determine if an act violates the First Amendment. One aspect of the test determined whether or not a piece of legislation serves any

⁶¹ *Wallace v. Jaffree*, 472 U.S. 38, 1985 (Justice Stevens).

⁶² *Ibid.*

⁶³ *Wallace v. Jaffree*, 472 U.S. 38 1985 (Justice Stevens).

other purpose than advancing a particular religion.⁶⁴ State Senator Donald Holmes aided the Court in its decision on this aspect of the “Lemon Test.”

In his testimony before the Court, Holmes, a primary sponsor of the Alabama prayer laws, stated that these statutes were an “effort to return voluntary prayer” to public schools and the legislature had “no other purpose in mind” when bringing the legislation to a vote.⁶⁵ The Court commented on the situation: “The State did not present evidence of *any* secular purpose” for the statutes, a circumstance that made this portion of the “Lemon Test” quite simple to determine.⁶⁶

Justice Stevens wrote, “The legislative intent to return prayer to the public schools is, of course, quite different from merely protecting every student’s right to engage in voluntary prayer during an appropriate moment of silence during the schoolday [sic].”⁶⁷ This was a reference to §16-1-20, which allocated one minute of the school day for simple “meditation”—a statute expanded by statute §16-1-20.1 by adding specifically that this time was to be used for voluntary prayer. Despite this existent statute allocating time for meditation, the State still added supplementary guidelines in §16-1-20.1 that, as the Court wrote, “indicates that the State intended to characterize prayer as a favored practice. Such an endorsement is not consistent with the established principle that the government must pursue a course of complete neutrality toward religion.”⁶⁸

Considering all of these factors, the Supreme Court affirmed the decision made by the Eleventh Circuit Court. Alabama state statute §16-1-20.1 was deemed unconstitutional, as it was found directly to violate the Establishment Clause of the First Amendment. Ishmael Jaffree’s

⁶⁴ *Lemon v. Kurtzman*, 403 U.S. 602, 1971 (Justice Burger).

⁶⁵ *Wallace v. Jaffree* (Justice Stevens).

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

effort at providing his children an educational environment free from what he viewed as religious indoctrination had finally met an end—an end, to his surprise, that ruled in his favor.⁶⁹

Once the Court had finally rendered its complete decision, Jaffree recalled an easing of tensions not only in his private life, but in his public life as well. The case had catapulted Jaffree to celebrity-like status, although he often was not met with celebrity-like respect. The four years that had transpired as the case proceeded through the various levels of the court system had given Jaffree a quality of life that was far less than desirable.

Before, During, and After: Impacts and Consequences of the Ruling

The African American community, a close-knit population in Mobile in the 1980s, had its own opinions of Jaffree’s case. As it first went forward, Jaffree encountered hostility from the black community. “African Americans as a group are among the most religious people in the world”⁷⁰ Jaffree recalled that “most [African Americans] didn’t have a problem with religion in school at all,” and, as a result, he was initially shunned from the community for his actions.⁷¹ These passive-aggressive stances were not the only public displays of criticism that Jaffree was met with.

The Jaffrees were repeatedly subjected to threatening phone calls at all hours of the day and night, threatening letters sent to their home, and offensive actions such a repeatedly having eggs thrown at their cars and home.⁷² These actions got so unbearable that Jaffree had considered moving out of Mobile altogether.⁷³ The attacks that the Jaffrees endured were a

⁶⁹ Author’s Interview with Ishmael Jaffree, 11 October 2012.

⁷⁰ Jaffree, *African-American Humanism*, 187.

⁷¹ Author’s Interview with Ishmael Jaffree, 11 October 2012.

⁷² Ibid.

⁷³ “Jaffree Paid Steep Price for Prayer Victory,” *The Montgomery Advertiser*, 6 June 1985.

testament of public opinion in the area. The condemnation of Jaffree, however, not only came from the public. Jaffree's own children soon became some of his major critics.

When Ishmael Jaffree decided to initiate the suit in 1981, his wife and children were initially supportive of the action.⁷⁴ As the case began to gain traction and garner the local and national spotlight, however, these feelings drastically changed. His children especially were swept into the spotlight as the case gained national attention.

As the children endured borderline harassment, Jaffree recalled them quickly turning against his actions and wishing he had never even brought the suit. "They resent the fact that I brought the case. My own children call it a 'stupid case.' That's what they've heard in class."⁷⁵ He suggested that the attention and subsequent ostracism that his children were receiving at school was perhaps far more difficult to cope with than the results of their refusal to participate in the prayer. The ostracism became so great that at one point they came to Jaffree and asked him to dismiss the case entirely.⁷⁶

The four years of the case were ones of great tribulation for the Jaffree family. Once the Supreme Court rendered its decision, however, some things changed for the better. The initial shunning Jaffree and his family experienced from the African American community reversed, and he and his actions were welcomed and supported by the black community.⁷⁷ As Jaffree recalled, when the case was first brought, the shunning stemmed from the fact that the action was "just something that we [as African Americans] don't do."⁷⁸ The final decision, though, represented a victory for the minority population in Alabama, and was then welcomed. This clear reversal illustrates this point. Not everything, though, changed for the better.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Jaffree, *African-American Humanism*, 187.

⁷⁷ Author's Interview with Ishmael Jaffree, 11 October 2012.

⁷⁸ Ibid.

Jaffree continued to practice law after the decision was handed down. Now a public figure, Jaffree was often met with hostility in the courtroom. Frequently, judges would mockingly ask Jaffree if it were acceptable to swear in witnesses as they took the stand.⁷⁹ Additionally, one opposing attorney in particular repeatedly referred to Jaffree as Frederick, his original and renounced name, as an attempt to aggravate him.⁸⁰ These all came as a result of the litigation and its legacy.

One result that Jaffree had not necessarily expected, however, was the blatant disregard for the Supreme Court's ruling on the part of the State government and the school system. From the top tiers of the State government down to the ordinary citizens and school employees, sentiment against the ruling seemed to be uniform. Governor George Wallace, clearly outspoken against the decision, declared that "I feel the Supreme Court is in error in this ruling" and that he "intends to protect the religious freedoms of all citizens of the state."⁸¹ The same attitude appeared to be reflected among school officials throughout the state.

"I can't envision a great deal of change because of the court's decision."⁸² Randy Quinn, the Executive Director of the Alabama Association of School Boards, expressed feelings that presumably reflected those of the entire board. The President of the Alabama Congress of Parents and Teachers echoed this sentiment in saying that she does not foresee "drastic change" because of the ruling. Additionally, she asserted that "[religious practices] will continue to happen [in smaller schools] if there is no one in those schools offended by it."⁸³

Despite the national publicity and federal ruling on prayer and religious activity in the public school system, faithful believers persisted and sometimes resolved to defy the order of the

⁷⁹ Ibid.

