

## MODERN-DAY SCHOOL PRAYER: HOW PUBLIC SCHOOLS ARE TEACHING BUDDHIST MEDITATION IN VIOLATION OF THE ESTABLISHMENT CLAUSE

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### I. INTRODUCTION

The United States Supreme Court has previously warned that “great consequences can grow from small beginnings.”<sup>1</sup> What can appear to be simple breathing exercises to help students handle stress could actually lead to the religious indoctrination of an entire generation. Public schools are training students in Buddhist practices through the teaching of mindfulness.<sup>2</sup>

The origins of mindfulness are not in dispute.<sup>3</sup> Jon Kabat-Zinn, the founder of mindfulness, freely admits mindfulness is based on Buddhism.<sup>4</sup> However, proponents of mindfulness are strategically avoiding using Buddhist terms, including the word Buddhism itself, in an attempt to make Buddhism more palatable to a western audience.<sup>5</sup> Mindfulness is Buddhist meditation repackaged.<sup>6</sup>

In recent years, many public schools have adopted mindfulness as part of the curriculum.<sup>7</sup> In those schools, it is now the role of the

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1. *Lee v. Weisman*, 505 U.S. 577, 598 (1992) (quoting *Sch. Dist. of Abington v. Schempp*, 374 U.S. 203, 308 (1963) (Goldberg, J., concurring)).

2. Randye J. Semple et al., *Mindfulness Goes to School: Things Learned (So Far) From Research and Real-World Experiences*, 54(1) PSYCHOL. SCH. 29, 32, 37, 41-42, 45-46 (2017) (surveying mindfulness-based programs and noting three such programs, which have been implemented in public schools).

3. Jon Kabat-Zinn, *Mindful Yoga, Movement and Meditation*, YOGA CHICAGO (Mar./Apr. 2005), <http://yogachicago.com/2014/03/mindful-yoga-movement-and-meditation/>.

4. JON KABAT-ZINN, FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS 364-65 (2013).

5. See David Chapman, *Stealth Dharma*, APPROACHING THE ARO GTER (Aug. 11, 2009), <https://approachingaro.org/stealth-buddhism> (explaining that disclosing the Buddhist origins of mindfulness lead to its rejection, and that proponents of mindfulness should not mention Buddhism, or any Buddhist terms, while discussing mindfulness).

6. Jenny Wilks, *Secular Mindfulness: Potential & Pitfalls*, BARRE CENTER FOR BUDDHIST STUDIES (2014), <https://www.buddhistinquiry.org/article/secular-mindfulness-potential-pitfalls>.

7. Semple, *supra* note 2 at 29, 32, 37, 41-42, 45-46.

teacher to lead students in Buddhist meditation exercises in the classroom.<sup>8</sup> Schools districts are directing and training teachers on how to teach mindfulness.<sup>9</sup> This Article will argue that through the adoption and promotion of mindfulness programs in public schools, the state has determined what religion is to be taught, who is to teach it, and how it is to be taught.<sup>10</sup>

This Article will highlight the various factors used by the Supreme Court to determine if the Establishment Clause has been violated in the public school setting.<sup>11</sup> This Article will review the history of mindfulness and its Buddhist meditation practices.<sup>12</sup> This Article will show that mindfulness is merely Buddhist meditation repackaged.<sup>13</sup> Ultimately, this Article will argue that, upon applying Supreme Court precedent, teaching mindfulness in public schools violates the Establishment Clause.<sup>14</sup>

## II. BACKGROUND

The first sentence of the First Amendment to the United States Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>15</sup> The Establishment Clause only served as a limitation on Congress’ legislative power until the United States Supreme Court, in *Everson v. Board of Education*,<sup>16</sup> applied the Establishment Clause to the states through the Due Process Clause of the Fourteenth Amendment.<sup>17</sup> The Supreme Court has stated that “[t]he fundamental concept of liberty embodied in [the Fourteenth] Amendment embraces the liberties guaranteed by the First Amendment.”<sup>18</sup> Therefore, the Establishment Clause imposes “substantive limitations on the legislative power of the States and their political subdivisions.”<sup>19</sup>

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8. Juliann Garey, *Mindfulness in the Classroom: How it Helps Kids Regulate Behavior and Focus on Learning*, CHILD MIND INSTITUTE, <https://childmind.org/article/mindfulness-in-the-classroom/> (last visited Feb. 17, 2019).

9. See Lauren Cassani Davis, *When Mindfulness Meets the Classroom*, THE ATLANTIC (Aug. 31, 2015), <https://www.theatlantic.com/education/archive/2015/08/mindfulness-education-schools-meditation/402469> (explaining how a public school’s administrators agreed to pay for a teacher’s year-long mindfulness certification, when he was engaged in teaching students mindfulness techniques in the classroom).

10. See *infra* notes 180-259.

11. See *infra* notes 26-104.

12. See *infra* notes 105-164.

13. See *infra* notes 165-179.

14. See *infra* notes 180-259.

15. U.S. CONST. amend. I, § 1.

16. 330 U.S. 1 (1947).

17. *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947).

18. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 215-16 (1963) (quoting *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940)).

19. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 301 (2000).

The Supreme Court has interpreted the Establishment Clause to mean more than simply forbidding the government to favor one religion over another.<sup>20</sup> “[T]he First Amendment was adopted to curtail the power of Congress to interfere with the individual’s freedom to believe, to worship, and to express himself in accordance with the dictates of his own conscience.”<sup>21</sup>

The Court has explained that the Establishment Clause forbids “laws which aid one religion, aid all religions, or prefer one religion over another.”<sup>22</sup> The Supreme Court relied on history in acknowledging “that governmentally established religions and religious persecutions go hand in hand.”<sup>23</sup> “When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.”<sup>24</sup> That is why the Supreme Court has stated “the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.”<sup>25</sup>

#### A. SUPREME COURT CASES REGARDING RELIGIOUS ACTIVITY IN PUBLIC SCHOOLS

##### 1. *Engel v. Vitale: The Supreme Court Recognizes Minor Endorsements of Religion as Potentially Coercive*

In 1962, the United States Supreme Court, in *Engel v. Vitale*,<sup>26</sup> determined that beginning a school day with a prayer violated the Establishment Clause.<sup>27</sup> The prayer was composed by state officials as part of the school’s moral and spiritual training.<sup>28</sup> This religious exercise was to be conducted “by each class in the presence of a teacher at the beginning of each school day.”<sup>29</sup> Some parents challenged the

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20. *Schempp*, 374 U.S. at 216.

21. *Wallace v. Jaffree*, 472 U.S. 38, 49 (1985).

22. *Everson*, 330 U.S. at 15.

23. *Engel v. Vitale*, 370 U.S. 421, 432 (1962). “The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs.” *Engel*, 370 U.S. at 431.

24. *Id.*

25. *Lee v. Weisman*, 505 U.S. 577, 587 (1992) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 678 (1984)).

26. 370 U.S. 421 (1962).

27. *Engel v. Vitale*, 370 U.S. 421, 436 (1962).

