

They Say Jump...

Welcome to *Constitutional Context*. This is Professor Glenn Smith with another “five-minute bite of background about the Court and Constitution.”

Lawyers and laypersons alike can fall into the habit of thinking that, once the Supreme Court rules on the meaning and application of the Constitution, that settles the matter.

Sure, we remember President Eisenhower having to send national-guard troops into Little Rock, Arkansas to enforce a school desegregation order. And we know that some state legislatures pass laws contradicting Supreme Court abortion-rights rulings to create “test cases.”

But we might think that the rest of the time long-standing Supreme Court rulings are followed, at least grudgingly.

That’s why a CNN story earlier this year caught my attention. The story reports on a lawsuit filed against the public-school system in Webster Parish, Louisiana. The lawsuit’s filing already stopped a long-standing practice of students reciting the Lord’s Prayer during morning announcements over school public-address systems. But the lawsuit – commenced with the help of the American Civil Liberties Union – challenges a wider array of “school-sponsored Christian prayer, religious messages and/or proselytizing [at] virtually all school events – such as sports games, pep rallies, assemblies, and graduation ceremonies.”

What’s surprising about this lawsuit is that it was even necessary to file it.

It’s been clear since the 1962 Supreme Court decision in *Engel v. Vitale* that school officials violate the Constitution’s Establishment Clause (forbidding inappropriate government identification with religion) when they place their “power, prestige and financial support...behind a religious belief.” Later decisions clarify that it matters not whether government writes the prayers or simply promotes prayers written or composed by others. And bans clearly extend beyond the classroom: A 1992 decision invalidated the practice of one school district, which invited a religious official to say generic prayers at an offsite high-school graduation. A 2000 decision clarified that turning over the microphone to praying students at a high-school football game also violated the Constitution.

By the way, it’s not that these decisions completely zone God and religion out of public schools. The Court has emphasized that religious texts and sacred art and music may be “presented objectively as part of a secular program of education.” What is forbidden is government *endorsement* of religious teaching.

Webster Parish would certainly not be alone if found to be ignoring Supreme Court guidance. Achieving compliance with Court rulings is a complicated and incomplete endeavor.

First, even public officials wanting to comply in good faith may be unclear on the lines drawn in judicial pronouncements. This may be due to simple ignorance, compounded by gaps in current systems for continuing education about Court rulings. And the Supreme Court may abet the problem by using vague or fact-specific legal criteria (for example, the “totality of the circumstances” test for determining whether police searches are reasonable).

A second point is that many officials face strong political and social pressures against complete and timely compliance with Court rulings. Life-tenured lower-federal-court judges are obligated by professional norms and encouraged by reversal risks to follow the rulings of their “bosses.” Still, these federal judges reflect regional influences and at times provide only partial implementation. And, further down what one scholar calls the “pyramid of compliance,” it’s not unusual to find state-court judges and non-judicial officials at all levels bending to public pressure -- especially when subject to initial election or re-election.

Luckily, we see few examples of outright, in-your-face defiance with court orders. And America’s rate of constitutional compliance compares favorably with other countries. No doubt this is strong testament to many officials committed to the rule of law – and to proactive lawyers ready to sue them when they aren’t.

Still, it’s important to appreciate that multiple practical factors cause many officials and citizens to respond with less than “How high?” when the Supreme Court says “Jump!”