

RELIGION, EDUCATION, AND THE WARREN COURT:  
REACTIONS TO THE ENGEL AND SCHEMPP DECISIONS

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I recommend this thesis for acceptance by the Honors Program  
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## I

### INTRODUCTION

The purpose of this paper is to examine the reaction to the Engel and Schempp decisions which banned state sanctioned prayer and Bible-reading from the public schools. The reaction to the Warren Court by most every segment of society was the result of an inadequate understanding of what the Court had decided, but it was also the result of the Court's already unpopular image. The failure of the news media to report the Engel decision accurately generated high emotion in practically all segments of society, including Congress which failed to correct itself or its constituents. Regionally, the South was the most vehement in its reaction, which further reflects its attitude toward the Court whose decision in 1954 meant the erosion of an institution-racism. Politically, the reaction was predominately the reflection of a conservative coalition of Southern Democrats and Republicans. However the Republicans were the predominate force in defying the Warren Court and attempting to amend the Constitution; thus circumventing the rulings of Engel and Schempp.

President Dwight Eisenhower's appointment of Earl Warren as Chief Justice of the United States Supreme Court in 1952 changed the balance of that body when Warren began

voting with the liberal Justices. Thus began what was considered a historical shift in the role of the Supreme Court; the Court was no longer just an interpreter of the Constitution. In the Brown v. Board of Education decision of 1954 which struck down the "separate but equal" status of school segregation under the Plessy v. Ferguson decision of 1896, the Supreme Court set down guidelines and dates by which the states were to comply with the decision.

As a result of the desegregation decision the Supreme Court became the target for abusive attacks, especially from the South where segregation was extensively practiced. The Supreme Court became popularly known as the "Warren Court" because of the presumed influence that the Chief Justice had on the Court. As a result of its rulings the Warren Court became one of the most unpopular Supreme Courts. If judged by the public attitude and efforts by Congressmen to curb the Court, then the Warren Court was the most unpopular Court in the history of the Supreme Court.

There have been more attempts to curb the Warren Court than any other Supreme Court. Thirty-two percent of all bills introduced into Congress to curb the Supreme Court were introduced in the two year period immediately following the desegregation decision.<sup>1</sup> The Court has not fared well in the Public's opinion either. In a survey published in 1966 by Louis Harris only forty-eight percent of the population agreed with the decisions of the Warren Court. This low percentage is somewhat

the result of the Court's unpopular position in the South.<sup>2</sup>

At any estimation the Warren Court has maintained a very unpopular position in American society. Due to the widespread unpopularity of the Court, it was to become even more unpopular when it issued the decision to ban prayers in the public schools. The Warren Court reached the height of its unpopularity when it banned a state composed prayer in New York in 1962. In the Louis survey of 1966, of the six categories of disapproval i.e., desegregation and rights of the accused, banning prayers in the public schools ranked the highest with seventy percent of the population disapproving of the Engel and Schempp decisions.<sup>3</sup>

The Warren Court has become unpopular largely because many of its decisions have been contrary to the beliefs and values of most Americans. The controversy over separation of church and state in education has been long standing. The creation of a board of education dates to 1842, when the New York legislature because of quarreling religious sects created a school system in which no "religious sectarian doctrine or tenet should be taught, inculcated or practiced."<sup>4</sup> The problem however has been that the schools, the courts, and the churches have been unable to agree on what constitutes a sectarian doctrine or tenet. Prior to the Engel decision in 1962 there had been numerous decisions on the subject dating from an 1884 decision of the Iowa Supreme Court in Moore v. Monroe.<sup>5</sup>

Most of the states disagree on what constitutes a sectarian practice. In 1965 all states except Vermont had constitutional provisions prohibiting the use of public funds for sectarian purposes.<sup>6</sup> However the big problem has been that prior to Schempp decision which prohibited Bible-reading and recitation of the Lord's Prayer, thirty-seven of the states permitted Bible-reading. Thus in effect these states have concurred that the Bible is non-sectarian. The Bible was considered to be sectarian in only eleven states. Prior to the Schempp decision in 1963 there had been a total of twenty-one different states to rule on the legality of Bible-reading.<sup>7</sup> In fourteen of the decisions which viewed Bible-reading and prayer as legal, the courts decided that since attendance was not compulsory there was no violation of the First Amendment. The seven state courts that ruled Bible-reading illegal based their decision on the belief that the Bible is a sectarian book.<sup>8</sup>

Practically all the decisions prior to the Engel and Schempp decisions were decided on the basis of the "Free Exercise Clause" of the First Amendment. In his dissent in both the Engel and Schempp decisions, Justice Potter Stewart based his argument on the "Free Exercise Clause" because in both cases the students had the right to absent themselves from the room.

The issue of public school sanctioned prayer was not argued in a federal court until the landmark case of Engel

v. Vitale. The Supreme Court had refused to rule on the matter until 1962. Up until that time jurisdiction was deemed proper at the state level. In 1962 the Supreme Court ruled that the prayer composed by the Board of Regents in New York was a violation of the "Establishment Clause" of the First Amendment. On June 25 Justice Hugo Black delivered the opinion for the Court:

The Board of Education of Union Free School District No. 9 New Hyde Park, New York, acting under its authority sustained by state law, directed the principal of the district schools to cause the following prayer to be said aloud in the classrooms in the presence of a teacher at the beginning of each school day:

Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessing upon us, our parents, our teachers and our Country.<sup>9</sup>

The suit had been brought by the parents of ten pupils who insisted that the prayer was "contrary to the beliefs, religions, or religious practices of both themselves and their children."<sup>10</sup> The petitioners contended that the prayer was a violation of that part of the First Amendment which declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." The Supreme Court held that the Regents prayer was an "establishment" of religion and was thus unconstitutional even though the prayer was said to be "non-denominational."

The Supreme Court in 1962 reached the same conclusions that seven states had reached before. The only difference is that the state decisions did not set off a national reaction

as did the Supreme Court. Nearly every segment of society objected to the Engel decision largely because of the widespread confusion as to what the Court had decided. The news media deleted important parts of the decisions which indicated the scope of the decision and made people think that the decision went farther than it did. There was also widespread reporting of Justice William Douglas' concurring opinion which had no force of law. In his concurring opinion, Douglas referred to religious influence in governmental institutions, such as the House and Senate Chaplains, oaths for office, and slogans on coins. In his opening remarks Douglas said:

The point for decision is whether the Government can constitutionally finance a religious exercise. Our system at the federal and state levels is presently honeycombed with such financing. Nevertheless I think it is an unconstitutional undertaking whatever form it takes.<sup>11</sup>

Anyone who read Douglas' opinion could have easily got the impression that the Court had tried to adjudicate God from existence.

The reporting of Justice Potter Stewart's lone dissent did not serve to clarify the decision either. In his dissent Stewart said:

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

After the Engel decision in 1962, many people expected the Abington v. Schempp and Murray v. Curlett decisions in June of 1963. The Schempp decision as they are collectively called banned Bible-reading and recitation of the Lord's Prayer in public school. The Schempp decision was on appeal by the School District of Abington Township, Pennsylvania. The case had been won by the Schempps in a federal district court in Pennsylvania. The Abington Senior High School had each day broadcast ten verses from the Bible and followed this with the recitation of the Lord's Prayer.

