

No. 12-696

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In The  
Supreme Court of the United States



TOWN OF GREECE,

*Petitioner,*

v.

SUSAN GALLOWAY AND LINDA STEPHENS,

*Respondents.*



**On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Second Circuit**



**BRIEF OF NATHAN LEWIN  
AS AMICUS CURIAE  
IN SUPPORT OF PETITIONER**



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**INTEREST OF THE AMICUS<sup>1</sup>**

As a practicing Orthodox Jew, the *amicus* obviously does not himself engage in prayer that has Christian themes or contains Christian references. Nor would the *amicus* support the constitutionality of Christian public prayer programs that coerce or

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, *amicus* certifies that no counsel for a party authored this brief in whole or in part. No person or party other than the *amicus* has made a monetary contribution to this brief's preparation or submission. All parties have consented in writing to the filing of *amicus* briefs.

proselytize, or any form of Christian governmental expression that disparages Judaism or any other non-Christian faith.

Sectarian Christian prayer in public by a clergyman or other religious official as part of a governmental ceremony, or at the inception or conclusion of a governmental assembly, is, however, a well-ingrained American tradition that does not, in the *amicus'* view, impair religious freedom. The Establishment Clause of the First Amendment does not bar such non-coercive and non-proselytizing sincere public expression of human gratitude to a Supreme Being.

The *amicus* is an attorney who has briefed and argued orally in a number of cases before this Court that have raised issues under the Religion Clauses of the First Amendment. *E.g.*, *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977); *Goldman v. Weinberger*, 475 U.S. 503 (1986); *Board of Education of Kiryas Joel Village School District v. Grumet*, 512 U.S. 687 (1994). The *amicus* is on the Adjunct Faculty of Columbia Law School and has taught for more than ten years a seminar titled "Religious Minorities in Supreme Court Litigation." The *amicus* also writes comments on church-state issues for the general public.

As a Law Clerk to Justice Harlan in this Court's 1961 Term, the *amicus* worked on an unpublished opinion written by Justice Harlan in the case of *Engel v. Vitale*, 370 U.S. 421 (1962), that concerned the New York State Regents Prayer. The *amicus* was also counsel who argued in this Court on behalf of a

prevailing party in *Allegheny County v. American Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573 (1989), a decision that was relied upon by the court below and has been invoked the parties and other *amici*.

The *amicus* has written this brief and is filing it with the Court to present points and provide material that would not, in all likelihood, be submitted by either party or by any other *amicus*.

### SUMMARY OF ARGUMENT

*First*, honest and authentic prayer is invariably “sectarian.” Prayer that is “neutral” because it lacks the unique attributes and references of a particular faith may be prayer in form, but it is not prayer in substance.

*Second*, although some individuals – including Jewish plaintiffs in Establishment Clause lawsuits -- have stated that they suffer “discomfort” or are “offended” by public prayer that contains Christian references, traditional Jewish sources encourage and promote prayer by Christians. We include in this *Amicus* Brief citations and summaries of these traditional rabbinic authorities.

*Third*, the history of legislative prayer in the United States Congress demonstrates that in a society as inclusive as the United States a constitutional mandate is not needed to enable minority faiths, including Jewish representatives, to recite prayers at public gatherings. Rabbis have delivered prayers at sessions of both the House of

Representatives and the Senate, and the content of their prayers have frequently been “sectarian.” Indeed, the content of the message by the first rabbi to deliver a prayer in Congress was blatantly “sectarian.”

*Fourth*, the personal injury suffered by an unwilling listener to distinctly Christian legislative prayer is no more than “discomfort” or “offense.” Such psychic injury is inadequate to warrant restraint on speech, and it should be insufficient to restrain religious expression.