28. *Engel*, 370 U.S. at 423. “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.” *Id.*

29. *Id.* at 422.

daily religious exercise as “contrary to the beliefs, religions, or religious practices of both themselves and their children.”<sup>30</sup>

Respondents defended the program, arguing the prayer was non-denominational or denominationally neutral.<sup>31</sup> Respondents also argued there could not be an Establishment Clause violation because students were not required to participate in the program.<sup>32</sup> Students that did not want to participate were allowed to either sit and not recite the prayer or be excused from the classroom during the exercise.<sup>33</sup> Respondents reasoned that the prayer was “so brief and general there can be no danger to religious freedom in its governmental establishment.”<sup>34</sup>

Even though the Court conceded that the program did not set up an official state religion, the Court quoted James Madison in stating, “it is proper to take alarm at the first experiment on our liberties.”<sup>35</sup> The Court reasoned that even a minor endorsement of religion may lead to coerced obedience in the future.<sup>36</sup>

In addressing the other defenses of the program, the Court stated that “[n]either the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause.”<sup>37</sup> The Court concluded by stating that there can be no doubt that the “prayer program officially establishes the religious beliefs embodied in the Regents’ prayer.”<sup>38</sup>

## 2. School District of Abington Township v. Schempp: *The Supreme Court Emphasizes the Importance of Neutrality as Embodied in the First Amendment*

In *School District of Abington Township v. Schempp*,<sup>39</sup> the United States Supreme Court addressed two companion cases involving possible Establishment Clause violations in public schools.<sup>40</sup> The first case, originating from Pennsylvania, involved a state law that re-

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30. *Id.* at 423.

31. *Id.* at 430.

32. *Id.*

33. *Id.*

34. *Id.* at 436.

35. *Id.* The Court quoted James Madison, *A Memorial and Remonstrance Against Religious Assessments* (June 20, 1785), available at *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 28, 63-73 (1947) (Rutledge, J., dissenting). Justice Rutledge added *Memorial and Remonstrance Against Religious Assessments*, in its entirety, as an appendix to the dissenting opinion. *Everson*, 330 U.S. at 63-73.

36. *Engel*, 370 U.S. at 436 (quoting Madison, *supra* note 35).

37. *Id.* at 430.

38. *Id.*

39. 374 U.S. 203 (1963).

40. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 205 (1963).

quired reading at least ten verses of the Holy Bible at the beginning of each school day.<sup>41</sup> While some schools included a recitation of the Lord's Prayer with their readings, all schools were to conclude the exercises with a salute to the flag.<sup>42</sup>

The religious exercises were to be accompanied by "no prefatory statements, no questions asked or solicited, no comments or explanations made and no interpretations given at or during the exercises."<sup>43</sup> Classes were to simply perform the religious exercise.<sup>44</sup> The Scripture readings were taken from the King James Bible, the Douay Bible, the Revised Standard Bible, and the Jewish Holy Scriptures.<sup>45</sup> Student participation was voluntary, and students were allowed to be excused from the Bible reading upon the request of a parent.<sup>46</sup>

The Supreme Court referenced expert witness testimony from the trial court proceeding that stated reading from the Holy Bible was nonsectarian among the Christian faith and the Jewish faith.<sup>47</sup> The expert testimony also noted secular benefits gained from reading the Bible in classrooms, including the great moral, historical, and literary value.<sup>48</sup> Even with this expert testimony, however, the Court struck down the exercises explaining that "[t]he reading of the verses, even without comment, possesses a devotional and religious character and constitutes in effect a religious observance."<sup>49</sup> The fact that the classroom exercises were practices favored by religions demonstrated that it was the "intention of [Pennsylvania] to introduce a religious ceremony into the public schools."<sup>50</sup> The Court also determined the classroom exercises were obligatory, even though participation was voluntary and the students were able to be excused.<sup>51</sup>

The second case, out of Baltimore, Maryland, involved a similar statute that "provided for the holding of opening exercises in the schools of the city, consisting primarily of the reading, without com-

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41. *Schempp*, 374 U.S. at 205, 207-08 (elaborating that the verses were either read by a student through the intercommunication system or by the teacher, if no intercommunication system was present).

42. *Id.* at 207.

43. *Id.*

44. *Id.*

45. *Id.* The King James Bible is predominately used in the Protestant faith, while the Douay Bible and the Revised Standard Bible are used in the Catholic faith.

46. *Id.* at 205, 207.

47. *Id.* at 210 (citing *Schempp v. Sch. Dist. of Abington Twp.*, 177 F. Supp. 398, 401-02 (E.D. Pa. 1959)).

48. *Id.*

49. *Id.* at 210 (quoting *Schempp v. Sch. Dist. of Abington Twp.*, 201 F. Supp., 815, 819 (E.D. Pa. 1962)).

50. *Id.* at 211.

51. *Id.* at 210-11.

ment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer."<sup>52</sup>

Both schools defended the exercises on the basis that such exercises provided secular benefits to all public school students regardless of religious affiliation.<sup>53</sup> These secular benefits included: "the promotion of moral values, the contradiction to the materialistic trends of our times, the perpetuation of our institutions and the teaching of literature."<sup>54</sup> However, the Court explained that even if the public schools were attempting to teach secular lessons, or provide secular benefits to students through these exercises, the schools still used religious exercises to accomplish these goals.<sup>55</sup> Therefore, the Court concluded that both schools engaged in religious exercises that violated the Establishment Clause.<sup>56</sup>

In examining these cases, the Court referenced an unpublished opinion by Judge Alphonso Taft, the father of former President and Chief Justice William Howard Taft.<sup>57</sup> In the opinion, Judge Taft explained that the government's role is to maintain neutrality in matters of religious freedom.<sup>58</sup> The Supreme Court adopted the theory of neutrality by declaring that "the rule [of neutrality] is clearly and concisely stated in the words of the First Amendment."<sup>59</sup>

The Court also determined that the classroom exercises, although a minor encroachment on the First Amendment, still breached neutrality.<sup>60</sup> The Court reasoned that "the concept of neutrality . . . does not permit a State to require a religious exercise even with the consent of the majority of those affected."<sup>61</sup> The Court warned that "[t]he breach of neutrality that is today a trickling stream may all too soon become a raging torrent."<sup>62</sup>

52. *Id.* at 211 (internal quotations omitted).

53. *Id.* at 223.

54. *Id.* Expert testimony from the first case also emphasized the great moral, historical, and literary value of reading the Bible in the classroom. *Id.* at 210 (citing *Schempp*, 177 F. Supp. at 401-02).

55. *Id.* at 224.

56. *Id.* at 224. The Court stated:

The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners. Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause.

*Id.* at 224-25.

57. *Id.* at 214-15 (citing *Bd. of Educ. v. Minor*, 23 Ohio St. 211, 253 (1872)).

58. *Id.* at 215 (citing *Minor*, 23 Ohio St. at 253).

59. *Id.* at 226.

60. *Id.* at 225.

61. *Id.* at 225-26.

62. *Id.* at 225. "[I]n the words of [James] Madison, 'it is proper to take alarm at the first experiment on our liberties.'" *Id.* (quoting Madison, *supra* note 35).