In the Murray v. Curlett decision, the decision was on appeal from the Maryland Court of Appeals by William J. Murray III, infant son of Madalyn Murray whose atheistic beliefs were opposed to a reading from the King James Version of the Bible or the use of the Lord's Prayer.

In both the Schempp and Murray decisions which were referred to as the Schempp decision, the Supreme Court held as they did in the Engel decision that such exercises constituted an "establishment" of religion. However due to widespread misunderstanding, the Schempp decision was carried to extremes by those who did not understand what the decision said and by those who felt some gain in misinterpreting the decision. Justice Tom Clark who delivered the Schempp decision was careful to point to the narrowness of the decision:

. . .it might well be said that one's education is not complete without a study of comparative religion, or the history of religion and its

relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education may be affected consistent with the just amendment.<sup>11</sup>

Despite efforts by the Court to correct the misunderstanding of the Engel and Schempp decisions, nearly every segment of society continued to react and misinterpret the decisions. The remainder of this paper is an attempt to analyze those reactions and misinterpretations.

## II

### CONGRESSIONAL REACTION

The role of Congress has usually been characterized as a slow deliberating process which diligently considers the problems facing the nation and its people. In 1962, when the United States Supreme Court in Engel v. Vitale decided that the state sanctioned use of a non-denominational prayer composed by the Board of Regents of New York was unconstitutional, Congressmen in both Houses were shocked and astonished. Congressional response to the prayer decision was explosive. The members of Congress responded to the decision more promptly and more aggressively than did any other segment of society. Not since the desegregation decision of Brown v. Board of Education of 1954 has Congress reacted with a more immediate emotional feeling. Within the first twenty-four hours after the Engel decision, several Congressmen introduced strong attacks on the Supreme Court into the Congressional Record, and no one raised their voice in defense of the Court during that period.<sup>1</sup> Democrats and Republicans both took to the floor in both Houses to condemn the decision. Most of this criticism was an effort to align the decision to a Communist conspiracy. Many Congressmen felt that the decision favored atheism which the Communists support.<sup>2</sup>

Speakers in the House, mostly from the South, seized the opportunity to excoricate the Supreme Court and its stand on school prayer. They were to most observers striking at the Supreme Court not only because of the prayer decision but also at the Court as an institution which had decided the controversial school desegregation decision of 1954. The position of the Southern critics was appropriately stated when George Andrews, Democrat Representative of Alabama, said, "They put the Negro in school and now they are driving God out."<sup>3</sup> The most vocal critic in the Senate was Senator Strom Thurmond of South Carolina. In one day he introduced eight hostile editorials into the Congressional Record. For more than two months he criticized the Court constantly.<sup>4</sup>

The immediate reaction of Congress was very emotional. Judging from the content of the Congressional criticism of the Court, it appears that Congressmen were not any more informed than the general public who were practically as outraged. Much of the early criticism of the Court was based on what Congressmen had read in the press. They did not wait to read the actual decision before making many incorrect allegations.

The Engel decision, as the prayer decision came to be called, provoked immediate legislative action. Fifty-three members of the House of Representatives and twenty-two Senators immediately introduced constitutional amendments to have the Engel decision reversed. On July 26 and August 2 of 1962 the Senate Judiciary Committee agreed to hold hearings on the

proposed amendments. In September of 1962, the House in a gesture to show which side it was on, voted unanimously to put "In God We Trust" behind the House Speaker's desk.

The Abington v. Schempp decision by the Supreme Court in June of 1963 which banned Bible-reading and recitation of the Lord's Prayer in public school was but another blow to many Congressmen who had already disapproved of the Engel decision. The number of bills to amend the Constitution continued to increase in the House and Senate. In April of 1964 just prior to the opening of hearings by the House Judiciary Committee on the proposed Amendments, the number of bills had increased to 151 in the House, and nine joint bills in the Senate. Several Representatives introduced more than one bill; thirty-four Representatives introduced two bills, one Representative sponsored three bills and eighty Representatives sponsored one bill each for a total of 151.<sup>5</sup> Needless to say many of the bills were similar. When they were all sorted out and categorized the proposals seemed to suggest only seven different ways to change the First Amendment of the Constitution.

The number of proposals to amend the Constitution suggests that there was more in the motive of Congressmen than just to amend the Constitution. An article in The New Republic suggested that many Congressmen merely wanted to go on record for the upcoming elections.<sup>6</sup>

It is interesting to note the political affiliation of the members of the House who introduced proposals in the two year period prior to the House Judiciary Hearings of 1964. An analysis of the political profile of the 115 Congressmen who introduced bills to amend the Constitution reveals that sixty-seven were Republicans; forty-eight were Democrats, and all but nineteen of the Democrats were from the South. Nine of the Republicans also came from the South. A political analysis of the sponsors of the prayer amendments in the Senate reveals that they were similar to the sponsors in the House. Of the fourteen Senators who submitted resolutions, nine were Republicans, and five were Democrats; and of the five Democrats, four were from the South.<sup>7</sup>

According to G. Theodore Mitau, who made a political analysis of the impact of the "Warren Court," the proposals to amend the Constitution had conservative backing. Sixty-seven percent of the Republicans and fifteen percent of the Democrats who introduced bills to amend the Constitution scored eighty percent or better on the rating scale of the Americans for Constitutional Action.<sup>8</sup>

Many of the Congressmen who proposed the bills to amend the Constitution were from states in the East and the South. Several of the states in these two regions have a strong attachment to devotional exercises in the public schools. More than one-third of the Representatives from the states of Alabama, Mississippi, New Jersey, North Carolina, Pennsylvania,

South Carolina and West Virginia, submitted proposals to amend the Constitution.<sup>9</sup> The region most opposed to the Engel and Schempp decisions was the South, however that does not explain why Representatives from thirty-nine states submitted bills to amend the Constitution as does political differences.

An analysis of the political affiliation of Congressmen who proposed an amendment reveals that they were a coalition of Republicans and Southern Democrats. The issue, however, was solidly favored by the Republican Party. Two months before the House Judiciary Committee began its hearings on school prayer, Representative John W. Byrnes of Wisconsin, Chairman of the House Republican Policy Committee, informed the press that the Republicans had gone on record to support the Becker Amendment. The committee further urged their members to sign the discharge petition, (a parliamentary device to remove legislation from committee to the floor for a vote), thus removing the proposed amendment from the Judiciary Committee. The Becker amendment had supposedly been held up by the Chairman of the committee who was opposed to amending the Constitution.<sup>10</sup>

The first hearings on a constitutional amendment began in July of 1962 before the Senate Judiciary Committee. The hearing gave vent to many Congressmen who were highly emotional. The testimony revealed that many of them did not understand the decision. Most of the testimony stressed the concurring opinion

of Justice William Douglas in the Engel decision, which does not have the force of law. Justice Douglas in his opinion stressed what he felt was an unconstitutional act by the government. In governmental institutions Douglas felt that chaplains and references to God were unconstitutional. Senator John Stennis of Mississippi, during testimony, was even read the important footnote of Justice Hugo Black which indicated the scope of the Engel decision. Stennis, however, held that the sweeping dicta of Douglas' concurring opinion would eventually become the law. Strom Thurmond of South Carolina, also agreed with Stennis when he said, "As has been the case so often in the past, I fear that Justice Douglas' far-reaching and unprecedented concurring opinion will become the law."<sup>11</sup>

In judging the testimony and the proposed amendments, it is obvious that many Congressmen had little if no regard for what the Engel decision actually entailed. One bill proposed by Representative Walter McVey of Kansas misses the point in the Engel decision entirely. House Joint Resolution 814 reads: "In due acknowledgement and gratitude to Almighty God for his blessings on our Nation, the right of the people to pray in all public and private places shall not be violated."<sup>12</sup> To anyone who had read and understood the Engel decision it would have been obvious that this resolution would not have changed the decision at all.

