

## Applying Precedents Activity

**Comparison case:** *Engel v. Vitale* (1962)

**Precedent cases:** *West Virginia State Board of Education v. Barnette* (1943)  
and *McCullum v. Board of Education* (1948)

**What you need to know before you begin:** When the Supreme Court decides a case, it clarifies the law and serves as guidance for how future cases should be decided. Before the Supreme Court makes a decision, it always looks to precedents—past Supreme Court decisions about the same topic—to help make the decision. A principle called *stare decisis* (literally “let the decision stand”) requires that the precedent be followed. If the case being decided is legally identical to a past decision, then the precedent is considered binding and the Supreme Court must decide the matter the same way. However, cases that make it to the Supreme Court are typically not completely identical to past cases, and justices must consider the similarities and differences when deciding a case.

The process of comparing past decisions to new cases is called applying precedent. Lawyers often argue for their side by showing how previous decisions would support the Supreme Court deciding in their favor. This might mean showing how a previous decision that supports their side is analogous (similar) to the case at hand. It can also involve showing that a previous decision that does not support their side is distinguishable (different) from the case they are arguing.

**How it's done:** In this exercise, you will analyze a precedent and compare it to *Engel v. Vitale*. You have been provided with information about three cases: **1)** the facts, issue, and constitutional provisions/precedents of the comparison case (*Engel v. Vitale*) and **2)** a brief summary of two precedent cases (*West Virginia State Board of Education v. Barnette* and *McCullum v. Board of Education*), which can be found within the *Engel v. Vitale* case materials.

After reading about the cases, you will look for evidence that *Engel v. Vitale* is analogous (similar) to the precedent cases and evidence that the cases are distinguished (different) from each other. After considering both possibilities, you must decide whether the precedents are analogous enough to command the same outcome in the comparison case, or whether the comparison case is different enough to distinguish itself from the precedents.

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1. Using factual and legal similarities, show how *Engel v. Vitale* is **analogous** (similar) to the precedent case (*West Virginia State Board of Education v. Barnette*):

2. Show how *Engel v. Vitale* is **distinguished** (different) from the precedent case (*West Virginia State Board of Education v. Barnette*) by pointing out factual and legal differences:
  
  
  
  
  
  
  
  
  
  
3. We found that *Engel v. Vitale* is \_\_\_\_\_ (**analogous to** or **distinguished from**) the precedent case (*West Virginia State Board of Education v. Barnette*) because (choose the most convincing similarities or differences from questions 1 and 2):
  
  
  
  
  
  
  
  
  
  
4. Using factual and legal similarities, show how *Engel v. Vitale* is **analogous** (similar) to the precedent case (*McCollum v. Board of Education*):
  
  
  
  
  
  
  
  
  
  
5. Show how *Engel v. Vitale* is **distinguished** (different) from the precedent case (*McCollum v. Board of Education*) by pointing out factual and legal differences:

6. We found that *Engel v. Vitale* is \_\_\_\_\_ (**analogous to** or **distinguished from**) the precedent (*McCullum v. Board of Education*) because (choose the most convincing similarities or differences from questions 4 and 5):
7. Based on the application of the precedents, how should *Engel v. Vitale* be decided?
- \_\_\_\_\_ Decision for Engel (to declare the recitation of the prayer unconstitutional)
- \_\_\_\_\_ Decision for Vitale (to allow the prayer to continue)

## Comparison Case: *Engel v. Vitale* (1962)

**Argued:** April 3, 1962

**Decided:** June 25, 1962

### **Background**

The First Amendment to the Constitution protects the right to religious worship, yet it also shields Americans from the establishment of state-sponsored religion. Courts are often asked to decide tough cases about the convergence of those two elements—the Free Exercise and Establishment Clauses of the First Amendment.

The United States has a long history of infusing religious acts into its political practices. For instance, “In God We Trust” is printed on currency. Congress opens each session with a prayer. Before testifying in court, witnesses typically pledge an oath to God that they will tell the truth. Traditionally, presidents are sworn in by placing a hand on a Bible. Congress employs a chaplain, and Supreme Court sessions are opened with the invocation “God save the United States and this Honorable Court.”

Public schools are bedrock institutions of U.S. democracy, where the teaching of citizenship, rights, and freedoms are common. This is a case about whether public schools may also play a role in promoting those values through the daily recitation of prayer.

### **Facts**

Each day, after the bell opened the school day, students in New York classrooms would salute the U.S. flag. After the salute, students and teachers voluntarily recited this school-provided prayer, which had been drafted by the state education agency, the New York State Board of Regents: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country.” The prayer was said aloud in the presence of a teacher, who either led the recitation or selected a student to do so. Students were not required to say this prayer out loud; they could choose to remain silent. Two Jewish families (including Steven Engel), a member of the American Ethical Union, a Unitarian, and a non-religious person sued the local school board, which required public schools in the district to have the prayer recited. The plaintiffs argued that reciting the daily prayer at the opening of the school day in a public school violated the First Amendment’s Establishment Clause. After the New York courts upheld the prayer, the objecting families asked the U.S. Supreme Court to review the case, and the Court agreed to hear it.

### **Issue**

Does the recitation of a government-composed prayer in public schools violate the Establishment Clause of the First Amendment?

**Constitutional Amendment and Supreme Court Precedents****– First Amendment to the U.S. Constitution**

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

**– *West Virginia State Board of Education v. Barnette* (1943)**

The West Virginia Board of Education required that all public schools include a salute of the American flag as a part of their activities. Everyone, including teachers and pupils, was required to salute the flag. If they did not, they could be charged with “insubordination” and punished. Students who were members of a religious sect, the Jehovah’s Witnesses, cited a religious objection to saluting the flag, claiming that it was equivalent to “idolatry.” Their parents sued the state board of education asserting that the compulsory flag salute was a violation of the Establishment Clause. The Supreme Court ruled that the mandatory salute was unconstitutional. They said that a flag salute was a form of speech because it was a way to communicate ideas. In *West Virginia State Board of Education v. Barnette*, the Court ruled that in most cases the government cannot require people to express ideas that they disagree with, especially when the ideas conflict with their own religious beliefs.

**– *McCullum v. Board of Education* (1948)**

In *McCullum v. Board of Education*, the Court said a public school violated the Establishment Clause when it allowed the school to teach religious instruction during school hours on school property. The schools set aside time for religious instruction, organized selection of religious community members to teach the school children and administered the instruction. The Court ruled in an 8–1 decision this violated the Establishment Clause by establishing a government preference for certain religions.