⁸⁰ Author's Interview with Ishmael Jaffree, 11 October 2012.

⁸¹ George Wallace, "Press Release on Supreme Court Ruling," 4 June 1985, Legal File: Jaffree v. Mobile County.

⁸² "Ruling Not a Big Deal," *The Mobile Register*, 5 June 1985, Jaffree Legal Files.

⁸³ Ibid.

Court. This fact speaks to the nature and ideals of many affected by the ruling. Regional and national opinion all were affected by these proceedings, a process that was ignited by one man's persistence for what he saw as right. Just how much of an effect this had on the opinions of others is yet to be determined, but they were nonetheless challenged and perhaps even changed.

Conclusion

From his early childhood, through his college years, and culminating in his involvement in *Wallace v. Jaffree*, Ishmael Jaffree believed in the value of independent thinking and strove to do all he could to promote this goal. This value was most threatened when it was encroached upon in his children's lives. He believed it was impossible to espouse these ideals, especially in the form of religious choice, when his children were being indoctrinated with specific beliefs in their educational curricula.

It was this defense that came to reroute his life and eventually define his purpose. Despite hostile attacks from his community, both black and white, and even harsh criticisms of his own family, Jaffree fought for equality for his children. "I was seeking to maintain the integrity of the Constitution and to keep public officials from making decisions about my children's spiritual upbringing."⁸⁴ Those decisions were solely ones to be made by his children themselves. Jaffree would stop at nothing to see that through.

Jaffree had experienced a number of transformations throughout his life—spiritual, philosophical, and intellectual. *Wallace v. Jaffree* perhaps represents the apex and summation of every transformation he experienced. The values of independent thinking and independent choice, both of which Jaffree embodied, are exhibited most clearly through his actions in the case. He affected the case, just as much as the case affected him.

⁸⁴ Jaffree, *African-American Humanism*, 186.

Chapter 4 Rehnquist's Attempt to Break the Wall

In 1985, Justice William Rehnquist sat in his chambers to draft his dissenting opinion in the case of *Wallace v. Jaffree*, an opinion that would come to illustrate his ideals and beliefs. In his dissent, Rehnquist addressed the foundations upon which so many prior precedents had been built. In a lengthy discussion of the historical foundations of Church-State relations, where he saw the possibility of a harmonious relationship, Rehnquist struck at the key misperception, as he described it, of this relationship for over a century.

Our perception has been clouded not by the Constitution, but by the mists of an unnecessary metaphor [of an apparent wall of separation between Church and State] . . . As its history abundantly shows, however, nothing in the Establishment Clause requires government to be strictly neutral between religion and irreligion, nor does that Clause prohibit Congress or the States from pursuing legitimate secular ends through nondiscriminatory sectarian means.¹

Rehnquist addressed and attempted to break down the understanding of the metaphorical wall that separated government from religion. This wall, as he said, has no basis in any constitutional document and should not be relied upon for legal rulings.

Rehnquist's arguments did not end with his rejection of this apparent "wall of separation," a phrase that was originally coined in the 1878 Supreme Court case, *Reynolds v. United States*. Rehnquist went further to bring issues of the Fourteenth Amendment and state sovereignty into his dissent, many of which mirrored arguments made by the Wallace administration in the *Wallace* case. He did not take this position at the time of his ascendancy to the Supreme Court, but adopted it much earlier in his life.

Early Life and Influences

¹ *Wallace v. Jaffree*, 472 U.S. 38, 1985 (Justice Rehnquist).

William Hubbs Rehnquist accepted his offer of admission as an undergraduate to Stanford University and first stepped onto the Palo Alto campus in the fall of 1946. His time there would prove extremely influential in his later opinions as a member of the Supreme Court. This influence originated in his first experience with constitutional law in an undergraduate course taught by Charles Fairman, a legend on the Stanford campus. Fairman was “a brilliant and imposing figure” and “a demanding teacher and exacting scholar of constitutional law and court history,” as a Stanford alumni magazine described him.² While his reputation preceded him, this was not his most striking feature that influenced Rehnquist as he sat in Fairman’s constitutional law class as an undergraduate.

Fairman focused much of his semester on the interpretation and implications of the Fourteenth Amendment, especially Section I, which states:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Despite the clear language of the amendment, Fairman saw its meaning as subject to interpretation and far from a uniformly accepted truth. He taught that the “privileges and immunities” were few, and espoused an extremely narrow interpretation of the phrase’s authority over the states.³ As one undergraduate enrolled in Fairman’s class recalled, “He clearly taught that the Fourteenth Amendment did not apply the Bill of Rights to the states.”⁴

These views Fairman communicated seemed to resonate with William Rehnquist. Rehnquist took Fairman on as a mentor throughout his academic career. Fairman was such an influence on Rehnquist that Rehnquist dedicated his final book, *Centennial Crisis*, to the

² John A. Jenkins, *The Partisan: The Life of William Rehnquist* (Public Affairs: New York, 2012) 14.

³ Ibid. 15.

⁴ Ibid. 15-16.

professor. “I dedicate this book to Charles Fairman who first introduced me to the Supreme Court in an undergraduate course in Constitutional Law at Stanford University.”⁵ From his first introduction to constitutional law, Rehnquist firmly held Fairman’s teachings and applied them throughout his long tenure in the field of law.

Rehnquist Arrives in Washington

While Rehnquist’s relationship with Fairman influenced his opinions, it also greatly contributed to Rehnquist’s success at attaining a seat on the Supreme Court. After his graduation from the Stanford University School of Law in 1952, Rehnquist set his sights on attaining a clerkship with a Supreme Court justice, namely, the conservative Justice Robert Jackson. Traditionally, Stanford Law graduates were passed over for clerkships in favor of Ivy League graduates. Fairman, however, thought Rehnquist was well qualified to hold the position. He consulted a former clerk and protégé Phil Neal, who set up a meeting between Rehnquist and Justice Jackson that ultimately led to Rehnquist’s appointment as a clerk.⁶

Rehnquist’s clerkship under Justice Jackson lasted a term and a half—from February 1952 to June 1953. His short time under Jackson, though, was at a moment of great significance in the history of American civil rights. It was between these dates that the 1896 Supreme Court decision *Plessy v. Ferguson* came to be challenged before the Court. In *Plessy*, the Court ruled in a 7-1 vote that state law endorsing “separate-but-equal” facilities for different races did not violate the Thirteenth or Fourteenth Amendments.⁷

In the years leading up to Rehnquist’s clerkship, the National Association for the Advancement of Colored People (NAACP) had already worked to loosen the restraints of racial

⁵ William Rehnquist, *Centennial Crisis: The Disputed Election of 1876* (Vintage Publishing: New York, 2005).