The misunderstanding of the Engel decision is difficult to explain especially of Congressmen who were actively trying to have it reversed. A probable explanation for the congressional reaction was offered in the testimony of C. Emanuel Carlson, chairman of the Joint Baptist Commission on Public Affairs: "Misinformation is probably one of the major reasons for the current proposals. The Supreme Court's decision has been badly reported in many areas, and some politicians have adjusted themselves to the misinformation rather than assume responsibility to correct the reports."<sup>13</sup> With many conflicting views, the Senate Judiciary Committee failed to recommend that any action be taken. The hearings closed after two days.

The failure of the Senate Judiciary Committee to act did not halt congressional action. In less than a year the Supreme Court delivered its second decision which banned Bible-reading and recitation of the Lord's Prayer. The Schempp decision as it was called was another blow to those already highly disturbed. Representative Frank Becker of New York became the leading spokesman for a change in the First Amendment to permit prayer and Bible-reading in the public schools. However not everyone shared Becker's views, Emanuel Celler, Chairman of the House Judiciary Committee, did not want to hold hearings. Celler was accused of being an arch-secularist by his colleagues. His reluctance to open the hearings was well known; he directed the preparation of a

staff study which delayed the hearings for a while.<sup>14</sup> After many months of delay, Becker was able with the threat of a discharge petition to force Celler to hold hearings. Becker had secured the signatures of 167 Representatives on the petition, just 51 short of the necessary majority, when Celler announced that his committee would begin hearings in April of 1964.

Representative Becker also was the key figure initiating action to overturn the Supreme Court's decisions. In 1962, after the Engel decision and following the Schempp decision of 1963, he introduced amendments to the Constitution. He later joined in with other Congressmen to draft what later became the Becker Amendment. In order to avoid political antagonism he joined in with two other Republicans and three Democrats and they together submitted their joint text as House Joint Resolution 693 in September 1963.<sup>15</sup>

The House Judiciary hearings on school prayers opened on April 22, 1964 with Congressmen testifying first. Becker who was the first to testify began with an emotional barrage at the Supreme Court. His disregard for what the Court had decided in Engel and Schempp was also characteristic of the Senate hearings two years before. Becker's opinion was that there are forces in America who have committed themselves to the elimination of any reference to God:

. . .there is little doubt in my mind that steps now being taken in the courts will eventually forbid any reference to one's

reliance on God Almighty and . . . .  
Unless constitutional guarantees are es-  
tablished, devotions will be outlawed in  
all public institutions.<sup>16</sup>

In the first four days of hearings there was only one Congressman who supported the Supreme Court.<sup>17</sup> The final count of Congressmen reveals that of the one hundred who testified, ninety-seven opposed the Supreme Court. The profusion of congressional support in favor of amending the Constitution suggests that many Congressmen felt a need to go on record for opposing the Supreme Court. To some extent, the lack of support for the Court suggests that it is not politically safe to oppose religious oriented legislation. According to Donald E. Boles, a prominent authority on separation of church and state, a number of Congressmen privately confided in him that if the discharge petition had been successful, Becker's amendment would have passed the House because many members felt that it was politically impossible to oppose the amendment despite personal views to the contrary.<sup>18</sup>

What prompted the House Judiciary Committee to hold hearings was obviously the threat of the discharge petition, but it is interesting to note that many Congressmen were under pressure from their constituents to sign the petition. There was an extensive organizational effort by many groups to pressure Congressmen into signing the petition. One group, The Committee of Christian Laymen Inc., of Woodland Hills California, distributed a printed card which attributed the decision against prayer to the American Civil Liberties Union and the

Communist Party. The detachable portion of the card which was void of any Communist allegations was to be sent to Congressmen.<sup>19</sup>

The members of the House Judiciary Committee and other members of Congress received an overwhelming amount of mail. The mail they received was comparable to that received after the desegregation decision of 1954. But judging from the many printed forms it was also obvious that much of the mail was initiated by very conscientious organizational efforts throughout the nation.<sup>20</sup> Under such pressure, most Congressmen obviously felt that they had the choice of either supporting the amendment or remaining quiet.

Even though many Congressmen may have favored the Supreme Court decisions, they were under heavy pressure from their constituents to do otherwise. The extent of constituent pressure is difficult to assess. Bishop Fulton J. Sheen's testimony before the House Judiciary Committee may have provided an indication of how Congressmen may have felt. When asked what would happen if Congress also passed a ban on prayer and Bible-reading as had the Supreme Court, Sheen replied that "the House and Senate would have whole new members after the next election."<sup>21</sup> Other observers also saw the reaction of the Congressmen as politically partisan. Paul Blanshard, an authority on separation of church and state, said that the nature of the controversy was leading the nation into the "emotional eye of a hurricane." Since the Republican Policy

Committee had endorsed the Becker Amendment, it was up to the Democrats to stop them, but when both sides start arguing over who is more religious anything can happen.<sup>22</sup>

It was obvious to most observers that Congressmen were under considerable pressure from their constituents, but it was also known that after two years that the vast majority of the public did not fully understand what the Supreme Court had decided. What was even more disturbing was that Congressmen who knew that their constituents did not understand the decisions were still pressing for an amendment to the Constitution. Under questioning from Chairman Celler, Representative Louis C. Wyman of New Hampshire admitted inadvertently that it was necessary to pass an amendment to the Constitution to placate confused citizens.<sup>23</sup>

Religious influence may have prompted many Congressmen to support the Becker Amendment. It is interesting to note that the first member of Congress to support the Supreme Court during the Becker Amendment hearings was from the West Coast where religious influence in the public schools is least in the nation.<sup>24</sup> Representative B. F. Sisk, Democrat of California, charged that the campaign to upset the Court's ruling was conducted by "rather radical right wing extremist groups trying to cloak political motives in responsibility by using religion." Sisk said that Dr. Carl McIntyre, President of the International Council of Churches, was spearheading the

movement.<sup>25</sup> An article appearing in America, a Jesuit magazine, somewhat supported Sisk's contention: "It is quite true that some ultraconservative groups have picked up the prayer amendment for the political mileage that is in it. But the amendment has a lot of highly respectable supporters who can not be written off as radical right-wingers."<sup>26</sup>