3. *Wallace v. Jaffree: The Supreme Court Acknowledges the Subtle Ways in Which the Establishment Clause can be Eroded*

In *Wallace v. Jaffree*,<sup>63</sup> the United States Supreme Court addressed the constitutionality of an Alabama statute that authorized a one-minute period of silence in public schools for meditation or voluntary prayer.<sup>64</sup> Some parents complained that teachers were using the daily minute of silence to lead students in religious exercises.<sup>65</sup> These parents also claimed that students who chose not to participate in the religious exercises were ostracized by their classmates.<sup>66</sup> Some of the parents alleged that their “children had been subjected to various acts of religious indoctrination.”<sup>67</sup>

The Court struck down the Alabama statute as a violation of the Establishment Clause on the basis that the purpose of the statute was to endorse religion.<sup>68</sup> To determine the purpose of the statute, the Court examined the legislative history.<sup>69</sup> The Court discovered that the Alabama State Senator who sponsored the bill had inserted a statement in the legislative record indicating that the purpose of the legislation was to return voluntary prayer to public schools.<sup>70</sup> When the district court asked him if he had any purpose for the legislation other than bringing prayer back to public schools, the Senator stated, “No, I did not have . . . [an]other purpose in mind.”<sup>71</sup>

With such a clear record of the legislative purpose, the Court determined that the intended purpose of the legislation was religious, and not secular, in nature.<sup>72</sup> Therefore, the Court stated that the Alabama statute endorsed religion and violated the Establishment Clause.<sup>73</sup> While the legislative purpose was easily identifiable in *Wallace*, the Court explained that there are a myriad of subtle ways in

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63. 472 U.S. 38 (1985).

64. *Wallace v. Jaffree*, 472 U.S. 38, 40-42 (1985).

65. *Wallace*, 472 U.S. at 42 (complaining that “teachers had ‘on a daily basis’ led their classes in saying certain prayers in unison”).

66. *Id.*

67. *Id.*

68. *Id.* at 56.

69. *Id.*

70. *Id.* at 56-57.

71. *Id.* at 57.

72. *Id.* at 56.

In applying the purpose test, it is appropriate to ask “whether government’s actual purpose is to endorse or disapprove of religion.” In this case, the answer to that question is dispositive. For the record not only provides us with an unambiguous affirmative answer, but it also reveals that the enactment of [the statute] was not motivated by any clearly secular purpose – indeed, the statute had *no* secular purpose.

*Id.*

73. *Id.*

which the fundamental values of the Establishment Clause can be eroded.<sup>74</sup>

4. *Lee v. Weisman: The Supreme Court Focuses on the Potential Coercive Aspects of a Nominally Secular Invocation at a Graduation Ceremony*

In *Lee v. Weisman*,<sup>75</sup> the United States Supreme Court addressed whether an invocation at a junior high graduation ceremony violated the First Amendment.<sup>76</sup> In *Lee*, a student and her father objected to a rabbi giving a nonsectarian invocation at the ceremony, claiming it forced the student to participate in a religious exercise.<sup>77</sup> The school defended the invocation by asserting it was nonsectarian and that students were not required to attend the ceremony.<sup>78</sup>

In examining this case, the Court focused on the fact that the school had determined both to include an invocation in the graduation ceremony and who would lead the invocation.<sup>79</sup> The Court also took notice of that fact that the school provided guidance as to how the invocation should be conducted.<sup>80</sup> The school defended its involvement in the process, claiming the school was ensuring the invocation would be nonsectarian.<sup>81</sup> However, the Court explained that the school's attempt to make the invocation nonsectarian "does not resolve the dilemma caused by [the school's] participation" in a religious activity.<sup>82</sup> "[I]t is no part of the business of government to compose official

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74. *Id.* at 61 (citing *Lynch v. Donnelly*, 465 U.S. 668, 694 (1984) (O'Connor, J., concurring)).

75. 505 U.S. 577 (1992).

76. *Lee v. Weisman*, 505 U.S. 577, 580 (1992). The Court assumed, for the purposes of its analysis, that the ceremony in question was a high school graduation instead of a junior high school graduation. *Lee*, 505 U.S. at 583.

77. *Id.* at 581. The Court acknowledged:

It has been the custom of Providence school officials to provide invited clergy with a pamphlet entitled "Guidelines for Civic Occasions," prepared by the National Conference of Christians and Jews. The Guidelines recommend that public prayers at nonsectarian civic ceremonies be composed with "inclusiveness and sensitivity," though they acknowledge that "[p]rayer of any kind may be inappropriate on some civic occasions." The principal gave Rabbi Gutterman the pamphlet before the graduation and advised him the invocation and benediction should be nonsectarian.

*Id.* (internal citations omitted).

78. *See id.* at 581, 583 (explaining that students did not have to attend the ceremony to receive their junior high diploma). The Court examined the case as if the ceremony at issue was a mandatory high school graduation ceremony instead of the optional junior high graduation ceremony that it actually was. *Id.* at 586.

79. *Id.* at 587-88.

80. *Id.* at 588. "Principal Lee provided Rabbi Gutterman with a copy of the 'Guidelines for Civic Occasions,' and advised him that his prayers should be nonsectarian." *Id.*

81. *Id.* at 581.

82. *Id.* at 588-89.

prayers for any group of the American people to recite as a part of a religious program carried on by government.”<sup>83</sup>

The Court also focused on whether the student was coerced into participating in a religious activity through the graduation invocation.<sup>84</sup> The Court stated that there are “heightened concerns with protecting [a student’s] freedom of conscience from subtle coercive pressure[s] in . . . public schools.”<sup>85</sup> The Court determined that “subtle coercive pressures exist[ed] and . . . the student had no real alternative which would have allowed her to avoid the fact or appearance of participation.”<sup>86</sup> Therefore, the Court concluded that public schools are forbidden from persuading or compelling students to participate in a religious exercise.<sup>87</sup>

The Court determined that the rabbi’s nonsectarian invocation constituted a state-sponsored religious activity.<sup>88</sup> Specifically, the Court acknowledged:

The government involvement with religious activity in this case is pervasive, to the point of creating a state-sponsored and state-directed religious exercise in a public school. Conducting this formal religious observance conflicts with settled rules pertaining to prayer exercises for students, and that suffices to determine the question before us.<sup>89</sup>

Therefore, the Court concluded that the Establishment Clause forbids religious exercises where students who object are induced to conform.<sup>90</sup>

5. *Santa Fe Independent School District v. Doe: The Supreme Court Relies on the Perception of an Objective Observer to Determine the Constitutionality of a School Activity*

In *Santa Fe Independent School District v. Doe*,<sup>91</sup> the United States Supreme Court addressed whether student-led, student-initiated prayer during an invocation before a high school football game

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83. *Id.* at 588 (quoting *Engel v. Vitale*, 370 U.S. 421, 425 (1962)). The United States Supreme Court “precedent [ ] do[es] not permit school officials to assist in composing prayers as an incident to a formal exercise for their students.” *Lee*, 505 U.S. at 590.

84. *Id.* at 592.