⁶ Jenkins, 29-29.

⁷ 163 U.S. 537.

segregation through the abolition of some Jim Crow laws and related restrictions.⁸ The *Plessy* ruling, though, still remained.

Rehnquist had just taken his new job as Jackson's clerk when the Fred Vinson Court announced it would take on the case of *Brown v. Board of Education of Topeka, Kansas*. *Brown* confronted the issue of segregation of public school systems. On May 17, 1954, the Supreme Court unanimously ruled that the segregation of the school systems was unconstitutional and hence overturned the 1896 *Plessy* precedent.

Whereas the decision was unanimous, Rehnquist reached his own opinions on the matter. Professor Fairman's influence first appears in Rehnquist's writings about *Brown*. Rehnquist believed that the scope of the Fourteenth Amendment's Equal Protection Clause was narrow. It did not extend the Bill of Rights to the actions of the states over individuals.⁹

These conclusions appeared in a 1952 memo Rehnquist wrote entitled, "A Random Thought on Segregation Cases." In the short essay, Rehnquist expressed his feelings concerning the authority of the Supreme Court over federal, state, and individual matters, and the relationships between each. Additionally, he went on to critique arguments against the practice of segregation and how segregation was said to violate the rights of the individual.

[The process of judicial review] as applied to questions of inter-state or state-federal relations, as well as to inter-departmental disputes within the federal government, this doctrine of judicial review has worked well...[The process] as applied to relations between the individual and the state, the system has worked much less well...I realize that it is an unpopular and unhumanitarian [*sic*] position, for which I have been excoriated by "liberal" colleagues, but I think *Plessy v. Ferguson* was right and should be re-affirmed.¹⁰

⁸ *Sweat v. Painter*, 339 U.S. 629, 1950, *McLaurin v. Oklahoma State Board of Regents*, 339 U.S. 637, 1950.

⁹ David L. Hudson, Jr., *The Rehnquist Court: Understanding Its Impact and Legacy* (Westport: Praeger Publishers, 2007) 7-8.

¹⁰ William Rehnquist, "A Random Thought on Segregation Cases," 1952, Supreme Court History: Expanding Civil Rights, http://www.pbs.org/wnet/supremecourt/rights/sources_document7.html, accessed 25 February 2013.

At the bottom of the document, the initials “WHR” appear as a testament to the author, William Hubbs Rehnquist. Defying his “liberal colleagues,” Rehnquist declared his opposition to this application of the Fourteenth Amendment. At the time of this memo, Justice Jackson was still allegedly undecided on how to rule on the case. Despite Jackson’s hesitation, Rehnquist urged the Justice to file a dissenting opinion. His preference is encapsulated in a recommendation given to Jackson urging just that:

The Constitution does not prevent the majority from banding together, nor does it attain [*sic*] success in the effort. It is about time the Court faced the fact that the white people in the South don’t like the colored people; the Constitution restrains them from effecting this dislike through state action, but it most assuredly did not appoint the Court as a sociological watchdog to rear up every time private discrimination raises its admittedly ugly head.¹¹

Just as in his memo, Rehnquist argued that the federal government has no jurisdiction to rule in such instances as the one they currently were, which was *Brown*. It is solely a state issue, he argued, and should be left as such.

His efforts, though, would prove to be fruitless. When *Brown* was reargued on December 8, 1953, Earl Warren had replaced Fred Vinson as Chief Justice of the Supreme Court. It was ultimately Warren who led the Court to a unanimous decision in favor of *Brown*, reversing the *Plessy* precedent.

While these opinions and documents seemingly defined a specific legal perspective of the young Rehnquist, they would not be publicly heard nor seen until years later, in 1971. Perhaps the worst time to surface politically speaking, these memos reappeared almost two decades into Rehnquist’s future, during the Senate hearings that placed him on the Supreme Court.

Rehnquist’s Ascent to the Court

¹¹ Jenkins, 41.

William Rehnquist's ascendency to the Supreme Court came as a surprise not only to those speculating about who would replace Justice John Marshall Harlan II, but also to Rehnquist himself. In 1971, William Rehnquist was serving as the Assistant Attorney General to the Office of Legal Counsel, essentially leading the office of the Attorney General.¹² As the search began for an individual to fill the vacancy left by Justice Harlan, Rehnquist's office was given the job of organizing the search. John Dean, White House Counsel, recalled the surprise as President Richard Nixon announced his choice: "The reason Rehnquist had never been on anybody's radar before was because Rehnquist was *running* the radar machine over at Justice."¹³

Rehnquist's confirmation hearings, though, did not go entirely without challenge. In 1971, during the hearing in front of the Senate, *Newsweek* unearthed the memo he wrote in 1952 regarding the *Brown* case. This memo, inscribed with his initials "WHR," only gave his opponents further ammunition in support of their opposition to his appointment.

The NAACP set out to paint Rehnquist as a racial extremist against any progress towards racial equality. Their accusations that Rehnquist had challenged the right of African Americans exercising their right to vote fueled their further allegations that a "Rehnquist doctrine would return the nation to pre-1954 practices" and "permit segregation by race, both by private individuals and government."¹⁴ The American Civil Liberties Union (ACLU) also outspokenly opposed his nomination, claiming Rehnquist was "a dedicated opponent of individual liberties."¹⁵

Most of the accusations delivered against Rehnquist's nomination stemmed from his 1952 memo. In his own defense, Rehnquist claimed that this memo was only a draft of a

¹² Hudson, 4-5.

¹³ Jenkins, 127-128.

¹⁴ Hudson, 7.