Sisk was actually the only Congressman to fully support the Supreme Court. The other two Congressmen who joined in with him had already been the sponsors of prayer amendments. Representatives Robert L. Leggett, Democrat of California, and Cornelius Gallagher, Democrat of New Jersey, changed their minds and asked that the Becker Amendment be rejected.<sup>27</sup>

The overwhelming congressional support for an amendment convinced those who opposed any change in the Constitution to organize a campaign to prevent Congress from taking any action. The National Council of Churches started a drive to convince the public that a change in the Bill of rights would endanger the position of religion in America. As a result of the support for the Supreme Court, the flow of mail to Congressmen began to change. Representative Sisk announced that his mail was running eight to one in favor of the Supreme Court. On May 22, 1964 Chairman Celler announced that the "tide has turned."<sup>28</sup>

Despite the overwhelming congressional support for the Becker Amendment it failed, but the reasons for its failure

are attributable to several sources. During the early part of the hearing most of the major religious groups went on record opposing an amendment to the Constitution. The House Judiciary Committee was not convinced that the public was as concerned as many Congressmen claimed that it was. A substantial amount of the mail was generated through organizational campaigns, such as ad hoc committees set up for that very purpose. On June 4, 1964, the New York Times announced that the House Judiciary Committee had completed the hearings, however the members were highly divided and with those who were undecided holding the balance of power.<sup>29</sup>

After the close of the hearings on the Becker Amendment, which other sources say floundered on the obstructionism of Emanuel Celler and the lack of support by the Roman Catholic Church, the issue lay dormant for more than a year.<sup>30</sup> But on March 22, 1966, Senator Everett Dirksen, Republican of Illinois, announced that he would institute a proposal that would allow devotional activities in the public schools. Dirksen said that a constitutional amendment permitting devotional activities was probably the biggest thing in his life. He said that he was disturbed because the Supreme Court would not hear a case sustained by a lower court. In Stein v. Oshinsky the federal Court of Appeals sustained the ruling by the school principal that the recitation of a prayer in kindergarten by pupils of that age was not a voluntary spontaneous

action.

It is important to note that Senator Dirksen, unlike other prayer amendment advocates, wielded tremendous influence in the Senate. Even before hearings on his amendment began, he had secured the support of forty-eight co-sponsors.<sup>31</sup> The Dirksen Amendment which was officially known as Senate Joint Resolution 148 was drafted under the assumption that the Supreme Court in refusing to review the decision of Stein v. Oshinsky by the Second Circuit Court of Appeals had definitely closed the door to voluntary prayer in the public school. The Supreme Court, however did not rule on the voluntary aspect of school prayer which is provided through the "Free Exercise Clause" of the First Amendment. The narrowness of the Engel and Schempp decisions, which were based on the "Establishment Clause" seems to have convinced many Congressmen that it also affected the voluntary aspect of religious freedom.

Not only did Dirksen have the support of many other Senators, he also claimed to have the support of the public. He constantly referred to a Gallup Poll which indicated that eighty percent of the people supported his amendment.<sup>32</sup> On August 1, 1966 the Senate Judiciary Subcommittee, under the Chairmanship of Birch Bayh, Democrat of Indiana, opened hearings on the Dirksen Amendment. But unlike the hearings on the Becker Amendment two years earlier, most of the testimony this time supported the Supreme Court's Engel and Schempp decisions. The testimony of several experts on the Constitution

revealed that Dirksen's Amendment as well as the 151 bills introduced at the Becker Amendment hearing failed to be suitable to everyone. But even with failure to write an amendment that would be acceptable to everyone, Dirksen brought his amendment to the floor of the Senate for a vote.

The vote on Dirksen's prayer amendment seemed to be a ticklish situation for most Senators. The common response from many Senators was "how can we vote against prayer." Yet if they voted for the proposed amendment they would be the object of criticism by the major religious organizations, such as the National Council of Churches.<sup>33</sup> Dirksen was accused of having other motives for his stand on the school prayer issue. According to one news source, Dirksen threatened to bring the prayer amendment to the floor of the Senate so as to whip up support for his campaign against reapportionment.<sup>34</sup> Nonetheless, the Senate did vote on the Dirksen Amendment on September 21, 1966 after only a week of hearings. The amendment did not get the necessary two-thirds and failed 49-37, just nine votes short.

The vote on the Dirksen Amendment is important in that it indicates a significant political and regional difference in America's attitude toward religion. In many ways the vote was politically partisan. Of the Senators who voted for the Dirksen Amendment, twenty-seven were Republicans and twenty-two were Democrats; and of the Democrats, fifteen were from the South. The coalition opposing the Dirksen Amendment was

even more one-sided. Three Republicans and thirty-four Democrats opposed the amendment and twenty-nine of the Democrats were from regions other than the South. It was somewhat expected that the vote would follow those patterns, but what is more significant is that of the twenty-eight Senators re-elected later that November in 1966, twenty-one voted for the Dirksen Amendment.<sup>35</sup> Illustrative of a broader ideological implication is that of the coalition which voted against the amendment, thirty-two were rated with a 61 percent approval by the Americans for Democratic Action. Of the Senators who voted in favor of the amendment, twenty-nine were given a 61 percent or better rating by the Americans for Constitutional Action.<sup>36</sup>

Although Dirksen's amendment failed, he brought it before the Senate again in 1967. But as had been the results of all previous attempts to draft an amendment, Dirksen's latest proposal was not suitable to everyone. In this latest draft Dirksen even tried to get nondenominational prayer accepted, but that was hardly acceptable since that was what started the controversy in the first place. Even Dr. Carl McIntyre contended from the start of the Becker Amendment hearings that there was no such thing as a nondenominational prayer.<sup>37</sup>

The Dirksen Amendment did not have as much congressional support as did the Becker Amendment. After the House Judiciary Hearings in 1964, interest in obtaining a constitutional

amendment abated considerably. The number of bills proposing to amend the Constitution in 1965 and 1966 declined sharply. By the end of 1966 only fifty-five Representatives had offered resolutions and twenty-three of these were a reintroduction of the Becker Amendment.<sup>38</sup>

The failure of the Dirksen Amendment has thus far marked the end of legislative attempts to reverse the Engel and Schempp decisions. What has been most significant of the congressional reaction is that Congress was willing to repeat the process of amending the Constitution three times with the same results. During each of the hearings the same conclusion was reached each time. The hearings revealed that there was no practice of religion in the public schools that was acceptable to all segments of society.

### III

#### POLITICAL REACTION

During the times of great controversy there usually is a certain group of people who feel the necessity and compunction to take the leadership for what they consider to be the common cause for all men. On June 25, 1962, judging from the lament of some of our most outstanding political leadership, just such a cause existed. The Supreme Court on that day declared that a prayer composed and endorsed by the Board of Regents in the state of New York to constitute an "establishment" of religion, which is illegal as provided by the First Amendment to the Constitution.