85. *Id.*; see also *Schempp*, 374 U.S. at 307 (Goldberg, J., concurring); *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987); *Bd. of Educ. v. Mergens*, 497 U.S. 226, 261-62 (1990) (Kennedy, J., concurring).

86. *Lee*, 505 U.S. at 588.

87. *Id.* at 599.

88. *Id.* at 586.

89. *Id.* at 587.

90. *Id.* at 599.

91. 530 U.S. 290 (2000).

violated the Establishment Clause.<sup>92</sup> The students who gave the invocations were chosen by their classmates through two separate student election processes.<sup>93</sup> The school district policy allowed, but did not require, students to pray during the invocations.<sup>94</sup> If a student did choose to pray during the invocation, the school district policy “permit[ted] only nonsectarian, nonproselytizing prayer.”<sup>95</sup>

The school district defended the invocations by stating the prayers were student-led and student-initiated and, therefore, did not constitute a state action.<sup>96</sup> The school district reasoned that no coercion was present during the invocations because students were not required to attend the football games.<sup>97</sup> The district also argued that the invocations served the secular purpose of “foster[ing] free expression of private persons . . . as well as to solemnize sporting events, promote good sportsmanship and student safety, and establish an appropriate environment for competition.”<sup>98</sup>

The Court rejected all of the school district’s defenses for the invocations by relying upon how an objective observer would have perceived the situation.<sup>99</sup> The Court found that even if most students attended football games voluntarily, the students who were present were still improperly coerced into participating in the religious exercise.<sup>100</sup> The Court reviewed the history of the invocations and determined that because of the “regular delivery of a student-led prayer at athletic events, it is reasonable to infer that the specific purpose of the policy was to preserve a popular ‘state-sponsored religious practice.’”<sup>101</sup> The Court also rejected the school district’s argument that the invocation served a secular purpose, calling it “a sham secular purpose.”<sup>102</sup> The Court, therefore, determined that the school district

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92. *Santa Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290, 301 (2000).

93. *Santa Fe*, 530 U.S. at 297-98.

94. *Id.* at 294.

95. *Id.*

96. *See id.* at 304-05 (arguing the students were selected by other students, not the school).

97. *Id.* at 292.

98. *Id.* at 309.

99. *Id.* at 308. “The text and history of this policy . . . reinforce[s] our objective student’s perception that the prayer is, in actuality, encouraged by the school.” *Id.*

100. *Id.* at 292. The Court reasoned:

Even if we regard every high school student’s decision to attend a home football game as purely voluntary, we are nevertheless persuaded that the delivery of a pregame prayer has the improper effect of coercing those present to participate in an act of religious worship. For “the government may no more use social pressure to enforce orthodoxy than it may use more direct means.”

*Id.* at 312 (quoting *Lee v. Weisman*, 505 U.S. 577, 594 (1992)).

101. *Id.* at 309 (quoting *Lee*, 505 U.S. at 596) (noting that the student who gave the invocation was formerly referred to as the student chaplain).

102. *Id.* at 308-10 (quoting *Wallace v. Jaffree*, 472 U.S. 38, 75 (1985) (O’Connor, J., concurring)).

had endorsed the religious exercise by “fail[ing] to divorce itself from the religious content in the [student-led] invocations.”<sup>103</sup> The Court affirmed the lower court’s decision that the school district’s invocations violated the Establishment Clause.<sup>104</sup>

## B. MINDFULNESS

### 1. *The Buddhist Origins of Mindfulness*

Mindfulness is a form of meditation developed in the religious traditions of Buddhism.<sup>105</sup> Buddhism originated in India in the sixth century B.C.<sup>106</sup> Buddhism is based on the teachings of the Buddha.<sup>107</sup> The goal of Buddhism is to overcome suffering and the cycle of death and rebirth through the attainment of Nirvana, or enlightenment.<sup>108</sup> Today, there are nearly half a billion Buddhists worldwide.<sup>109</sup>

The term mindfulness comes from the Buddhist term *sati*.<sup>110</sup> *Sati*, or right mindfulness, is one part of Buddhism’s Eightfold Path.<sup>111</sup> The Eightfold Path is a collection of Buddhist practices which lead to enlightenment.<sup>112</sup> Buddhist meditation is one of the practices of the Eightfold Path that leads to overcoming the cycle of death and rebirth.<sup>113</sup> The Buddha taught that meditation was an es-

103. *Id.* at 305.

104. *Id.* at 317.

105. See KABAT-ZINN, *supra* note 4 (defining mindfulness as “a form of meditation originally developed in the Buddhist traditions of Asia”).

106. *Origins of Buddhism*, MINNEAPOLIS INSTITUTE OF ARTS, <https://archive.artsmia.org/art-of-asia/buddhism/buddhism-origins.cfm> (last visited Feb. 16, 2019).

107. Lise F. Vail, *The Origins of Buddhism*, CENTER FOR GLOBAL EDUCATION, <https://asiasociety.org/education/origins-buddhism> (last visited Feb. 16, 2019).

108. See Dr. Thane Hutcherson Ury, *Buddhism*, ANSWERS IN GENESIS (Jan. 27, 2017), <https://answersingenesis.org/world-religions/buddhism> (describing that the driving motivation of the Buddha “was to pinpoint the origin of pain and suffering and to propose a solution” and “to escape from the cycle of reincarnation and attain enlightenment”); Todd Friel, *Wretched TV Episode 1956*, WRETCHED (Sept. 21, 2017), <https://www.wretched.org/mindfulness-school-wwutt-essentials-christianity/> (describing Buddhist salvation practices).

109. Ury, *supra* note 108.

110. Christopher Shea, *A Brief History of Mindfulness in the USA and Its Impact on Our Lives*, PSYCHCENTRAL, <https://psychcentral.com/lib/a-brief-history-of-mindfulness-in-the-usa-and-its-impact-on-our-lives> (last updated Oct. 8, 2018). *Sati* is the Pali term and *smṛti* is the Sanskrit term. *Id.*

111. Walpola Sri Rahula, *The Noble Eightfold Path: The Buddha’s Practical Instructions to Reach the End of Suffering*, TRICYCLE, <https://tricycle.org/magazine/noble-eightfold-path> (last visited Dec. 13, 2018).

112. RELIGIONS IN FOCUS: NEW APPROACHES TO TRADITION AND CONTEMPORARY PRACTICES 319 (Graham Harvey ed., 2014). “The path to *nirvana*, to the end of suffering, is the Eightfold Path to enlightenment . . .” *Id.*

113. Compare Rahula, *supra* note 111 (providing that meditation is one component of right mindfulness, which is one part of the Noble Eightfold Path), with RELIGIONS IN FOCUS: NEW APPROACHES TO TRADITION AND CONTEMPORARY PRACTICES 319, *supra* note

sential component to achieving liberation from suffering.<sup>114</sup> Meditation practices are, therefore, vital to Buddhism.<sup>115</sup>

Buddhist meditation often begins with the sounding of a bell.<sup>116</sup> Practitioners may sit cross-legged on the floor or in a straight-backed chair with their feet placed flat on the floor.<sup>117</sup> It is important to keep the body erect during Buddhist meditation because of the Buddhist belief that the mind and the body are connected.<sup>118</sup> If the body is not kept in an upright position, the energy flow will be hindered and the practitioner's thought process will be negatively affected.<sup>119</sup>

It is also important to concentrate on breathing during Buddhist meditation.<sup>120</sup> Focusing on breathing serves to bring the practitioner's breath, body, and mind together.<sup>121</sup> Concentrating on breathing also helps the practitioner relax and maintain focus during

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112 (stating the Eightfold Path is the path to enlightenment, nirvana, and to the end of suffering).