¹⁵ *Ibid.* 8.

possible opinion for Justice Jackson. At the time, claimed Rehnquist, Jackson was still undecided on how he would vote in the *Brown* case, and instructed Rehnquist to write the memo.¹⁶

Despite such harsh criticism from groups like the NAACP and ACLU, many did join in the defense of Rehnquist. Building off of Rehnquist's own defense of his memorandum in opposition to the *Brown* ruling, David Cronson, a fellow law clerk for Justice Jackson during Rehnquist's time, echoed Rehnquist in saying that the memo was written at Jackson's request as a rough draft for the Justice's views on the case. This claim became a defining point for the hearings. While his explanation for the memo was accepted, later documents revealed that his defense may very well have been unfounded.¹⁷

Casting the Mold: Rehnquist's Judicial Outlook

Having been confirmed to the Court in the Senate by a 68-26 vote, Rehnquist finally ascended to the highest court in the nation. Now he began the process of molding himself into the judge that he would become. Rehnquist himself repeatedly described his judicial outlook as emphasizing the importance of perceiving the Constitution in light of the original intent of the framers. He stringently opposed the philosophy that is sometimes referred to as a "living Constitution," or what he described as keeping the Constitution "in step with the times."¹⁸ It was this strict outlook that guided his opinions, especially those regarding the First Amendment, during his tenure on the Court. In other words, Rehnquist became a strict constructionist. He

¹⁶ Ibid.

¹⁷ Jenkins, 42-43.

¹⁸ Derek Davis, *Original Intent: Chief Justice Rehnquist and the Course of American Church/State Relations* (Prometheus Books: New York, 1991), 8.

believed one should strictly confine his or her decisions on constitutional matters to enforcing the statements that are clearly stated in or implied by the text of the Constitution.¹⁹

This strict adherence complemented his blatant advocacy of states' rights and his opposition to the extension of federal power. In the 1977 case, *Trimble v. Gordon*, a matter that addressed the issue of inheritance and how it applied to illegitimate children in Illinois, Rehnquist further expressed his opinion on states' rights in his dissent.

It is too well known to warrant more than brief mention that the Framers of the Constitution adopted a system of checks and balance conveniently lumped under the descriptive head of "federalism," whereby all power was originally presumed to reside in the people of the States who adopted the Constitution. The Constitution delegated some authority to the federal executive, some to the federal legislature, some to the federal judiciary, and reserved the remaining authority normally associated with sovereignty to the States and to the people in the States.²⁰

Additionally, Rehnquist asserted his belief that the states rightfully sought to enforce their laws without any type of federal intervention. Instead, despite the Civil War amendments, specifically the Fourteenth Amendment, Rehnquist aimed to severely limit the extent of these provisions. While Rehnquist conceded that these amendments do alter the balance between federal and state power, they were not solely designed to accomplish a revision of the relationship between the two. The specific language of the amendments instead outlines the true extent of their original meaning. "Congress might affirmatively legislate under Section 5 of the Fourteenth Amendment and the courts could strike down state laws found directly to violate the dictates of the Amendments."²¹ A case where a state's law unquestionably violates federal precedent was the sole purpose of the amendments, a purpose, according to Rehnquist, that should be exercised with great caution.

¹⁹ Ibid., 14-17.

²⁰ 430 U.S. 762 (Justice Rehnquist).

²¹ Ibid.

This [ability to nullify states laws] was strong medicine, and intended to be such. But it cannot be read apart from the original understanding at Philadelphia: the Civil War Amendments did not make this Court into a council of revision, and they did not confer upon this Court any authority to nullify state laws which were merely felt to be inimical to the Court's notion of the public interest.²²

A balance, rather, must be struck. To reach such a balance, Rehnquist invoked his strict constructionist viewpoint and referred to the framers and their perceived original intent. This balance was made more tenuous by the incorporation of the First Amendment on the states via the Fourteenth. Drawing on his principle of balance that he first absorbed at Stanford, Rehnquist further advocated for states' rights and against the overreach of the federal government.

In 1981, *Thomas v. Review Board of Indiana Employment Security Division* reached the Supreme Court and dealt with matters on this point of balance. The petitioner, Eddie C. Thomas, a Jehovah's Witness, left his job at a machinery company after being reassigned to work on turrets for military use, a task religiously objectionable to him. He then was denied unemployment compensation when he resigned, because an Indiana state statute mandated the refusal of compensation for anyone who voluntarily left his or her job.²³

Initially, the Indiana Supreme Court ruled in favor of the state, declaring that the state law was not a burden on the petitioner's freedom of religion, and further that the allowance of such practices of compensation would amount to a state endorsement of religion. The case reached the United States Supreme Court in 1981. In an 8-1 decision, the Warren Burger Court reversed the Indiana Court's ruling, holding that the law was in fact an undue burden on the plaintiff, and the payment was in actuality an appropriate, neutral route of action for a member of a religious group, not a state endorsement of religion.²⁴

²² Ibid.

²³ *Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707, 1981.

²⁴ Ibid. (Justice Burger).

The lone dissenter, Justice William Rehnquist, saw otherwise. In his view, this decision only intensified and complicated the already ambiguous relationship between Church and State.

One major point of tension in this relationship, Rehnquist asserted, was:

The decision by this Court that the First Amendment was ‘incorporated’ into the Fourteenth Amendment and thereby made applicable against the States... None of these developments could have been foreseen by those who framed and adopted the First Amendment.²⁵

Despite his reluctance to accept incorporation, Rehnquist soon resigned himself to it, as seen in his dissenting opinion of the 1985 case *Wallace v. Jaffree*. This conflict, though, did not expire in the *Thomas* case. It again reemerged in *Wallace v. Jaffree*.

Rehnquist and Religion

Rehnquist’s judicial outlook informed his opinions on First Amendment cases and the incorporation of its provisions in the states. Specifically, issues of religion and its relationship with state practices was an issue that Rehnquist addressed through his strict constructionist perspective.

“The Establishment Clause presents especially difficult questions of interpretation and application.”²⁶ Writing the majority opinion in the 1983 case of *Mueller v. Allen*, Rehnquist described the Establishment Clause as the source of complex questions. Often his opinions articulated a simple, general principle: adherence to the intent of the framers. He applied this principle in this specific case that dealt with tax deductions for both public and parochial schools—a practice that the plaintiffs argued was a government endorsement of religion. “The historic purposes of the Clause simply do not encompass the sort of attenuated financial benefit,

²⁵ Ibid. (Justice Rehnquist).

²⁶ *Mueller v. Allen*, 463 U.S. 388, 1983.

ultimately controlled by the private choices of individual parents, that eventually flows to parochial schools from the neutrally available tax benefit at issue in this case.”²⁷

Rehnquist wrote the majority opinion that ruled that this practice did not in fact violate the Establishment Clause. As illustrated through his opinion in this case, Rehnquist viewed the First Amendment much differently than his peers on the Court.