The immediate reaction of many political leaders was to denounce the Supreme Court for what they considered to be an obvious misinterpretation of the Constitution. Many of them were quick to speak out even though it was impossible for them to fully understand what the Court had actually decided. Many of the major newspapers had made major deletions of extremely important points in the majority opinion. Thus the immediate impression of many politicians was that the Supreme Court had attempted to adjudicate God from existence. Two former presidents wasted little time in commenting on the decision. Dwight Eisenhower accordingly said:

I always thought that this nation was essentially a religious one. I realize of course that the Declaration of Independence antedates the Constitution, but the fact remains that the Declaration was our certificate of national birth. It specifically asserts that we as individuals possess certain rights as an endowment from our Creator--a religious concept.<sup>1</sup>

Former President Herbert Hoover asserted with more certainty that the Supreme Court's decision definitely represented the "disintegration of a sacred American heritage." He further asserted that "Congress should at once submit an amendment to the Constitution which establishes the right to religious devotion in all governmental agencies whether national, state or local."<sup>2</sup>

Not all Presidents, past and present, saw the decision in the same view. John F. Kennedy, the first Catholic to become President, felt compelled to support the Supreme Court. In a press conference two days after the decision he had this to say of the decision:

In addition, we have in this case a very easy remedy, and that is to pray ourselves. And I think that it would be a welcome reminder to every American family that we can pray a good deal more at home, we can attend our churches with a good deal more fidelity, and we can make the true meaning of prayer much more important in the lives of all of our children.<sup>3</sup>

Not all political leaders on Capitol Hill saw the decision the same way as the President. Many Congressmen took to the floor in the House and Senate to bitterly criticize the Court for its erring ways. Most of the criticism was an emotional outburst aligning the Court with a Communist plot

to secularize the nation. Representative Mendel Rivers of South Carolina charged that the decision provided "aid and comfort to Moscow!"<sup>4</sup> Alvin O'Konski of Wisconsin, in a similar vein, said that "We ought to impeach these men in robes who put themselves above God."<sup>5</sup>

Much of the criticism came from Southern Congressmen whose wounds from the desegregation decision of Brown v. Board of Education had yet to heal. In a speech delivered on the floor of the Senate, Strom Thurmond, the Southern defender of states rights, charged: "The Court has bitten off more than it can chew. And I trust that the American people will soon have the Congress to take the necessary action to reverse this decision."<sup>6</sup> Senator Herman Talmadge of Georgia, in what was a typical misunderstanding of the decision, said that "the Supreme Court has set up atheism as a new religion and put God and the devil on an equal plane."<sup>7</sup>

The emotional reaction generated by the Engel decision had yet to settle when, one year later, the Supreme Court declared Bible-reading and recitation of the Lord's Prayer to be unconstitutional. Reading of the Bible for devotional purposes, was to the Court an "establishment" of religion, which was the same principle used in the Engel decision. The reaction to the Schempp decision was somewhat subdued as compared to the Engel decision, however, many political figures had yet to understand what the first decision actually said.

Due to the widespread misunderstanding of the Engel decision, the Supreme Court clearly said in the Schempp decision that "In the relationship between man and religion, the state is firmly committed to a position of neutrality." Senator A. Willis Robertson of Virginia instead charged that the Court had said: "We will put all the rights in this country behind the few atheists who deny God and the Bible."<sup>8</sup> Senator Olin Johnson from South Carolina disregarded the Supreme Court even more when he said:

Despite the Supreme Court ruling, I am urging school teachers and schools to continue the reading of the Bible and to continue praying in the classrooms. There is no statutory provision to penalize school officials for defying the Supreme Court.<sup>9</sup>

Although the criticism of the Supreme Court was considerably subdued after the Schempp decision, the quality of the criticism did not improve. The rhetoric of many well known Congressmen and other political leaders was still on the emotional level. According to John Bell Williams of Mississippi, the decisions were a plot by the Court to substitute "materialism for spiritual values."<sup>10</sup>

Political action after the Engel decision was quick to delineate. At the Annual Governors Conference in 1962 a resolution was introduced by Governors Bryant of Florida and Reed of Maine which urged Congress to adopt a constitutional amendment, which would "make clear beyond challenge the acknowledgement of our nation and people in their faith in God." The resolution just barely passed the necessary percentage

of votes to send it to Committee. In the debate, while in committee, the resolution was finally approved with only Governor Nelson Rockefeller of New York abstaining.<sup>11</sup>

The endorsement of a constitutional amendment by the Governors Conference cannot be seen as more than a symbolic gesture. Seven of the states had already, either in their state constitution or through litigation, approved of what the Supreme Court was to decide in Engel and Schempp. In 1964 during the House Judiciary Committee hearings on the Becker Amendment only two governors appeared to testify. Faris Bryant of Florida and George Wallace of Alabama appeared, however, they had excellent motives for being there. In Florida the state courts were actively defying the Engel decision, and in Alabama Governor Wallace had openly encouraged the people to defy the Supreme Court.<sup>12</sup>

The reaction to the prayer and Bible-reading decisions has been predominately a regional and politically partisan reaction. As a region the greatest reaction has been in the South where most politicians are Democrats. Outside of the South the Republicans have predominately initiated resolutions and supported amendments to reverse the Supreme Court. Seven states in the South, Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee, introduced one-third of the bills to reverse the Engel and Schempp decisions.<sup>13</sup> In 1966, when the Dirksen Amendment came up for a vote, seventy-five percent of the Senators considered to

be Southern Democrats voted in favor of amending the Constitution.<sup>14</sup>

Political reaction has also been a partisan issue to a great extent. From June of 1962, until the opening of the House Judiciary hearings in April of 1964, sixty-seven of the 115 congressmen who introduced bills to amend the Constitution were Republicans.<sup>15</sup> The disparity is even more pronounced by the fact that the Republicans were in the minority. In 1963 the House of Representatives was composed of 174 Republicans and 261 Democrats. The Senate was even more one-sided with the Democrats numbering sixty-seven to thirty-three Republicans.<sup>16</sup> In 1964 the Republican Policy Committee of the House endorsed the Becker Amendment and encouraged its members to sign the discharge petition which would remove the amendment to the floor for a vote. There was a fear among Republicans and other supporters of the Becker Amendment that arch-secularist, Emanuel Celler, would block committee endorsement.<sup>17</sup>

In 1966, when the Senate voted on the Dirksen Amendment, the Republicans again opposed the Supreme Court; twenty-seven of the thirty Republicans who voted were in favor of the Dirksen Amendment.

For the most part congressional action has failed because of the regional and political differences toward religion that exist, however, political reaction has not totally been confined to legislative action in Congress.