*Fifth*, the court below erroneously applied to the subject of legislative prayer the “endorsement” test articulated by Justice O’Connor in her opinions in *Lynch v. Donnelly*, 465 U.S. 668, 691 (1984), and in *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573 (1989), for determining whether a public religious display violates the Establishment Clause. That test should not govern Establishment Clause claims generally, and should surely not determine whether sectarian legislative prayer violates the Establishment Clause.

## ARGUMENT

### I.

#### HONEST AND AUTHENTIC PRAYER IS NATURALLY SECTARIAN

Prayer is an entreaty for Divine assistance and it must, therefore, reflect the supplicant’s personal

belief regarding the object of his or her prayers. Jewish prayer invokes the Biblical account of the creation of the Jewish people beginning with Abraham, Isaac, and Jacob and continuing through the delivery from Egypt, the receipt by the Jewish nation of the Torah at Mount Sinai, and the promise of the Land of Israel. These are, of course, “sectarian” references, but they are unavoidable in sincere prayer according to centuries-old Jewish tradition.

By the same token, authentic Christian prayer is customarily based on Christological references. Removing such references from Christian prayers on the ground that they are “sectarian” and may offend individuals who do not share Christian beliefs removes meaningful content from prayer and leaves text that is prayer in form, but not in substance. The Founding Fathers – many of whom were deeply religious Christians who believed in the efficacy of Christian prayer – did not intend, with the sweeping non-Establishment directive of the First Amendment, to permit only hollow “neutral” expressions of gratitude and supplication to be pronounced at public meetings.

*Amicus* agrees with the view expressed in an *amicus curiae* brief supporting the petition for certiorari in this case “that there can be no such thing as a religiously ‘neutral’ prayer and that attempts to establish a standard for a religiously ‘neutral’ prayer are contrary to the very concept of prayer and require that the judiciary become arbiters of a state orthodoxy – a task for which any governmental entity is ill-suited.” Brief of *Amici*

*Curiae* Dr. Mark L. Bailey, et al., in Support of the Petition for a Writ of Certiorari, No. 12-696, p. 1. “Neutrality” diminishes prayer and reduces it to formal lip-service. The *Ethics of the Fathers* (“*Pirkei Avot*”) in Chapter 2:18 instructs Jewish worshippers, “When you pray, do not make your prayer routine (*keva*) but plead for mercy and compassion before the Omnipresent.”

## II.

### JEWISH LAW AND TRADITION ENCOURAGES MEANINGFUL CHRISTIAN PRAYER

Contrary to common misconception, Jewish Law does not condemn Christian prayer. In fact, the opposite is true. There are Biblical references to worship by non-Jews – Noah’s sacrifice after the flood (*Genesis* 8:20), Solomon’s prediction on the construction of his Temple that “gentiles . . . from a distant land . . . will come and pray toward this Temple” (*Kings I* 8:41-43), and the repentance of the King and people of Nineveh in response to Jonah’s prophesy (*Jonah* 3:8-9). The prophet Isaiah declared that “my house shall be called a house of prayer for all peoples.” *Isaiah* 56:7.

Rabbi Moshe Feinstein (1895-1986), the universally accepted prolific Twentieth Century authority on questions of Jewish Law, declared in a responsum dated February 1, 1963, to Rabbi Sholom Rivkin (1926-2011), the Chief Rabbi of St. Louis, that gentiles are obliged to pray in time of need. He also concluded that Jewish Law does not prohibit simultaneous Jewish and Christian individual

prayer, each to his own Divine Being. *Igros Moshe, Orach Chaim* Vol. 2, pp. 196-197.

Rabbi Meir Simcha of Dvinsk (1848-1926), another prominent leader of Eastern Europe's Orthodox Jewish community, interpreted an opinion expressed by Saadia Gaon (882-942), a principal Jewish-Law authority of the Tenth Century, as declaring that non-Jews who seek Divine assistance have an obligation to pray. *Ohr Sameach, Hilchos Tefilla* 1:2.