114. *How to Meditate: The Complete Buddhist Guide*, LION'S ROAR: BUDDHIST WISDOM FOR OUR TIME, <https://www.lionsroar.com/category/how-to/> (last visited Feb. 16, 2019).

115. *Id.* "Breath meditation is a vital practice in itself, but it also represents the very foundation of all of Buddhist meditation's varied forms." *Id.*

116. Thich Nhat Hanh, *How to Sit*, LION'S ROAR: BUDDHIST WISDOM FOR OUR TIME (May 6, 2016), <https://www.lionsroar.com/thich-nhat-hanh-sit/>.

117. *How to Meditate: The Complete Buddhist Guide*, *supra* note 114 (instructing practitioners to also place their hands palms-down on their thighs).

118. Sakyong Mipham Rinpoche, *How to Practice Mindfulness*, LION'S ROAR: BUDDHIST WISDOM FOR OUR TIME (July 28, 2017), <https://www.lionsroar.com/how-to-do-mindfulness-meditation/>.

The basic principle is to keep an upright, erect posture. You are in a solid situation: your shoulders are level, your hips are level, your spine is stacked up. You can visualize putting your bones in the right order and letting your flesh hang off that structure. We use this posture in order to remain relaxed and awake. The practice we're doing is very precise: you should be very much awake even though you are calm. If you find yourself getting dull or hazy or falling asleep, you should check your posture.

*Id.* See also Hanh, *supra* note 116. "When you sit, keep your spinal column quite straight, while allowing your body to be relaxed. Relax every muscle in your body, including the muscles in your face. Consider smiling slightly, a natural smile. Your smile relaxes all your facial muscles." *Id.*

119. Rinpoche, *supra* note 118.

120. *Id.*

121. Hanh, *supra* note 116.

Notice your breathing. As you breathe in, be aware that you are breathing in. As you breathe out, notice that you are breathing out. As soon as we pay attention to our breath, body, breath and mind come together. Every in-breath can bring joy; every out-breath can bring calm and relaxation.

*Id.*

meditation.<sup>122</sup> Practitioners are told to feel their breath going in and out.<sup>123</sup>

While meditating, practitioners can either close their eyes or keep them open.<sup>124</sup> If the practitioner's eyes remain open during meditation, they should be focused but not staring.<sup>125</sup> Practitioners are encouraged to not look at anything, as the object of Buddhist meditation is to reduce sensory input as much as possible.<sup>126</sup> This reduction of sensory input is an effort to empty, or quiet, the mind.<sup>127</sup> If a thought comes to mind during meditation, the practitioner should remove the thought and return to meditation by focusing on breathing.<sup>128</sup>

## 2. *Jon Kabat-Zinn and Stealth Buddhism*

Mindfulness in America is often attributed to Jon Kabat-Zinn.<sup>129</sup> Kabat-Zinn was first introduced to Buddhist meditation through a Zen missionary while studying at MIT.<sup>130</sup> He began to study meditation under Zen Buddhist teachers, including Zen master Thich Nhat Hanh.<sup>131</sup> Kabat-Zinn then mixed his Buddhist training with yoga practices to develop his own brand of meditation which he called mindfulness.<sup>132</sup> In 1979, at the University of Massachusetts Medical

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122. *See id.* (describing how every breath out can bring relaxation to the practitioner); *How to Meditate*, *supra* note 114 (stating that focusing on breathing in and out makes for a more focused meditation).

123. Rinpoche, *supra* note 118. “The whole feeling of the breath is very important. The breath should not be forced, obviously; you are breathing naturally. The breath is going in and out, in and out. With each breath you become relaxed.” *Id.*

124. THICH NHAT HANH, *PLANTING SEEDS: PRACTICING MINDFULNESS WITH CHILDREN* 44 (2007) (stating that open eyes are to only remain half open).

125. Rinpoche, *supra* note 118 (describing the downward focus of the eyes as a “soft gaze”).

126. *See id.* (explaining “the more we raise our gaze, the more distracted we’re going to be”).

127. Friel, *Wretched TV Episode 1956*, *supra* note 108.

128. Rinpoche, *supra* note 118.

129. Shea, *supra* note 110; *see also* Janette Grant, *Jon Kabat-Zinn – The Godfather of Modern Mindfulness*, MINDFULNESS4U (Mar. 19, 2018), <https://mindfulness4u.org/jon-kabat-zinn-the-godfather-of-modern-mindfulness/> (describing Jon Kabat-Zinn as “the godfather of modern mindfulness”).

130. Matthew Nisbet, *The Mindfulness Movement: How a Buddhist Practice Evolved into a Scientific Approach to Life*, SKEPTICAL INQUIRER (May 1, 2017), <https://web.northeastern.edu/matthewnisbet/2017/05/24/the-mindfulness-movement-how-a-buddhist-practice-evolved-into-a-scientific-approach-to-life>.

131. *Id.*

132. Kabat-Zinn, *supra* note 3. “Over the years, my own experiences of combining mindfulness meditation practices and hatha yoga into a seamless whole prompted me to experiment with different ways of bringing these ancient consciousness disciplines into contemporary mainstream settings.” *Id.*

School, Kabat-Zinn founded what is now called the Center for Mindfulness.<sup>133</sup> He published his first book on mindfulness in 1991.<sup>134</sup>

Kabat-Zinn stated that his intentions were to make the “path of mindfulness accessible to mainstream Americans so that it would not feel Buddhist or mystical.”<sup>135</sup> However, Buddhist teachings and practices are implicit in mindfulness exercises.<sup>136</sup> Kabat-Zinn has stated that “[m]indfulness lies at the very core of Buddhism in all its forms.”<sup>137</sup> Mindfulness is a distillation of the Buddha’s key teachings that have been repackaged to make the exercises palatable.<sup>138</sup> This repackaging of Buddhist meditation has led some to refer to mindfulness as “stealth Buddhism.”<sup>139</sup> Stealth Buddhism is a term used to describe teaching the “aspects of Buddhism to non-Buddhists, without the word Buddhism, without Buddhist jargon, and without presenting the entire Buddhist framework.”<sup>140</sup> Mindfulness is the most successful style of stealth Buddhism, with millions of non-Buddhists unknowingly practicing Buddhism every day.<sup>141</sup>

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133. *History of MBSR*, UNIVERSITY OF MASSACHUSETTS MEDICAL SCHOOL CENTER FOR MINDFULNESS IN MEDICINE, HEALTH CARE, AND SOCIETY, <https://www.umassmed.edu/cfm/mindfulness-based-programs/mbsr-courses/about-mbsr/history-of-mbsr/> (last visited Feb. 16, 2019).