Historically, the Supreme Court’s most explicit attempt at defining an understanding came through Justice Hugo Black’s opinion in the 1947 case, *Everson v. Board of Education*. The issue dealt with the allocation of tax dollars to the transportation of students to Catholic schools. The practice was ruled to be constitutional, despite the perception of a “wall of separation” between Church and State. Writing for the small majority in the 5-4 decision, Black asserted:

The "establishment of religion" clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another ... No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion ... In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State." *Reynolds v. United States, supra*, at 164 ... That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here²⁸

The four dissenting Justices ironically agreed with Justice Black’s understanding of a wall. By their logic, however, the practice of transporting children to religious schools should clearly have been struck down as a breach of the First Amendment. Justice Wiley Blount Rutledge, writing the dissenting opinion, declared, “The funds used here were raised by taxation. The Court does not dispute, nor could it, that their use does, in fact, give aid and encouragement

²⁷ 463 U.S. 388, 1983, (Justice Rehnquist).

²⁸ 330 U.S. 1, 1947 (Justice Black).

to religious instruction. It only concludes that this aid is not ‘support’ in law.”²⁹ According to Rutledge, the allocation was most certainly a breach of the restrictions of the Establishment Clause. Despite the logic, the Court generally accepted Black’s definition, which drew upon earlier cases such as *Reynolds v. United States* to arrive at the standing meaning—before Rehnquist arrived.

Through his many dissenting opinions during his time on the Court, Rehnquist strongly disagreed with such an interpretation a wall of separation espoused by past Courts and the Warren Court on which he now sat. The stances taken by these Courts were ones of strict separation.³⁰ In Rehnquist’s view, the Court should rather take more of an accommodating stance—not blatantly endorsing one religion, but rather a position that allowed for more room for government to be free to “disperse nondiscriminatory aid various religious groups.”³¹ Rehnquist aimed to dismantle the “wall of separation” that had long been accepted legally between the Church and State. This wall, according to Rehnquist, had no foundation in any part of the Constitution or First Amendment.

Wallace v. Jaffree

William Rehnquist was given his best opportunity to voice his opinions on matters of the Court’s incorporation of the Establishment Clause in 1985. *Wallace v. Jaffree*, the Alabama moment of silence case, finally reached the floor of the Supreme Court after years of rulings in lower courts.

Governor George Wallace aimed to refute the arguments of Ishmael Jaffree, who claimed the state statutes endorsing school prayer were an encroachment upon his children’s First

²⁹ Ibid. (Justice Rutledge).

³⁰ Hudson, 71.

³¹ Davis, 84.

Amendment rights. One of Wallace's main objections was that the mere presence of the federal government in the Alabama controversy was an overextension of its jurisdiction, as he believed this matter of state statutes about religion in public schools should be left to the states to decide.

These arguments by the State of Alabama directly resonated with William Rehnquist and his strict construction ideal. Just as he had argued in *Trimble*, the *Wallace* case was another instance of imbalance. Despite his distaste for the Court intervening in this matter, Rehnquist seemed already to have resigned himself to the fact that these types of cases would be heard because of the common understanding of the incorporation of the First Amendment under the Fourteenth. His reluctance to accept this inclusion can be seen in his dissent of *Wallace v. Jaffree*.

Given the "incorporation" of the Establishment Clause as against the States via the Fourteenth Amendment in *Everson*, States are prohibited as well from establishing a religion or discriminating between sects. As its history abundantly shows, however, nothing in the Establishment Clause requires government to be strictly neutral between religion and irreligion, nor does that Clause prohibit Congress or the States from pursuing legitimate secular ends through nondiscriminatory sectarian means.³²

“*Given* the ‘incorporation’” [italics added] showed Rehnquist's reluctant acceptance of the inclusion of the amendment. He did, however, use this incorporation doctrine to his advantage. Instead of being completely neutral towards religion, as the federal government had been in principle in the past, Rehnquist asserted that it can in fact aid religious efforts in a nondiscriminatory way, something made possible by the understanding of incorporation.

In his dissent, Rehnquist first attempted to break down the apparent wall of separation between Church and State and did so by emphasizing the wall's absence from any part of the Constitution. This idea of a wall, he argued, was grounded in enduring misunderstandings.

³² 472 U.S. 38, 1985 (Justice Rehnquist).

Rehnquist wrote extensively on the history of the First Amendment, specifically the Establishment Clause, and asserted that complete neutrality was never the true intent of the framers. He went on to question the conclusions drawn from this apparent misconception, and further, sought to set the record straight. He provided an understanding of his own of the relationship that the Church and State should pursue. While *Wallace v. Jaffree* was in fact the only case in which William Rehnquist formally discussed his views on the framer's intents of the religion clauses, he did so in a pointed, deliberate manner.³³

The Dissent

Rehnquist began his attack at the outset of his dissent.

It is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history, but unfortunately the Establishment Clause has been expressly freighted with Jefferson's misleading metaphor for nearly 40 years.³⁴

Referencing the Court's reliance on what Rehnquist perceived as a faulty metaphor, Rehnquist argued Jefferson's "wall of separation" had misled their rulings for four decades. Jefferson, Rehnquist asserted, was not the best authority to look to for advice on the First Amendment, as was done in the 1878 *Reynolds* case. He was in France at the time of the passage of the Amendment and therefore most likely detached from the true religious debate in the country.

James Madison, rather, should be the true voice of authority sought in the debate of the Church-State relationship. Madison was the man who pushed the idea of religious freedom through Congress.

³³ Davis, 98.

³⁴ 472 U.S. 38, 1985 (Justice Rehnquist).

When we turn to the record of the proceedings in the First Congress leading up to the adoption of the Establishment Clause of the Constitution, including Madison's significant contributions thereto, we see a far different picture of its purpose than the highly simplified "wall of separation between Church and State."³⁵

Madison's original intended amendment read as:

The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

Madison's initial proposal was much different than any wall of separation that may be understood to exist. The words and actions of Madison should elevate him above Jefferson in the debate of Church-State relations. Madison, according to Rehnquist, was advocating a responsible religious relationship for the federal government.

On the basis of the record of these proceedings in the House of Representatives, James Madison was undoubtedly the most important architect among the Members of the House of the Amendments which became the Bill of Rights, but it was James Madison speaking as an advocate of sensible legislative compromise, not as an advocate of incorporating the Virginia Statute of Religious Liberty into the United States Constitution ... His original language "nor shall any national religion be established" obviously does not conform to the "wall of separation" between Church and State idea which latter-day commentators have ascribed to him.³⁶

The Court, according to Rehnquist, mistakenly followed Jefferson's later words. Rehnquist asserted that the Vinson Court, in its ruling on *Everson*, was correct to group Madison and Jefferson together in the passage of the Virginia Statute for Religious Freedom. The Vinson Court, however, should not have blurred this relationship in a connection with Madison's advocacy for religious freedom in his proposals of a First Amendment to the United States Congress.