After this Court ruled in *Engel v. Vitale*, 370 U.S. 421 (1962), that the New York State Regents Prayer was unconstitutional, the spiritual leader of the international Chabad-Lubavitch Hasidic community, Rabbi Menachem M. Schneerson, criticized the decision in a letter dated November 21, 1962. (Appendix A.) Rabbi Schneerson supported recitation of the Regents Prayer by non-Jews because of "[t]he responsibility which the Jewish religion imposes upon its adherents towards the non-Jew in the matter of dissemination of the belief in G-d."

These Jewish authorities establish that the authentic Jewish attitude towards Christian prayer is encouragement, not condemnation. Consequently, attendance at legislative prayer, even if it consists primarily of Christian references, does not violate Jewish law or custom.

### III.

#### JEWISH LEGISLATIVE PRAYER IS FREQUENTLY “SECTARIAN”

Many legislatures, including both Houses of the Congress of the United States, have invited rabbis or Jewish lay leaders to recite invocations or benedictions during public sessions. We list in the margin the dates since 2007 on which rabbis delivered opening prayers in the House of Representatives and the Senate and the identities of the rabbis<sup>2</sup>:

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<sup>2</sup> June 11, 2013 (Senate) Moshe Feller  
 May 23, 2013 (Senate) Michael Beals  
 April 17, 2013 (House) Robert Silvers  
 November 29, 2012 (Senate) Baruch Frydman-Kohl  
 September 20, 2012 (House) Steven Weil  
 July 11, 2012 (House) David Algaze  
 July 10, 2012 (House) Joel Levinson  
 May 31, 2012 (House) Aaron Melman  
 February 7, 2012 (House) Jeffrey Astrachan  
 November 2, 2011 (Senate) Lord Jonathan Sacks  
 September 15, 2011 (Senate) Leslie Gutterman  
 May 24, 2011 (House) Jeremy Wiederhorn  
 April 5, 2011 (House) Efrem Goldberg  
 June 16, 2010 (House) Joshua Davidson  
 May 5, 2010 (House) Dov Hillel Klein  
 January 27, 2010 (House) Gil Steinlauf  
 October 28, 2009 (House) Jacob Luski  
 July 22, 2009 (House) Stephen A. Leon  
 June 25, 2009 (Senate) Shea Harlig  
 June 18, 2009 (House) Solomon Schiff  
 January 29, 2009 (Senate) Daniel J. Fellman  
 July 30, 2008 (House) Peter E. Hyman  
 July 17, 2008 (House) Stuart L. Berman  
 June 3, 2008 (House) Felipe Goodman  
 May 22, 2008 (Senate) Stephen Baars

The first rabbi to be invited to give a prayer opening a Congressional session was Morris Raphall (1798-1868), the rabbi of New York's Congregation B'nai Jeshurun. He delivered a prayer at the February 1, 1860, session of the House of Representatives, while in full rabbinic dress, "piously bedecked in a white tallit and a large velvet skullcap." Jonathan D. Sarna, "Rabbi Raphall Goes to Washington," *The Forward*, February 28, 2010. The text of his unquestionably "sectarian" prayer – which invoked several uniquely Jewish themes and repeated the Biblical priestly blessing in Hebrew -- appeared in the *Congressional Globe* and is reprinted as Appendix B to this brief. *Cong. Globe*, 36<sup>th</sup> Cong. 1<sup>st</sup> Sess. 648-649 (1860).