134. *Biography of Jon Kabat-Zinn*, UNIVERSITY OF MASSACHUSETTS MEDICAL SCHOOL CENTER FOR MINDFULNESS IN MEDICINE, HEALTH CARE, AND SOCIETY, <https://www.umassmed.edu/cfm/about-us/people/2-meet-our-faculty/kabat-zinn-profile/> (last visited Feb. 16, 2019).

135. KABAT-ZINN, *supra* note 4.

136. Candy Gunther Brown, *Mindfulness: Stealth Buddhist Strategy for Mainstreaming Meditation?*, HUFFPOST BLOG (Dec. 2, 2014, 12:54 PM), [https://www.huffpost.com/entry/mindfulness-stealth-buddh\\_b\\_6243036](https://www.huffpost.com/entry/mindfulness-stealth-buddh_b_6243036).

137. Kabat-Zinn, *supra* note 3.

138. Wilks, *supra* note 6 (stating Ms. Wilks trained under Jon Kabat-Zinn).

139. Candy Gunther Brown & Saki Santorelli, *Does Mindfulness Belong in Public Schools?*, TRICYCLE, (Spring 2016), <https://tricycle.org/magazine/does-mindfulness-belong-public-schools/> (citing a 2014 BuddhistGeek.com podcast interview with Vincent Horn); Brown, *supra* note 136 (Ms. Goodman is the founder of a mindfulness center in Los Angeles and trained under Jon Kabat-Zinn). In an interview, Ms. Goodman provided:

I really wanted us to be able to work in this community to go into hospitals, and universities, and schools, and places where as Buddhists we might not be so welcome, especially state places, which is appropriate since we have the separation of church and state. . . . The really interesting question is what do they do after they take that class. . . . And you know the reality is they aren’t that different from our Buddhist classes. They just use a different vocabulary . . . And the question of will people then sort of migrate into Buddhism. Some will, some won’t . . . anyone who practices sincerely, whether they want it or not, they are going to discover more deeply other dimensions of their being, I think it’s inevitable if they keep practicing, don’t you?

*Id.*

140. Chapman, *supra* note 5.

141. *Id.*

However, not all Buddhists are excited about the success and spread of mindfulness.<sup>142</sup> Some Buddhists have attacked mindfulness' commercial success by renaming it McMindfulness.<sup>143</sup> There are also concerns in the Buddhist community that stealth Buddhism is deceitful, unethical, and, therefore, a violation of the basic tenets of Buddhism.<sup>144</sup>

### 3. *Mindfulness in Public Schools*

Mindfulness programs have been adopted in public schools all across America.<sup>145</sup> However, early attempts to incorporate meditation into public schools were resisted.<sup>146</sup> As described by Rick Kinder, mindfulness promoter and cofounder of Wellness Works in Schools, when the idea of bringing Buddhist meditation and yoga into the classroom was first pitched to public schools, the schools were not interested.<sup>147</sup> However, public schools responded differently after the material was repackaged as mindfulness.<sup>148</sup> Today, mindfulness programs, such as Goldie Hawn's MindUP, claim to have taught mindfulness to over 500,000 students within the last ten years.<sup>149</sup> Mindful Schools, another mindfulness organization, claims to have taught mindfulness to over 300,000 students within the last five years.<sup>150</sup> In 2012, Congressman Tim Ryan of Ohio received a one-million dollar federal grant to teach mindfulness in his home district's public schools.<sup>151</sup>

Mindfulness exercises in public schools often begin with the ringing of a Tibetan meditation bell or bowl.<sup>152</sup> The teacher, who serves as the mindfulness instructor, encourages the students to close their

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142. *Id.*; Davis, *supra* note 9.

143. Davis, *supra* note 9.

144. See Chapman, *supra* note 5 (noting both that "non-Buddhist teachers teach fragmented Buddhist concepts," and that Buddhists may prefer Buddhism be taught as a complete system, rather than in selective pieces).

145. Semple, *supra* note 2.

146. Garey, *supra* note 8 (stating that Kinder had learned early on in his promotion of mindfulness to "not use the terms yoga and meditation").

147. *Id.* (summarizing the difficulty of pitching mindfulness and yoga to schools due to its Buddhist roots as, "you go into a principal's office and say 'I'm bringing yoga in here,' and they say, 'Not in my school'").

148. Chapman, *supra* note 5.

149. Elissa Strauss, *Being Mindful About Mindfulness: Is the Push to Teach Meditation in Schools Just a Way to Mold Shiny Corporate Humanoids?*, SLATE (Mar. 2, 2016, 12:48 PM), <https://slate.com/human-interest/2016/03/teaching-mindfulness-meditation-in-schools-a-skeptics-investigation.html>.

150. *Id.*

151. Tim Ryan, *Bringing Mindfulness to Our Public Schools*, OMEGA (May 1, 2013), <https://www.eomega.org/article/bringing-mindfulness-to-our-public-schools>.

152. See Davis, *supra* note 9 (noting that classrooms in the Bronx begin their mindfulness meditation sessions with a Tibetan meditation bell).

eyes and focus on their posture.<sup>153</sup> The teacher then instructs the students to begin their breathing exercises.<sup>154</sup> The teacher leads the students in taking slow, deep breaths.<sup>155</sup> Some teachers assist student focus by repeating the mantra “just breathing in, just breathing out.”<sup>156</sup> Students are instructed to discard their wayward thoughts and return their focus to their breathing.<sup>157</sup> During the mindfulness meditation, the teacher will instruct the students to focus their minds, to empty themselves, and to find their center.<sup>158</sup>

School districts train teachers how to properly instruct students in mindfulness meditation.<sup>159</sup> Proponents of mindfulness have claimed that in order to teach mindfulness meditation, one must also practice mindfulness meditation.<sup>160</sup> Therefore, some school districts require teachers to personally practice mindfulness on a daily basis.<sup>161</sup> To assist in this daily practice of mindfulness meditation, teachers are encouraged to download and use mindfulness meditation apps, such as Buddhify.<sup>162</sup> Teachers, who are experiencing difficulties with their personal meditations are recommended to meditate with others to receive the benefits of the collective energy that is produced when multiple people meditate together.<sup>163</sup> One school district is promoting teacher participation in mindfulness by beginning all faculty meetings with three minutes of mindfulness meditation.<sup>164</sup>

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153. Garey, *supra* note 8.

154. Davis, *supra* note 9.

155. *Id.*

156. Courtney Ackerman, *Mindfulness Activities for Children and Teens: 25 Fun Exercises for Kids*, POSITIVE PSYCHOLOGY PROGRAM (Feb. 3, 2017), <https://positivepsychologyprogram.com/mindfulness-for-children-kids-activities/>.

157. *Mindfulness Activities for the Elementary Classroom*, ROOM 241 (Feb. 14, 2018), <https://education.cu-portland.edu/blog/classroom-resources/mindfulness-activities-kids-classroom/> (encouraging teachers to instruct their students to “sit as still as possible and if their thoughts wander, instruct them to kindly bring them back to the breath”).