The extent to which the Engel and Schempp decisions became campaign issues is for the most part difficult to estimate. Several state, local and national political figures have opposed the Engel and Schempp decisions as an issue, but few have supported them. After the Schempp decision, Georgia gubernatorial candidate, Carl E. Sanders promised that if he were elected he would not only go to jail, but give up his life to resist the Supreme Court's interference with the observance of religion in Georgia.<sup>18</sup> In 1964 during the primary elections, the Becker Amendment became an issue in the sixth district in Maryland. The incumbent, Charles Mathias, who had openly opposed the Becker Amendment, was running against Brent Bozell who was a staunch advocate of the Becker Amendment. Mathias easily defeated Bozell and according to Mathias, his victory "took the heat off the Congressmen who were afraid that opposing the Becker Amendment would hurt them politically."<sup>19</sup>

For the most part opposition to the Engel and Schempp decisions has been consistent with the vast majority of Republicans. Brent Bozell was supposedly a "ghost writer" for Barry Goldwater, the Republican candidate for president. In 1962, just after the Engel decision, Richard M. Nixon, in his unsuccessful campaign for governor of California, came out in favor of an amendment to the Constitution. According to Nixon, an amendment which would legalize the use of non-sectarian prayers in public schools would serve "to remind our children of our religious heritage."<sup>20</sup>

It is significant to note also that the Platform Committee of the Republican Party which had convened during the Becker Amendment hearings proposed to endorse a plank in support of a prayer amendment. Next to the Civil rights controversy the prayer amendment was the most popular issue.<sup>21</sup> Senator Barry Goldwater who had introduced a bill to amend the Constitution which would permit prayer and Bible-reading, cited the Supreme Court's decisions as a lack of adherence to "the constitutional tradition of limited government."<sup>22</sup> Later in October when Goldwater was campaigning for the Presidency, he accused the Democratic Party of showing an "utter disregard for God" because their platform did not have the school prayer controversy as a campaign issue.<sup>23</sup>

The Democrats on the other hand have not, as a party, supported any attempts to amend the Constitution. Even though the Democrats were the majority party in Congress when the Supreme Court decided Engel and Schempp, they have numerically been in favor of the Supreme Court. Most of the bills to amend the Constitution have been introduced by Republicans. The Democrats who submitted bills to amend the Constitution have predominately been Southern Congressmen. It is significant to note that in the vote on the Dirksen Amendment, only three Republicans voted with the Democrats who opposed the amendment.

## LEGAL REACTION

The role of the courts as interpreters of controversy usually places them in isolation when it comes to having an opinion other than that of the highest court in the nation -- the Supreme Court. The Supreme Court, however, consists of only nine justices, and at times the decisions are so split and controversial that we cannot reasonably expect other officials of the legal school to be any more agreeable. Nonetheless, the decisions of the Supreme Court concerning prayer and Bible-reading were almost unanimous. In the Engel and Schempp decisions, the Court voted six to one and eight to one respectively, with the same Justice, Potter Stewart, dissenting both times.

Unlike other segments of society, the legal reaction to the Engel and Schempp decisions was very mild. Most of the lower courts began immediately to interpret the same controversy in line with the Supreme Court. Perhaps the most emotional outburst came from Ada May Adams, a Los Angeles Municipal Judge. In opening her court as she had done for thirty-one years, she called on God to "bless the Supreme Court and let it be shown the errors of its way."<sup>1</sup>

Speeches and comments by those in the legal profession have been very few except for a scattered comment here and

there. Most of the legal periodicals have been remiss of much interest except for those actively involved in the Engel and Schempp decisions. The lawyers and other legal scholars who made public comments after the Engel decision reflect the same credibility for misunderstanding what the Supreme Court said as did almost everyone else. The President of the American Bar Association incorrectly believed that the Engel decision would require the elimination of "In God We Trust" from U. S. coins. He obviously had not read Justice Black's footnote which stated otherwise. Another distinguished official, Harvard Law Professor, Mark De Wolf Howe, who was featured in the Boston Globe, a newspaper hostile to the Engel decision, said that "Justice Black's opinion is ridiculous. It has no social, political, or historical validity."<sup>2</sup>

Not all legal spokesmen were as outspoken as those mentioned, however, it is important to note a dissent made shortly after the Engel decision by Erwin N. Griswold, Dean of the Harvard Law School. Griswold contends that the Engel decision is too absolutist because if one person objects to prayer then everyone must refrain. It seems that Griswold does not agree with the philosophy behind the Constitution. If the majority ruled everything, then we would not need a Constitution. The Constitution puts certain things off-limits to the majority so that minorities can have some rights -- even if it is a minority of one.

The reaction of most people in the legal profession was not directed at the Supreme Court, but at efforts by others to amend the Constitution. The hearings by the Senate Judiciary Committee in 1962 served to be an opportunity for Congressmen to castigate the Supreme Court, however, the American Jewish Congress which supported the Supreme Court was able to get others to support their position. They rounded up 132 professors and law-school deans from several colleges and universities who were opposed to amending the Constitution.<sup>3</sup>

The attitude of the legal community was more attentive after they realized the threat posed to the First Amendment. After the Schempp decision in 1963, the President of the American Bar Association said that he thought that the Supreme Court had properly interpreted the First Amendment. The lack of support for the Supreme Court at the Senate Judiciary hearings in 1962 awakened many of the leading constitutional experts, such as Paul A. Treund, Paul G. Kauper, Phillip B. Kurland and Leo Pfeffer to the eminent threat that existed to the First Amendment.

Unlike the Senate Judiciary hearings in 1962, when hearings opened on the Becker Amendment many of the nation's top legal authorities were there to support the Supreme Court. A statement signed by 223 of the leading legal experts was also introduced at the House Judiciary hearings. They opposed any change in the Bill of Rights. It is significant

to note that one of the signers had previously spoken in opposition to the Supreme Court. But when it appeared that the Constitution might be amended, Erwin Griswold joined the other 222 legal experts.<sup>4</sup>

It is of further significance that when it comes to interpreting the Constitution, legal scholars are usually in more of an agreement on what the Constitution says than other groups. Perhaps their cohesiveness is reflected in the statement to the House Judiciary Committee which said that the adoption of an amendment would set a "precedent. . . which may prove to easy when other controversial decisions interpreting the Bill of Rights are handed down."<sup>5</sup> Emanuel Celler may have been echoing the same sentiment when he said, "There have been 5392 attempts to amend the Constitution and all but twenty-four have failed. . . .The Becker Amendment will fail, the tide has turned against it."<sup>6</sup>

The public, however, was not as understanding of the Supreme Court as the legal community. As stated before, much of the public reaction was the result of inadequate reporting of the scope of the Engel decision. The headlines in the Chicago Sun Times ran: "Ban Prayers in Public Schools." Such a headline is technically incorrect because the Court only banned a certain type of prayer -- namely those that are state composed and others which violate the "Establishment Clause" of the First Amendment. What was further devastating to the public's image of the Court was a widely

distributed cartoon which showed the letters G-O-D being chipped away from the slogan "In God We Trust" on a coin.

As a result of what the public thought the Supreme Court had decided in the Engel decision, they sent the Court more than 5000 critical letters.<sup>7</sup> Thus the Supreme Court became so sensitive to the public's reaction that Justice Tom Clark felt obliged to volunteer a rare extra-judicial comment:

The Constitution says that the government shall take no part in the establishment of religion. No means no. As soon as the people learned that this was all the Court decided -- not that there could be no official recognition of a Divine Being or recognition on silver or currency of "In God We Trust," or public acknowledgement that we are a religious nation -- they understood the basis on which the Court acted.<sup>8</sup>

Clark's statement that the public eventually understood the basis for the Engel decision is for the most part his own personal view. The extent of public understanding was never improved substantially. The public supported every effort to reverse the Supreme Court simply because they were led by others to believe that there could be no prayer or Bible-reading in the public schools.