³⁵ Ibid.

³⁶ 472 U.S. 38, 1985 (Justice Rehnquist)

Rehnquist examined these matters of history quite closely. He raised the issue of George Washington who, at the request of the same Congress that passed the Bill of Rights declared a day of national prayer and public thanks. He also argued that Justice Joseph Story, a member of the Court from 1811 to 1845, defended religion's place in government.

Rehnquist used both this historical evidence and understanding of past precedent to arrive at his own definition of the Establishment Clause:

The Establishment Clause did not require government neutrality between religion and irreligion, nor did it prohibit the Federal Government from providing nondiscriminatory aid to religion. There is simply no historical foundation for the proposition that the Framers intended to build the "wall of separation" that was constitutionalized [*sic*] in *Everson*.³⁷

The Justice asserted that the strongest argument against such an understanding of a "wall of separation" was its complete absence from the Constitution. Sticking to his originalist perspective, Rehnquist viewed the use of such a term borrowed from extra-constitutional documents as erroneous and misguided. The misconception that has developed from the usage of the term, according to his dissent, has only further entangled and complicated the Church-State relationship.

Our recent opinions, many of them hopelessly divided pluralities, have with embarrassing candor conceded that the "wall of separation" is merely a "blurred, indistinct, and variable barrier," which "is not wholly accurate" and can only be "dimly perceived" ... the greatest injury of the "wall" notion is its mischievous diversion of judges from the actual intentions of the drafters of the Bill of Rights.³⁸

Rehnquist based the majority of his dissent on undermining this wall. After an extensive historical examination and review, in his opinion, of legal follies, Rehnquist called for a complete rejection of such a phrase, as it was "based on bad history" and therefore should be

³⁷ Ibid.

³⁸ Ibid.

“frankly and explicitly abandoned.”³⁹ He also demonstrated the fact that this idea of the “wall” was first conceptualized years after the actual amendment was written, pointing out the fact that Jefferson was more a “detached observer” than “ideal source” for interpretation of the amendment’s meaning.⁴⁰

This apparently false wall of separation was not the only flawed precedent of the Court. The Lemon Test, created by the 1971 case *Lemon v. Kurtzman*, was another measuring tool for determining if a statute was in conflict with the religious freedoms of the First Amendment.⁴¹ Rehnquist attacked the test in a much similar manner as he did the “wall” metaphor. He described the Court’s admission of the test to have been inherited from other Court rulings. These rulings, according to Rehnquist, had been based on inaccuracies such as the “wall” metaphor, and therefore false in themselves. Rehnquist extensively analyzed the test and its apparently unavoidable flaw of giving false results. He argued that the test itself was falsely grounded. He concluded his critique by drawing on his narrow constructionist ideals and saying, “These difficulties [of the test] arise because the *Lemon* test has no more grounding in the history of the First Amendment than does the wall theory upon which it rests.”⁴²

Rehnquist used all of these points to advance his own understanding of the true relationship that the Church and State should pursue. The notion of complete neutrality that the state had previously taken rested on entirely unfounded principles of nonexistent walls and faulty tests. The framers of the Constitution never intended for such a relationship to exist, according to Rehnquist. Government should be afforded much more room to accommodate nondiscriminatory relationships with religious organizations. That is what the words of the

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ 403 U.S. 602.

⁴² 472 U.S. 38, 1985 (Justice Rehnquist).

religious clauses of the First Amendment truly meant to Rehnquist, a meaning he defined in this dissent.

Rehnquist's dissent in this matter is especially interesting because of his interpretation of the amendment's meaning. This dissent was the first and only time Rehnquist articulated his understanding of the framers' intent towards the religion clauses. He used his entire dissent to describe this understanding. He in fact did not even mention the matter of *Wallace v. Jaffree* until the final two paragraphs.

Rehnquist fell back upon his historical examination of state officials "endorsing" religious action, like Washington calling a day of thanksgiving, in support of the actions of Wallace and the State of Alabama.

It would come as much of a shock to those who drafted the Bill of Rights as it will to a large number of thoughtful Americans today to learn that the Constitution, as construed by the majority, prohibits the Alabama Legislature from 'endorsing' prayer. George Washington himself, at the request of the very Congress which passed the Bill of Rights, proclaimed a day of "public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God." History must judge whether it was the Father of his Country in 1789, or a majority of the Court today, which has strayed from the meaning of the Establishment Clause.

The State surely has a secular interest in regulating the manner in which public schools are conducted. Nothing in the Establishment Clause of the First Amendment properly understood prohibits any such generalized "endorsement" of prayer. I would therefore reverse the judgment of the Court of Appeals.⁴³

Wallace v. Jaffree served as an ideal pulpit from which Rehnquist chose to express his opinions on the extent of the Establishment Clause and his understanding of the original intent of its authors. This is especially apparent because, in addition to this late mention of the actual matter of *Wallace*, Rehnquist neglected even to analyze the development, debate, and passage of the Alabama prayer laws. He also neglected to mention the plaintiff, defendant, and the true

⁴³ Ibid.

conflict that existed due to these prayer laws. Every other Justice, including the two additional dissenting Justices, referenced specific aspects of the conflict and cited their agreement or dissent in reference to specific points.

Also absent was the issue of race and its relation to the conflict. While it was in fact not explicitly part of the prayer laws in question, race certainly was an aspect interwoven in the traditions and beliefs of Alabamians defending their traditions. As seen through the defenses of segregation by radicals like Carey Daniel and other white southern extremists, religion was often turned to as a defense and even at times a prescriber of segregation practices.

How outspoken Rehnquist had once been regarding racial struggles, however, might logically lead to an anticipated mention of race in his dissent. Recalling his 1952 memo to Justice Jackson, Rehnquist blatantly argued against the nullification of the “separate but equal” doctrine. Given the way segregation and racial tension resonated throughout *Wallace v. Jaffree*, the issue of race might have been addressed. While he never directly addressed race, there is, however, a link between *Brown* and *Wallace* that Rehnquist did address.

In *Wallace*, *Brown*, and other cases like *Thomas* and *Trimble*, the issue of states’ rights and their protection from the intervention of the federal government posed a large question. Rehnquist viewed this issue as significant in all of these cases, whether on the surface about racial or religious matters. States’ rights were the unifying factor in the cases, and further, perhaps the reason for the lack of any mention of race in his dissenting opinion of the *Wallace* decision. The issue of states’ rights took precedence in Rehnquist’s opinions, overshadowing either race or religion more substantively.