158. Davis, *supra* note 9; Friel, *Wretched TV Episode 1956*, *supra* note 108.

159. *See* Davis, *supra* note 9 (explaining how school district paid for teacher’s year-long mindfulness certification to then pass along information to students).

160. Ackerman, *supra* note 156. In providing tips on how to successfully teach mindfulness to kids: “Make sure you practice mindfulness yourself! In this case, the old adage ‘those who cannot do, teach’ definitely does not apply.” *Id.*

161. *See* Garey, *supra* note 8 (stating “[a]ll teachers at the school are trained in the [mindfulness] program and they practice mindfulness themselves during the school day”).

162. *Mindfulness Training Tips for Teachers*, ROOM 241 (April 4, 2018), <https://education.cu-portland.edu/blog/lifestyle/mindfulness-training-for-teachers/>.

163. *Id.*

164. Garey, *supra* note 8.

“Our faculty meetings all start with three minutes of quiet breathing,” says Dennie Doran, head of the Upper School at the Nantucket New School and a teacher there. “Our head of school rings the chime and we just all relax and take some deep breaths and stop what we’re doing and then we start the faculty meeting.”

*Id.*

## III. ANALYSIS

## A. MINDFULNESS IS BUDDHISM REPACKAGED

The practice known today as mindfulness has its roots in Buddhism.<sup>165</sup> Jon Kabat-Zinn, the creator of mindfulness, first became interested in meditation when a Zen Buddhist missionary came to MIT.<sup>166</sup> Kabat-Zinn then trained under Buddhist master Thich Nhat Hanh.<sup>167</sup> Kabat-Zinn has stated that his purpose for creating mindfulness was to develop a way to make Buddhism more acceptable to western minds.<sup>168</sup> Mindfulness is Buddhism repackaged.<sup>169</sup>

Buddhism is implicit in the teachings and practices of mindfulness.<sup>170</sup> Mindfulness consists of the same breathing exercises that are taught in Buddhism.<sup>171</sup> The mindfulness exercises of focusing on breathing, emptying your mind, and finding your center are all components of Buddhist meditation.<sup>172</sup> The goal of Buddhism is to overcome the difficulties of life and to overcome the cycle of death and rebirth through attaining Nirvana.<sup>173</sup>

Teachers and promoters of mindfulness avoid using Buddhist terms, or even the word Buddhism, in an effort not to turn people away from mindfulness.<sup>174</sup> Kabat-Zinn changed the vocabulary of mindfulness practices to make it sound less Buddhist.<sup>175</sup> The Dalai Lama praised Kabat-Zinn's "strategy of modifying [the] vocabulary in order to make mindfulness acceptable to non-Buddhists."<sup>176</sup> Teaching Buddhism to non-Buddhists without using the word Buddhism or Buddhist terminology is called stealth Buddhism.<sup>177</sup> Mindfulness is

165. Kabat-Zinn, *supra* note 3. "Over the years, my own experiences of combining mindfulness meditation practices and hatha yoga into a seamless whole prompted me to experiment with different ways of bringing these ancient consciousness disciplines into contemporary mainstream settings." *Id.*

166. Nisbet, *supra* note 130.

167. *Id.*

168. KABAT-ZINN, *supra* note 4.

169. Friel, *Wretched TV Episode 1956*, *supra* note 108.

170. Brown, *supra* note 136.

171. Friel, *Wretched TV Episode 1956*, *supra* note 108.

172. *Id.*

173. See Ury, *supra* note 108 (describing that the driving motivation of the Buddha "was to pinpoint the origin of pain and suffering and to propose a solution" and "to escape from the cycle of reincarnation and attain enlightenment"); Friel, *Wretched TV Episode 1956*, *supra* note 108 (describing Buddhist salvation practices).

174. Brown & Santorelli, *supra* note 139; see also Wilks, *supra* note 6 (stating that proponents of Buddhism are intentionally not using the word Buddhist, "the 'B' word," in an effort to not scare people away from trying mindfulness).

175. Brown, *supra* note 136.

176. *Id.*

177. Chapman, *supra* note 5 (explaining that disclosing the Buddhist origins of mindfulness led to its rejection, and that proponents of mindfulness should not mention Buddhism, or any Buddhist terms, while discussing it).

the most successful style of stealth Buddhism, with millions of non-Buddhists unknowingly practicing Buddhism every day.<sup>178</sup> Perhaps the largest group of unknowing Buddhist practitioners may be found in public schools.<sup>179</sup>

B. BUDDHIST EXERCISES IN PUBLIC SCHOOLS ARE A VIOLATION OF THE ESTABLISHMENT CLAUSE

Over the last ten years, public schools have increasingly incorporated mindfulness programs into the curriculum.<sup>180</sup> Mindfulness organizations, such as MindUP and Mindful Schools, claim to have taught mindfulness exercises to nearly one million students in the past five to ten years.<sup>181</sup> However, mindfulness is a repackaging of Buddhist meditation practices.<sup>182</sup> The United States Supreme Court has recognized that there are a myriad of ways in which our First Amendment rights can be eroded.<sup>183</sup> Stealth Buddhism, disguised as mindfulness, has successfully eroded students' First Amendment rights.<sup>184</sup>

1. *The Preference for Mindfulness Exercises over other Religious Practices Violates the Concept of Neutrality Inherent in the First Amendment*

The Supreme Court has placed a high value on neutrality.<sup>185</sup> The Court considers neutrality the central meaning of the Religion Clauses of the First Amendment.<sup>186</sup> The concept of neutrality "is clearly and concisely stated in the words of the First Amendment."<sup>187</sup> Neutrality means that "all creeds must be tolerated and none favored."<sup>188</sup> Allowing mindfulness exercises in public schools, but not

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178. *Id.*

179. Friel, *Wretched TV Episode 1956*, *supra* note 108.

180. Strauss, *supra* note 149 (citing Davis, *supra* note 9).

181. *Id.*

182. Friel, *Wretched TV Episode 1956*, *supra* note 108.

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

184. Compare KABAT-ZINN, *supra* note 4 (defining mindfulness as "a form of meditation originally developed in the Buddhist traditions"), and Strauss, *supra* note 149 (stating two nonprofit organizations have taught mindfulness to 800,000 students in the last five to ten years), with *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 225-26 (1963) (stating religious activity in the classroom violates neutrality) and *Wallace*, 472 U.S. at 60-61 (concluding that allowing for a minute of silence for meditation or prayer at the beginning of the school day conveyed a message of state approval of religious activities).

185. *Schempp*, 374 U.S. at 214-15 (citing *Bd. of Educ. v. Minor*, 23 Ohio St. 211, 253 (1872)).

186. *Lee v. Weisman*, 505 U.S. 577, 590 (1992) (stressing the tolerance of all religious creeds without favoring any of them).

187. *Schempp*, 374 U.S. at 226.