Nevertheless the Supreme Court learned a lesson in public relations, for in the Schempp decision which followed a year later the majority opinion emphasized the importance of religion in the United States. In a seventy-six page concurring opinion by Justice William Brennan and a shorter concurring opinion by Arthur Goldberg, the Justices stressed

the scope of the Schempp decision, as to what had been decided and what had not been decided.<sup>9</sup>

Although the Court had taken precautions in the Schempp decision not to arouse the public, many Congressmen and other influential people had already concluded that the Schempp decision was the logical conclusion to the Engel decision. As a point of comparison the Court received less than 100 letters from the public despite the fact that the ruling in Schempp was of broader significance. It affected more people simply because most schools that had devotional activities read the Bible.<sup>10</sup>

The "legal" community learned from the Senate and House hearings in 1962 and 1964 that if the Bill of Rights were to withstand the onslaught of misunderstanding and emotionalism, they would have to be the bulwark against it. In 1966 when Everett Dirksen brought his campaign for an amendment to the Constitution before the Senate Judiciary Subcommittee, the opposition was firmly entrenched against it. Unlike the Senate Judiciary and House Judiciary hearings of 1962 and 1964, the legal experts were well prepared for Dirksen. The testimony of Paul Kauper of the University of Michigan Law School, Paul Freund of the Harvard Law School, and Father Robert Drinan, Dean of the Boston Law College, revealed again as it had in the House hearings of 1964 that there is no working alternative to devotional exercises in the public schools which are sanctioned by the state other

than a position of neutrality.

The three Congressional hearings, beginning in 1962, served to clarify the national attitude toward the Engel and Schempp decisions. Practically all federal offices have upheld the Supreme Court decisions. The Attorney General of the United States also supported the Engel and Schempp decisions.<sup>11</sup> However the Attorney Generals in many states, especially in the South, have either ignored or openly opposed the Engel and Schempp decisions.<sup>12</sup> The Attorney General of Arkansas, shortly after the Schempp decision, told the state's public schools to continue their daily reading and devotional exercises.<sup>13</sup>

In some states, the lower court have ruled inconsistent with the Supreme Court. Since the Engel and Schempp decisions, the same controversy has arisen in the states of Delaware, Florida, Idaho, Illinois, Massachusetts, Michigan, New Jersey, New York, and Pennsylvania. The cases have originated largely because people who have been opposed to devotional activities in the public schools have now taken advantage of the provisions in the Engel and Schempp decisions, which were previously denied them by their respective state. Also, many of the states have failed to comply with the Supreme Court because the Attorney Generals of some of these states have said that the Supreme Court decisions do not have precedent over state law. Indicative of the advice received by some school boards was that of John C. Young, Attorney for the city of Columbus,

Ohio: "It must be born in mind that the decisions of the Supreme Court are not in the sense law -- they bind no one except the party to the cases involved."<sup>14</sup>

In seven of the nine cases since the Engel and Schempp decisions, the state courts failed to resolve the controversy consistent with the Supreme Court and the federal courts have thus had the responsibility. In Florida, the State Supreme Court in Chamberlain v. Dade County Board of Public Instruction upheld Bible-reading and recitation of the Lord's Prayer just a few days prior to the Engel decision. The controversy continued until June of 1964, when the Supreme Court reversed the decision. The Florida Supreme Court did not comply until the following February, when it issued an order preventing Bible-reading and recitation of the Lord's Prayer in the state schools.

The significance of legal reaction to the Supreme Court has been that all the cases which were to arise after the Engel and Schempp decisions have all been resolved eventually under the criteria set forth by the Supreme Court's interpretation of the "Establishment Clause" of the First Amendment.

#### IV

#### PUBLIC REACTION

The general public in America has usually been described as apathetic when it comes to being aware of what goes on in the government. However Americans are just as attached to the ideals of their culture as other people are to theirs. Thus in 1962 the Supreme Court became the target of public outrage when it found a state composed prayer in New York to be unconstitutional. The "Warren Court," as the Supreme Court was called, became a popular "whipping post" for the public, beginning with the controversial desegregation decision of Brown v. Board of Education in 1954. Previous to the Engel decision, proposals in Congress to curb the Warren Court had reached an all time high. Out of a total of 165 bills proposed in the history of the Supreme Court to curb the Court, fifty-three were proposed in the period from 1955 to 1957, following the school desegregation decision of 1954.<sup>1</sup>

Thus the public outcry against the Supreme Court was nothing new in 1962. Shortly after the Engel decision, a sign in North Carolina advocating the impeachment of Earl Warren merely had to add the words "Save Prayer" to the already existing epithet.<sup>2</sup>

The general reaction of the public was one of indignation and astonishment, which did not stop with big names. In towns everywhere people wondered whether all references to God would be removed from society.<sup>3</sup> In a letter to Senator Keating of New York the village of Tuckahoe advocated "the immediate institution of proceedings to impeach and remove those justices of the U. S. Supreme Court whose recent decision outlawed the free practice of voluntary worship of God in the schools. . . ."4

The public reaction was highly emotional with many of the comments branding the Supreme Court as a bunch of atheists who were increasingly leading the American people to a morality breakdown.<sup>5</sup> Much of the reaction can however be attributed to what many Americans erroneously thought the Court had decided. The Court in Engel v. Vitale ruled solely on the "Establishment Clause" of the First Amendment, but many Americans got the impression that the Court had impaired the free exercise of religion.<sup>6</sup>

Much of the blame for the public's misunderstanding and reaction can be attributed to the news media. The Supreme Court received over 5000 letters and telegrams from the public which criticized it severely.<sup>7</sup> The reaction of the press, judging from editorials, was mixed, however several papers were regretful that such a decision had been made. Chester Newland, whose research was introduced before the House Judiciary Committee in 1964, found that the first day stories concerning

the majority opinion of Justice Hugo Black were fairly accurate, but second day stories virtually ignored what the Supreme Court had said and instead reported on the public reactions going on throughout the nation.<sup>8</sup> Editorialists paid little attention to what the Supreme Court had actually decided, instead they made inferences as to what the Court might do next. Some of the editorials were so violent and misleading that many people felt that they had to react appropriately.<sup>9</sup> The Press deleted important parts of the Engel decision, such as Justice Black's footnote, which gave many people the impression that the decision went farther than it did. To further confuse the public, many of the leading newspapers, such as the Boston Globe openly opposed the Engel and Schempp decisions.