In contrast to the other Justices, Rehnquist called for a complete reevaluation of the history, debate, and understanding of the First Amendment and the relationship between Church

and State. Government, instead of allowing this unauthorized wall to stand between it and religion, should pursue a more accommodating relationship with religious organizations, according to Rehnquist. Nowhere either in the Constitution or any opinion of the framers was there evidence of their intent of such a separation.

Other Opinions

Justices William Brennan, Thurgood Marshall, Harry Blackmun, Lewis Powell, Sandra Day O'Connor, and John Paul Stevens all voted in the majority against the Alabama statutes. Conversely, along with Rehnquist, Chief Justice Warren Burger and Justice Byron White voted in dissent. Including Rehnquist, the case elicited opinions from six Justices, three in favor of the majority, and three dissenting.

In the majority opinion, Justice Stevens evaluated the entire nature of the case, the arguments for and against the statutes and ultimately ruled in favor of Jaffree. He concluded:

The legislature enacted § 16-1-20.1, despite the existence of § 16-1-20, for the sole purpose of expressing the State's endorsement of prayer activities for one minute at the beginning of each schoolday. The addition of "or voluntary prayer" indicates that the State intended to characterize prayer as a favored practice. Such an endorsement is not consistent with the established principle that the government must pursue a course of complete neutrality toward religion.⁴⁴

This "complete neutrality" stands as the most pointed language of the opinion towards Church-State relations. Interestingly, Stevens neglected to insert or rely upon any allusion to the "wall of separation" metaphor that Rehnquist so scathingly renounced in his dissent. Stevens did, however, apply the Lemon Test, which incited criticisms from fellow Justices.

⁴⁴ Ibid. (Justice Stevens).

Chief Justice Warren Burger broke his dissent down into specific points. Among those, he pointed to what he saw as an over-reliance on the Lemon Test in determining such cases.

This test, he argued, should not be the sole indicator of constitutionality.

We have repeatedly cautioned that *Lemon* did not establish a rigid caliper capable of resolving every Establishment Clause issue, but that it sought only to provide "signposts." In any event, our responsibility is not to apply tidy formulas by rote; our duty is to determine whether the statute or practice at issue is a step toward establishing a state religion.⁴⁵

He also touched upon a point of irony, and perhaps hypocrisy, as he mentioned the fact that the Court session that began the day's session was initiated with a prayer.

Some who trouble to read the opinions in these cases will find it ironic -- perhaps even bizarre -- that on the very day we heard arguments in the cases, the Court's session opened with an invocation for Divine protection. Across the park a few hundred yards away, the House of Representatives and the Senate regularly open each session with a prayer.⁴⁶

These points echoed those made by Rehnquist in citing the traditional role prayer plays even in many governmental proceedings. These actions, according to Rehnquist, stood in conflict with the unexplainable and unnecessarily stark neutrality that the Court had grown to espouse.

Justice Sandra Day O'Connor, however, spoke to this point of neutrality in her concurrence. The contexts in which these proclamations of prayer are made are the defining difference for the prayer's understood acceptance.

The primary issue raised by Justice Rehnquist's dissent is whether the historical fact that our Presidents have long called for public prayers of Thanks should be dispositive on the constitutionality of prayer in public schools. I think not. At the very least, Presidential Proclamations are distinguishable from school prayer in that they are received in a noncoercive setting and are primarily directed at adults, who presumably are not readily susceptible to unwilling religious indoctrination. This Court's decisions have recognized a distinction when government-

⁴⁵ Ibid. (Justice Burger).

⁴⁶ Ibid.

sponsored religious exercises are directed at impressionable children who are required to attend school, for then government endorsement is much more likely to result in coerced religious beliefs.⁴⁷

Justice O'Connor also spoke to the issue of how the relationship between the Church and State should be defined. "The solution to the conflict between the Religion Clauses lies not in 'neutrality,' but rather in identifying workable limits to the government's license to promote the free exercise of religion."⁴⁸ Diverging from Justice Stevens, O'Connor seemed to situate herself closer to Justice Rehnquist in asserting that there is the possibility of some sort of governmental nondiscriminatory accommodation of religion by these "workable limits" in relation to the scope of the First Amendment.

The nature of the case and its practical implications most certainly caused such a diverse and articulate response from the Justices. All touched upon similar points, but presented unique perspectives that allow for insight into the logic applied to the final decision.

Conclusion

William Rehnquist carried opinions shaped in his early life into his service on the Supreme Court. His strict constructionist outlook, endorsing only the statements and sentiments clearly apparent or implicit within the text of the Constitution, was evident throughout his years of writing frequently dissenting opinions. This constructionist outlook, along with his belief in the prerogatives of the states and their immunity from unwarranted federal intervention, all emerged as principles that are most important and dear in his eyes for the governance of the country. States' rights united much of Rehnquist's dissents throughout his tenure and showed represented the groundwork of his true beliefs.

⁴⁷ Ibid. (Justice O'Connor).

⁴⁸ Ibid.

In light of this unifying principle, Rehnquist, a northern conservative and passionate advocate of legal tradition, agreed with Governor George Wallace, who at the time was often seen as a white southern extremist. Wallace and his arguments at first attempted to preserve the practice of segregation and later the religious fervor that he saw as rightfully in the school system. Rehnquist, while not espousing the questionable practices Wallace advocated, actually found himself in agreement with the man. There was an ironic conformity between the opinions of two different men.

While Rehnquist's judicial opinions aimed to protect the framers' intent, he refrained from explicitly applying them to religion—until the case of *Wallace v. Jaffree*. This case exhibited a potent combination of the struggles of Church-State relations, racial tension, and the struggle between states' rights and federal intervention. This mixture of elements provided a model case for Rehnquist to explicitly state his opinions on each matter, how they fit into his constructionist view, and how the Court should actually rule in regards to each consideration.

Most importantly for Rehnquist, the “wall of separation,” had to be knocked down, with the evidence he presented acting as the foundation for his argument. Doing this would allow a reevaluation of the relationship of Church and State, and ideally for Rehnquist, result in a more amiable, mutually beneficial affiliation.

Rehnquist responded to the arguments of both Governor George Wallace and Ishmael Jaffree, two men who held passionate personal ideals. He effectively reformulated Wallace's specific views in more general terms. In this manner, Rehnquist, a social and legal conservative, successfully made these issues a focus of a national conversation, one that called for intense inquiry and even perhaps redefinition of what Americans believed to be accepted understanding of basic concepts.