If "neutrality" were the governing standard for determining the constitutionality of legislative prayer, Rabbi Raphall's text and appearance would probably not have passed muster. Nonetheless, his pioneering presentation was hailed as "evincing the

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April 23, 2008 (House) Akiva Males  
 February 7, 2008 (Senate) Cheryl Jacobs  
 November 7, 2007 (House) Irwin N. Goldenberg  
 September 18, 2007 (House) Frederick L. Klein  
 July 12, 2007 (House) Ellen S. Wolintz-Fields  
 March 28, 2007 (House) Paul Silton,  
 March 22, 2007 (Senate) Milton Balkany  
 March 15, 2007 (House) Shea Harlig

We note that no rabbi delivered a prayer in the Senate between June 25, 2009, and September 15, 2011 – a span of more than two years. The court below found that a substantially shorter period of exclusively Christian prayers constituted an impermissible "endorsement" of Christianity.

triumph of an enlightened religious opinion over the vulgar prejudices of the world.” Frank Leslie’s Illustrated News, March 3, 1860, p. 219.

Similarly, the Jewish prayers of many rabbis at public events over the years have been “sectarian.” Several examples appear in the margin.<sup>3</sup>

Just as courts should not be in the business of censoring prayers by Jewish clergy to remove uniquely Jewish references they should not be authorized to review Christian prayers to decide whether they contain too much Christology.

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<sup>3</sup> On February 7, 2008, Cheryl Jacobs included in her prayer an English translation of the priestly blessing.

On July 12, 2007, Ellen S. Wolintz-Fields referred to the Jewish observance of reading a portion of the Torah every week, noting that the Book of Numbers was being concluded.

On September 18, 2007, Frederick L. Klein referred to the then-recent observance of the Jewish New Year (Rosh Hashanah).

On March 15, 2007, Shea Harlig noted that the Jewish holiday of Passover was beginning that evening.

On March 22, 2007, Milton Balkany referred in his prayer to the fact that “only when Moses parted the waters was a nation [the Israelites] set free.”

## IV.

**“DISCOMFORT” OR “OFFENSIVENESS” IS NOT  
A PERMISSIBLE CONSTITUTIONAL  
STANDARD FOR LIMITING  
RELIGIOUS EXPRESSION**

Plaintiffs who object to “sectarian” Christian public prayers often allege that they are made “uncomfortable” or are “offended” by hearing distinctly Christological references during the prayer. See, *e.g.*, *Salazar v. Buono*, 559 U.S. 700 (2010) (“Buono claims to be offended by the presence of a religious symbol on federal land.”); *Coles v. Cleveland Board of Education*, 171 F.3d 369, 374 (6th Cir. 1999) (“humiliated, demeaned and physically coerced”). Personal discomfort or “offense” at what is said is not, however, a permissible ground for suppressing speech.

This Court’s plurality opinion in *Carey v. Population Services International*, 431 U.S. 678, 701 (1977), declared, “[W]e have consistently held that the fact that protected speech may be offensive to some does not justify its suppression.” See also *Hill v. Colorado*, 530 U.S. 703, 715 (2000) (“The fact that the messages conveyed by those communications may be offensive to their recipients does not deprive them of constitutional protection.”) The Court suggested in *Cohen v. California*, 403 U.S. 15, 21 (1971), how persons who might be “offended” could avoid affront when the offensive speech is uttered in a public forum: “Those in the Los Angeles courthouse could effectively avoid further bombardment of their sensibilities simply by averting their eyes.”

The same rationale applies in the context of sectarian religious speech. The mere fact that many – or even most – onlookers would be offended by particular religious expression on public property does not justify its suppression. See *Capitol Square Review and Advisory Board v. Pinette*, 515 U.S. 753 (1995). The plaintiff’s “offense” at seeing a large religious symbol on federal land was not, in and of itself, grounds for granting judicial relief in *Salazar v. Buono*, 559 U.S. 700 (2010). By the same token, the “offense” or “discomfort” allegedly suffered by persons attending the governmental meeting where a prayer – even one with overt Christian references – is recited cannot secure judicial relief because of his “discomfort” or “offense.”

Indeed, when the first Jewish prayer was recited in the House of Representatives by Rabbi Raphall, it offended some in America’s Christian community. A comment in *The New York Herald* in 1860, warned that “the next thing we shall have will be a Shaking Quaker dancing a reel.” Another published comment wondered whether Rabbi Raphall’s appearance meant that Brigham Young might be next, “surrounded by his harem, threatening to send the administration to hell.” See Jonathan D. Sarna, “Rabbi Raphall Goes to Washington,” *supra*.