The public outrage was not only directed at the Supreme Court, the litigants in the Engel decision were the object of public scorn. The party primarily responsible for the Engel suit, Mr. and Mrs. Lawrence Roth, found themselves to be the target of public outrage. Many of the letters received during the trial accused them of Communist activities. After the Schempp decision in 1963, the Roth family were again the target for many calls and telegrams. Some of the messages were congratulatory, but most of them were abusive and obscene. "You Communist Kike, why don't you go back to Russia," said one letter.<sup>10</sup> Madalyn Murray, in an interview with the Saturday Evening Post after her victory concurrent with the

Schempp decision, complained that although she had a masters degree in Sociology and a Law degree she was unable to find a job.<sup>11</sup>

The Schempp decision which banned Bible-reading and recitation of the Lord's Prayer did not have near the violent reaction as the Engel decision in 1962. But judging from the fact that Bible-reading was more prevalent in public schools, it is difficult to say that the reaction was less. Many people had expected the Schempp decision. After the Engel decision the news media made many references to the fact that the Schempp decision was on appeal to the Supreme Court. Many Protestant leaders (including the National Council of Churches) added to the public's awareness in that they anticipated and approved of the Schempp decision.<sup>12</sup>

Although there is evidence that many people expected the Schempp decision, it does not indicate that the public agreed with it. A Gallup Poll taken shortly after the decision revealed that seventy percent of those surveyed opposed the Court's decision.<sup>13</sup> In 1964 the Survey Research Center of the University of Michigan disclosed in a survey that seventy-four percent of the public approved of school devotions. The Research Center also did a survey in the fall of 1964, which revealed that sixty-three percent of the public had only negative things to say about the Supreme Court. In the categories surveyed, the school prayer issue had more negative mentions than any other one. In comparison to the

school desegregation controversy, the prayer issue out scored it 252 to 145.<sup>14</sup>

Much of the responsibility for the public's reaction has been leveled at the Supreme Court not only for the decisions, but also the manner in which the decisions were written and reported by the press. The New York prayer decision stirred widespread alarm not so much for what it said as for what people thought it said. It is commonly understood that the decision banned all references to God in public schools and public affairs.<sup>15</sup>

The news media in reporting the school prayer decision in 1962 deleted an important footnote in the majority opinion which said:

There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contains references to the Deity or by singing officially espoused anthems which include the composer's profession of faith in a Supreme Being, or the fact that there are many manifestations in our public life of belief in God.

Adding greatly to the confusion was the concurring opinion of Justice William Douglas, which was misunderstood by many to have some force of law. Douglas' opinion magnified the widespread fear that the Court's decision would lead to the erasure of all traces of religion from the government. Douglas accordingly said:

What New York does on the opening of its public schools is what each House of Congress does at the opening of each day's business. . . . Yet for me the principal is the same, no matter how briefly the prayer is said, for in each of the instances

given the person praying is a public official on the public payroll, performing a religious exercise in a governmental institution.<sup>16</sup>

Douglas' opinion lent credibility to many people that such symbols as "In God We Trust" would be removed from coins as well as those in the national anthem. Time magazine speculated that had Black's footnote "been given half as much attention as Douglas' sweeping dicta, much of the controversy and confusion might have been avoided."<sup>17</sup>

The public reaction to the Engel decision prompted the Court to make clear the basis for the Schempp decision. In the Engel decision, Justice Black writing for the majority, the Court placed the decision in a historical perspective, citing church and state controversy, which has been going on since the founding of the nation. Justice Tom Clark, who delivered the second decision, made extensive references to the legal precedent upon which the majority based their decision. Justice William Brennan in a concurring opinion of seventy-six pages, further enunciated the validity of the Court's opinion by defining what the Supreme Court had decided in Abington v. Schempp and what it had not decided.

Much of the criticism of the Court by the public cannot solely be attributed to individuals. Many civic groups and other social organizations were responsible for much of the reaction. Group endorsement seemed to give credibility for many people to disapprove of the Supreme Court's decisions. Groups such as the Lions, Civitans, Junior Chamber

of Commerce, and Kiwanis began in 1964 to endorse proposals to amend the Constitution.<sup>18</sup> The American Legion and its National Americanism Committee also endorsed proposals to permit prayers by pupils in public school. Many of the groups formed for just that purpose, such as The Committee of Christian Laymen Inc. who organized a door to door campaign to get the House Judiciary Committee to hear the Becker Amendment.<sup>19</sup>

Most of the group activity centered around getting Congress to hear proposals to amend the Constitution. The International Christian Youth of America sponsored a campaign to get one million signatures opposing the Supreme Court. Other groups, such as Project Prayer, urged people to write their Congressman to sign the discharge petition, which would release the Becker Amendment to the House floor for a vote.

In Los Angeles in April of 1964, 2500 people attended a Shrine rally sponsored by Project Prayer. The group heard actors and actresses who appeared briefly to deride the Supreme Court. Despite efforts to keep the rally non-partisan it attracted ultra-conservatives, such as Sam M. Cavnar. Mr. Cavnar was also the director of Project Alert which received widespread attention when a retired Marine Corps Colonel said that Chief Justice Earl Warren should be hanged not impeached. According to the New York Times there were petitions calling for Warren's impeachment being circulated outside the Shrine rally.<sup>20</sup>

The impact that the public and group reaction had upon the legislative process is well recorded by the number of letters received by Congressmen from their constituents. The mail campaign seemed to force many Representatives who otherwise might not have supported such legislation as amending the Constitution to take an active interest.<sup>21</sup>

Whether or not Representatives agreed with their constituents is a matter of speculation. Nonetheless they had been swamped with what was one of the largest mail campaigns in history.<sup>22</sup> Proponents of the Becker Amendment devoted remarkable efforts to the distribution of printed cards which were dispatched by individuals to members of the House Judiciary Committee and their Representative. One of the cards declared: "This campaign year let's put God back in the schools."<sup>23</sup> What probably could have been the attitude of Congressmen was speculated on by Clifford M. Lytle, an authority on the Warren Court. According to Lytle, "The greater hazard to supporters of the School Prayer decision case than of the School Segregation decisions lies in the emotionally generated attempt to attribute an anti-God belief to anyone who defends the Court's action."<sup>24</sup> In any estimation it is not difficult to see the unpopular position that any supporter of the Supreme Court would be placed in particularly if he represented constituents in the South and East where most devotional activities in the public schools are concentrated.

The Becker Amendment was fully supported by Representatives and Senators who initially were in compliance with the general public. The heavy volume of mail and the public opinion polls indicated that the public solidly supported the Becker Amendment. Several Congressmen reported that their mail was running ten to one in favor of a Constitutional amendment. Nonetheless as the House Judiciary Committee began the hearings, the public attitude began to change; that is judging from those who wrote their Congressman. The change in public attitude, however cannot be attributed to a spontaneous change in those who supported the Becker Amendment. The support for the Supreme Court was the result of organizational efforts to get people to respond who did not agree with amending the Constitution.

One group responsible for this change in the public attitude was an ad hoc committee composed of several Protestant, Jewish, and civil liberties groups. The ad hoc committee under the leadership of Rev. Dean M. Kelly of the National Council of Churches began to mobilize leaders of the religious communities in order to make it respectful and safe for Congressmen to oppose the Becker Amendment.<sup>25</sup> According to Rev. Kelly, he was surprised to discover that so many Congressmen shared the views of the ad hoc committee.<sup>26</sup> As a result of the organizational efforts of the committee, the flow of mail began to change. On May 22, 1964 Chairman Celler of the House Judiciary Committee announced that the "tide has turned."