Calling into question the legal foundation of so many Court rulings was no trivial action on the part of William Rehnquist. His calculated rhetoric effectively questioned these beliefs and illuminated his reason for doubt. In light of Rehnquist's own foundational values, his basis for executing such an inquiry becomes clear. Beyond the dense analysis of legal precedent stood Rehnquist's main argument for states' rights against unwarranted federal intervention. *Wallace v. Jaffree* exemplified such an intrusion, one that for Rehnquist needed to be addressed and rectified.

Conclusion

Wallace v. Jaffree occurred at a time and place of religious traditionalism and racial tension. The case elicited arguments connected with religion and race, two issues that proved to be more interconnected than they first appeared.

The First Amendment itself, specifically the Establishment and Free Exercise Clauses, was the central point of contention in the case. The amendment had a history rife with argument and debate over its true jurisdiction and meaning.

In *Wallace v. Jaffree*, the First Amendment, while certainly the main point of explicit contention, was not the sole issue of the case. State's rights, historically connected in Alabama with racial segregation, also played a role. At the outset of his political career, Alabama Governor George Wallace was seen as a moderate supporter of segregation, his stance oftentimes being described as a "dignified defense." His position became more extreme later in his career, as he then espoused a view of segregation as now, tomorrow, and forever. These views were in stark conflict with federal law, and the Governor found himself frequently clashing with opponents at a national level. From his stand in the schoolhouse door to his harsh political rhetoric about racial separation, his arguments constantly advocated state sovereignty and freedom from the imposition of federal mandates. As race began to be eclipsed by other issues in the 1970s, the Governor's priorities also changed. Religion rose in importance not only to Alabamians, but also the country as a whole. Recognizing this, the Governor amplified his support for the inclusion of prayer in the educational system of Alabama.

One of the results of this political attention to religion in Alabama, specifically its presence in the school system, was *Wallace v. Jaffree*. This case exemplifies the Governor's political tendency to support extremism, as he quickly advocated the religious piety that many in

his state championed and its rightful place in public schools. In his arguments, the Governor fell back upon his same arguments of states' rights--the need for the responsibility to be solely in the hands of the states on issues like those of religion and race. The Alabama prayer laws were state laws enacted by the state legislature. Religious practice in schools should be left to the states to decide.

Ishmael Jaffree brought his own opinions and convictions with him to this legal struggle. He believed that everyone has the right to be his or her own individuality, unhindered by the opinions of the majority. Jaffree was fully willing to use the power of the federal government and courts to support and sustain this opinion, a decision that came to redirect his life and ultimately define his purpose.

Here was a man, hailing from the northern state of Ohio, who came to a religiously oriented, racially tense state of Alabama. He had spent his entire life to that point advocating for the rights of the individual. Jaffree believed religion to be a personal journey, and one that he and his children should experience for themselves. Despite the negative reactions his actions garnered from both the white and African-American communities, as well as even his own family at times, Jaffree remained undeterred from continuing his advocacy of personal freedom.

Personally, Jaffree was a man who had experienced spiritual and philosophical transformations. What came to be known as *Wallace v. Jaffree* perhaps represents the summation of every transformation he experienced. The values of independent thinking and independent choice are exhibited most clearly through his actions throughout the case.

The Supreme Court and Justice William Rehnquist in particular acknowledged every argument and formulated diverse opinions. While the majority sided with Jaffree and saw this state-mandated moment of silence for voluntary prayer in Alabama schools as an infringement

upon the First Amendment, Rehnquist expressed his dissent about how this and previous Courts arrived at First Amendment decisions.

Rehnquist represented detached stability. He contrasted with the two imposing figures of Wallace and Jaffree, who both had strong personal motives and social goals in their arguments. Rehnquist, however, embodied the characteristics of judicial conservatism, espousing his views of strict constructionist and narrow interpretation of the Constitution. He defended what he saw as the original intent of the framers of the Constitution. Whereas Wallace and Jaffree presented and argued specific ideals and doctrines, Rehnquist expanded and generalized. His arguments exhibited the breadth of the law, which made this issue not a specifically southern, religious, or racial challenge, but a national discussion.

Specifically, Rehnquist took this national discussion as an analysis of states' rights and the true meaning of the First Amendment. On this issue, and specifically the issue of state autonomy, Rehnquist ironically agreed with the arguments made by George Wallace. He reformulated them, however, as a national issue.

These three men, each with his own history and personal ideals, converged in this case—two in stark opposition to each other, and the other restating the arguments on a national scale. The arguments of each showed that while religion and race were two immensely tense issues of the time, they were not entirely unrelated to each other. Rather, they were interconnected. While this may not have been the ultimate issue, it certainly was a catalyst that drove both Wallace and Jaffree to passionately defend their respective ideals. Rehnquist took the arguments from each man and, in his judicial conservatism, transformed them to apply on a national level. This combination of circumstances made the case of *Wallace v. Jaffree* not only relevant to those the immediately involved in of the case, but to every individual in the nation.

Appendix: Chronology

1791	First Amendment adopted
1868	Fourteenth Amendment adopted
1878	<i>Reynolds v. United States</i>
1954	<i>Brown v. Board of Education of Topeka, Kansas</i>
1962	<i>Engel v. Vitale</i>
January 1963	George Wallace inaugurated to first term as Governor of Alabama
February 1963	<i>School District of Abington Township, Pennsylvania v. Schempp</i>
January 1971	George Wallace inaugurated to second term as Governor of Alabama
March 1971	<i>Lemon v. Kurtzman</i>
1978	Alabama Legislature passed statute §16-1-20
1979	Fob James inaugurated to first term as Governor of Alabama
1981	Alabama Legislature passed statute §16-1-20.1
September 1981	Chioke Jaffree complained to his father about school prayer before meals
May 1982	Ishmael Jaffree formally filed lawsuit against Mobile County School District
Spring 1982	Alabama Legislature passed statute §16-1-20.2
June 1982	Jaffree amended lawsuit to include Governor and State of Alabama
November 1982	Arguments heard in District Court in <i>Jaffree v. Mobile County School District</i>
January 1983	George Wallace, succeeding Fob James, inaugurated to third term as Governor
January 1983	District Court for the Southern District of Alabama rules against

	Jaffree and upheld school prayer
February 1983	Jaffree filed appeal to Eleventh Circuit Court
1984	Eleventh Circuit Court of Appeals reversed District Court's ruling
December 1984	<i>Wallace v. Jaffree</i> argued in front of Supreme Court
June 1985	Supreme Court declared school prayer statute unconstitutional

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