## V.

**“ENDORSEMENT” IS NOT THE  
CORRECT CONSTITUTIONAL STANDARD  
FOR LEGISLATIVE PRAYER**

The court of appeals invalidated the Town of Greece’s legislative prayer program because it determined from a review of the Town’s recent administration of its prayer program that it was an “endorsement” of Christianity if “viewed in its totality by an ordinary, reasonable observer.” 681 F.3d at 29. The court below relied on this Court’s decision in *County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573 (1989), in determining that the Constitution forbids the appearance of governmental “endorsement” of a “particular sect or creed.” 681 F.3d at 27.

The “endorsement” standard was articulated by Justice O’Connor in her opinion in *Lynch v. Donnelly*, 465 U.S. 668, 691 (1984), and discussed approvingly by Justice Blackmun responding to Justice Kennedy’s dissenting opinion in the majority opinion in the *Allegheny County* case. 492 U.S. at 603-605. Although the *amicus* was the attorney whose position with respect to a Jewish religious symbol prevailed in the *Allegheny County* case, that decision, insofar as it affected a Christian religious symbol, does not, in counsel’s opinion, control this case or the legitimacy of sectarian legislative prayer.

Religious sectarian displays on public property do not, in and of themselves, violate the Establishment

Clause. Chanukah menorah displays that stand by themselves with no nearby Christmas tree (unlike the menorah in the *Allegheny County* case), have been held to be constitutionally permissible. *Chabad-Lubavitch of Georgia v. Miller*, 5 F.3d 1383 (11th Cir. 1993); *Americans United for Separation of Church and State v. City of Grand Rapids*, 980 F.2d 1538 (6th Cir. 1992) (en banc). No “reasonable observer” believes that government is establishing a state religion by permitting a religious display on public property. By the same token, permitting clergymen to recite sectarian prayers at the inception of public meetings does not establish, as a state religion, the faith of the clergy. So long as the prayer does not proselytize and attendance is voluntary, the program is constitutional.

### CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals for the Second Circuit should be reversed.

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APPENDIX A

Excerpt from the Lubavitcher Rabbi's Shlita  
Letter on the Question of the Regents Prayer

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By the Grace of G-d  
24th of MarCheshvan, 5723 [November 21, 1962]  
Brooklyn, N.Y.

Greeting and Blessing:

The following is in reply to your request to state my views on the question of the Regents Prayer which became the subject of a controversy when the U.S. Supreme Court declared it, not unanimously but by a majority opinion, to be unconstitutional. I reiterate my views in writing, although I stated my position at greater length at a public gathering some months ago.

I want to make it clear that my views are based on the following aspects of the problem:

a. The question relates specifically to the non-denominational Regents Prayer, which reads:

Almighty G-d, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country.

b. The procedure of the recitation of this prayer being that the students read it together with the teacher.

I am approaching this question from the viewpoint of our Torah (though I firmly believe that this position coincides with the best interests of the United States in general).

It is important to bear in mind that the question concerns a vast number of children in the Public Schools who do not receive any other religious training or instruction in the morning, the majority of them not even in the afternoon, and many of them not even in Sunday school. This assertion will be borne out if we compare the statistics about the number of children attending afternoon classes of religious instruction plus those attending Sunday school, (both forms of instruction being very minimal), with the number of children in the Public Schools; the enormous proportion of children receiving no religious instruction whatsoever will at once be revealed.

The following factors have to be considered from the viewpoint of the Torah and Shulchan Aruch (Code of Jewish Law):

1. Prayer as a Divine Commandment. According to all our authorities, it is a positive commandment to pray to G-d daily. The text of the prayers has, of course, been formulated and ordained, but the law also provides that under certain circumstances (e.g. where personal safety is a factor, and distractions of a similar nature) – a short prayer should be recited and the commandment is fulfilled thereby. (I have discussed the matter from the Halachic [Jewish law] viewpoint in my letter to Rabbi J., which is available

in Hebrew). Accordingly, the Regents Prayer is a valid prayer, especially as it contains two basic elements of prayer: acknowledgment (praise of G-d) and request.

2. Submission to the Kingdom of Heaven  
(Kabbolas Ol Malchus Shomayim)

Recognition of the Divine Authority and obedience to it, is also one of the imperatives of the Torah, which is to be fulfilled every day. This is the basic purpose of our daily reading of the *Shema*. While the actual reading of the verses and portions of the *Shema* is required for the fulfillment of the precept, the element of "Submission to the Divine Authority" contained therein can also be expressed in any appropriate form (as this point has been more fully treated in the said Hebrew letter).

Thus, those Jewish children who do not recite the *Shema* daily could, at least, fulfill that part of it which expresses recognition of the Divine Authority – by means of the Regents Prayer.

3. There are certain precepts which are incumbent upon Jews not only every day, but every moment of their life, such as the belief in G-d, the love of G-d, reverence of G-d, etc., (as enumerated and explained in *Sefer haChinuch*, in the *Introduction*).

Precisely in the case of a very great number of children of the Public Schools and their parents, Jewish and gentile, it is likely, sad to say, that many days, weeks and months might pass by without their giving a thought to G-d in a more personal way, not to mention any thought of love and reverence for

G-d. (The widespread disinterestedness in religion and religious education among parents of Public School children seems to be borne out by the fact that so many children of the Public Schools receive no religious instruction whatever, as mentioned above. Some parents attempt to defend their neglect of religious instruction on financial grounds, but this excuse is not supported by their way of life, in which matters of *much* lesser importance are given priority).

Therefore the Regents Prayer, expressing as it does the acknowledgment of, and dependence upon, G-d, and that the welfare of this country and of the parents, children and teachers depends on G-d's benevolence, offers in many cases the only opportunity for the children to make some personal "contact" with G-d every day.

4. The hope expressed in some quarters that the banning of the Regents Prayer will somehow be compensated eventually by the introduction of more religion into the home, is very doubtful, in the light of the prevailing parental attitude, in those circles as mentioned above, towards religion. Be this as it may, it is certain that the *immediate* result of outlawing the Regents Prayer is that hundreds of thousands of children have been precluded from mentioning G-d's Name – in many cases the one and only opportunity they had of ever mentioning G-d's Name every school day of the week.

5. As for the argument that the Regents Prayer has little religious value because it would tend to become mechanical and would not reach the heart of

the child reciting it, the same argument can be used, and with greater justification, in the case of adults and in regard to any daily prayer in any place. It is, unfortunately, true that attendance at houses of worship sometimes in some such places degenerates into a social function rather than serving as a deep religious experience, but it is not necessarily the fault of the environment; and the same is true of the Public Schools.

As a matter of fact, children are usually more sincere and more receptive than adults, and a great deal depends on the teacher, and the Regents Prayer need not degenerate into a mechanical recitation if the teacher will put some feeling into it.

#### 6. Consecration and Desecration of the Divine Name (Kiddush Hashem and Chilul Hashem)

Whatever justification there may be for it, but the fact is that broad sections of the American people, and of people all over the world, see the attempt to suppress the brief non-denominational Regents Prayers as an attempt to eradicate religion, even G-d's Name, from Public School education and this also from the personal lives of the vast majority of American children, inasmuch as their character, personality, world outlook, etc. are largely formed in the public schools.

With the exception of a small number of secularists and atheists, there is no parent who could in all conscience object to a non-denominational prayer *per se*. Inevitably, there has been formed in the public mind the impression that it is the atheists and secularists that are the ones

who strenuously object to the Regents Prayer, or any mention of G-d's Name, and those circles which identify themselves with the opposition to the Regents Prayer are quite naturally placed in the same camp with the secularists. There is thus an obvious case of *Chilul HaShem*, the Profanation of G-d's Name, and also to the good name of the Jewish people (that is, *Chilul HaShem* in the eyes of the gentiles).

7. There is an additional point to be considered: The responsibility which the Jewish religion imposes upon its adherents towards the non-Jew in the matter of dissemination of the belief in G-d; certainly not to weaken that belief in any way, directly or indirectly, which comes under the Biblical injunction: "Place not a stumbling block before the blind."

8. From every aspect of Jewish Law, it would appear clear that every Jew, for whom the Torah is a guide, is duty bound to use every legal and constitutional means to see the majority-decision of the Supreme Court on the Regents Prayer reversed.

9. It is surprising to see that there are some people who are under the impression that inasmuch as the Supreme Court is the highest court in the land, its decision is final and there is nothing that should be done about it.

Needless to say, this is not so, for the Constitution provides the ways and means of enacting or repealing laws, and of amending the Constitution itself. Constitutional ways and means

can be found, should public opinion demand it, to rectify a situation. Indeed, this is one of the basic foundations of the democratic system of which this country is so justly proud. It is of particular interest to the Jewish community since it is the basis on which it can justly and legally claim the repeal of the so-called Sunday Blue Laws, which are unfair and discriminatory for Jewish Sabbath observers.

10. The apprehension has been expressed in some quarters that the recitation of the Regents Prayer in the Public Schools in the manner in which it was carried out (bareheaded, and limited to only twenty-two words, *etc., etc.*) might create an erroneous impression among those students who are completely devoid of Jewish knowledge, even of the fundamentals of our faith. Such children might conclude that this prayer and the manner of its expression satisfies all the requirements of our Torah and the Jewish prayer; that it is permissible for Jews to pray bare-headed; that no synagogue attendance is necessary, *etc., etc.*

In my opinion, however, these apprehensions do not justify at all the elimination of all the positive aspects of the Regents Prayer as enumerated above. To be more exact: The said apprehensions do not at all justify the prevention of scores of thousands of Jewish children from fulfilling the Mitzvoth enumerated above, all the more so since they are basic Mitzvoth.

Needless to add, it is necessary to seek appropriate ways and means to eliminate, or at least reduce, the danger of those apprehensions being

materialized. One such solution should be, first and foremost, the enrollment of all Jewish students of the Public Schools into Talmud Torahs [Jewish day schools], in the post school hours at least. But regardless of all this, it is a vital necessity that they should pray every day (and in the morning) even if only the Regents Prayer.

So much for the strictly Halachic aspects of the problem under discussion.

I venture, however, to address myself also to the sentiments and imagination of everyone whose heart is alert to what is happening around him, and is especially sensitive to the problems of the growing generation, to view the problem as an image projected against the background of our critical time. In our present day and age of rising tension and insecurity under the threat of a nuclear war; of the steadily growing might of communism making ever greater encroachments upon the free world, steadily extending its influence not only over newly captured territories, but also over the minds of people living in the free democracies; of mounting juvenile delinquency —

America has been blessed with hundreds of thousands of children, boys and girls, Jewish and gentile, throughout the width and breadth of these United States, who daily raise their youthful voices in prayer to G-d, acknowledging that He is the Master of the Universe, invoking His blessings upon their country and all who are dear to them, and expressing their confidence in His benevolence.

With this image in mind, can anyone raise his hand to silence this vast body of American youth, saying: "Stop praising G-d! Stop praying to Him! It is forbidden to do so in the American Public School!" What would be the effect of such an order on all these youths? Can anything explain away to their young minds, far removed from Constitutional Law, the impact of such a prohibition in this country, where the free exercise of religion is one of its most cherished values?

I sincerely hope that every Jew who is conscious of the great heritage of our people, the people who brought the idea of One G-d to the world, will uphold the only position compatible with this tradition – to disseminate G-dliness and the observance of the Divine commandments everywhere and at all times, especially among the youth of today, the builders of our future.

With blessing,

/Signature/

## APPENDIX B

Cong. Globe, 36<sup>th</sup> Cong. 1<sup>st</sup> Sess. 648-49 (1860)

Prayer of Rabbi M. Raphall, February 1, 1860

Almighty and most merciful God, we approach Thy presence this day to thank Thee for Thy past mercies, and humbly to beseech Thee to continue and extend the same to Thy servants, the representatives of these United States in Congress assembled.

Lord, great and manifold have been Thy bounties to this highly-favored land. Heartfelt and sincere are our thanks. While the vast despotisms of Asia are crumbling into dust, and the effete monarchies of the Old World can only sustain themselves by yielding to the pressure of the spirit of the age, it has been Thy gracious will that in this Western hemisphere there should be established a Commonwealth after a model of that which Thou, Thyself, didst bestow on the tribes of Israel, in their best and purest days. The Constitution and the institutions of this Republic prove to the world that men, created in Thy image and obedient to Thy behests, are not only capable, fully capable, of self government, but that they know best how to combine civil liberty with ready obedience for the laws, religious liberty with warm zeal for religion, absolute general equality with sincere respect for individual rights. In acquiring and carrying out these most wise institutions, Thy protection, Lord, has been signally manifest. It was Thy right hand that defended the founders of this Commonwealth, during the long and

perilous struggle of right against might. It was thy wisdom that inspired them when they established this Congress, to be what Thy tabernacle, with the *urim* and *thummim*-right and equity-were intended to have been for the tribes of Israel-the heart of the entire nation, where the wants, the feelings, and wishes of all might become known, to be respected by all, so that union might create strength, and concord keep pace with prosperity.

Lord, the ordinary life-time of a man has barely elapsed since this Constitution came into force, and under its auspices our country, from being feeble and poor has become wealthy and powerful, ready to take rank with the mightiest, and Thou, O Lord, wilt realize unto it Thy gracious promise unto Thy chose people: *Vehosireha adonai letobeh*-the Lord will distinguish thee for that which is good.

Supreme Ruler of the universe, many days and many weeks have gone by since Thy servants, our Representatives, first met in this Congress, but not yet have they been able to organize their House. Thou who makest peace in Thy High Heavens, direct their minds this day that with one consent they may agree to choose the man who, without fear and without favor, is to preside over this assembly. To this intent, Father most gracious, do Thou endow them with Thy spirit; the spirit of wisdom and of understanding: the spirit of counsel and of amity: the spirit of knowledge and of fear of the Lord. Grant, Father, that amidst the din of conflicting interests and opinions, Thy grace might direct them so that each one of them and all of them may hold the even tenor of their way-the way of moderation

and of equity: that they may speak and act and legislate for Thy glory and the happiness of our country; so that, from the North and from the South, from the East and from the West, one feeling of satisfaction may attend their labors; while the whole people of the land joyfully repeat the words of Thy Psalmist: "How good and how pleasant it is when brethren dwell together in unity."

Lord God of Abraham, of Isaac, and of Jacob, I, Thy servant, beseech Thee bless these Representatives, even as Thou hast directed Thy priests to bless Thy people.

*Yebarekeka adonai Veyishmireka  
Yo-air adonai panav aleka vy-chaneneka  
Yissa adonai penav aleka veyasem Leka Shalom*

May the Lord bless ye and preserve ye.

May the Lord cause his countenance to shine upon ye and be gracious unto ye.

May the Lord raise his countenance unto ye and grant ye peace.

May this blessing of the one who liveth and who reigneth forever rest upon your counsels and yourselves this day, and evermore. Amen.