188. *Lee*, 505 U.S. at 590.

allowing other religious practices, violates neutrality.<sup>189</sup> Favoring mindfulness exercises over other religious practices creates division along religious lines.<sup>190</sup> This divisiveness is at odds with the Establishment Clause.<sup>191</sup>

2. *The Diverse Religious Makeup of Mindfulness does not Prevent Mindfulness Exercises From Violating the Establishment Clause*

Even though mindfulness is a repackaging of Buddhism, mindfulness also borrows practices from Hatha yoga, Hinduism, and other eastern religious traditions.<sup>192</sup> Since mindfulness draws elements from multiple religious traditions, some have argued that mindfulness is nonsectarian.<sup>193</sup> Others have claimed that mindfulness is only slightly Buddhist, or Buddhism without the Buddha; therefore, mindfulness is not religious at all.<sup>194</sup> Proponents of mindfulness encourage society to embrace mindfulness meditation, arguing that the Buddhist roots of mindfulness have been so watered down that mindfulness meditation is no longer a Buddhist exercise.<sup>195</sup>

However, the United States Supreme Court has stated that nonsectarian religious exercises are still subject to the Establishment Clause.<sup>196</sup> Therefore, the argument that mindfulness meditation is not a purely Buddhist exercise does not prevent the mindfulness exercises from violating the Establishment Clause.<sup>197</sup> Mindfulness meditation does not need to invoke the name of a deity in order to violate

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189. *Schempp*, 374 U.S. at 225-26 (determining that religious exercises that favor one religion over another violate neutrality).

190. *See Santa Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290, 311 (2000) (stating that invocations delivered at the beginning of a public school's football games caused division along religious lines, which violated the Establishment Clause).

191. *Id.*

192. Kabat-Zinn, *supra* note 3. "Over the years, my own experiences of combining mindfulness meditation practices and hatha yoga into a seamless whole prompted me to experiment with different ways of bringing these ancient consciousness disciplines into contemporary mainstream settings." *Id.*

193. Brown & Santorelli, *supra* note 139 (describing how proponents of mindfulness claim that mindfulness is either nonsectarian or universal).

194. *See* Brown, *supra* note 136 (describing how mindfulness makes Buddhism a highly accessible "distillation of the essence of the Buddha's key teachings") (internal quotations omitted).

195. *Compare* Wilks, *supra* note 6 (discussing how many are jumping on the mindfulness bandwagon to make a profit, but not to promote sound Buddhist teachings), *and* Chapman, *supra* note 5 (stating that proponents of Buddhism are intentionally not using the word Buddhism and Buddhist terminology in an effort to not scare away people from trying mindfulness), *with* Brown & Santorelli, *supra* note 139 (stating mindfulness meditation is not a Buddhist practice).

196. *Lee v. Weisman*, 505 U.S. 577, 589 (1992).

197. *See Engel v. Vitale*, 370 U.S. 421, 430 (1962) (explaining that a prayer not being of one specific faith tradition cannot "free it from the limitations of the Establishment Clause").

the Establishment Clause.<sup>198</sup> Even though, in his book *Full Catastrophe Living*, Jon Kabat-Zinn tells a story of a woman who responded to her first mindfulness exercise by exclaiming, “oh, so this is what God is.”<sup>199</sup> Regardless, it is no defense to say that mindfulness is only slightly religious or, at most, a minor encroachment on the First Amendment.<sup>200</sup> Today’s trickling stream of mindfulness may, if it has not already, soon become a raging torrent of eastern religious exercises being practiced in public schools.<sup>201</sup> As James Madison warned us, it is right to take alarm when our liberties are first infringed.<sup>202</sup>

### 3. *The Means of Mindfulness Instruction Indicate a Religious Purpose*

It has been argued that the purpose for practicing mindfulness in public schools is, not to engage in a Buddhist exercise but, to reap the secular benefits produced by meditating.<sup>203</sup> Proponents of mindfulness claim that mindfulness exercises can improve a student’s focus, behavior, and ability to respond to stress.<sup>204</sup> However, these alleged secular benefits are similar to the benefits alleged in *Santa Fe Independent School District v. Doe*,<sup>205</sup> where the Court determined that the invocation was not necessary to achieve the alleged secular purposes.<sup>206</sup> Likewise, mindfulness exercises are not necessary to improve a student’s focus, behavior, or ability to respond to stress.<sup>207</sup> Prayer, or other religious exercises, could also claim these same secu-

198. See *Lee*, 505 U.S. at 586 (concluding that “under Establishment Clause rules no prayer, even one excluding any mention of the Deity, could be offered at a public school”).

199. KABAT-ZINN, *supra* note 4 196.

200. Compare Brown & Santorelli, *supra* note 139 (describing how proponents of mindfulness try to justify their claim that mindfulness is either nonsectarian or universal), with *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 225 (1963) (explaining “it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment”).

201. Compare Strauss, *supra* note 149 (stating two nonprofit organizations have taught mindfulness to 800,000 students in the last five to ten years), with *Schempp*, 374 U.S. at 225 (explaining how “[t]he breach of neutrality that is today a trickling stream may all too soon become a raging torrent”).

202. Madison, *supra* note 35. “[I]t is proper to take alarm at the first experiment on our liberties.” *Id.*

203. Alex Tzelnic, *The Vale of Mindfulness in the Classroom: An Elementary Gym Teacher and Zen Practitioner Asks Mindfulness Expert Sandra Delaney if Mindfulness is Doing Children More Harm than Good*, TRICYCLE (Jan. 12, 2017), <https://tricycle.org/trikedaily/value-mindfulness-classroom>.

204. *Id.*

205. 530 U.S. 290 (2000).

206. Compare Tzelnic, *supra* note 203 (noting schools defend teaching mindfulness to students on the basis that it provides students with secular benefits), with *Santa Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000) (claiming secular benefits of invocations before high school football games).

207. Friel, *Wretched TV Episode 1956*, *supra* note 108.

lar benefits.<sup>208</sup> Schools must remain neutral when it comes to different faith traditions and practices.<sup>209</sup> Additionally, the school's desired benefits can be accomplished through secular means.<sup>210</sup> Therefore, just as the Court concluded in *Santa Fe*, the alleged secular purpose behind implementing these Buddhist exercises is a sham.<sup>211</sup>

Even if the purpose for the mindfulness exercises is purely secular, the secular benefits are still being sought through the religious means of Buddhist meditation.<sup>212</sup> The Supreme Court has explained that religion may be objectively taught in public schools.<sup>213</sup> Therefore, eastern religious practices, as well as western religious practices, may be taught in public schools for their historical value and as a means of comparing religious practices.<sup>214</sup> However, the Court has looked at the means of the religious teachings to determine whether the purpose for the teachings were religious or secular.<sup>215</sup> The mindfulness programs taught in public schools are not taught in connection with a secular subject; rather, the mindfulness exercises are merely coupled with mindfulness instruction.<sup>216</sup> Therefore, as the means of the mindfulness exercises are only religious, and not connected with

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208. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 210 (1963) (noting the “great moral, historical, and literary value” of daily reading the Bible in classrooms).

209. *Lee v. Weisman*, 505 U.S. 577, 590 (1992).

210. *See Keep Calm and Teach On: 10 Ways to Calm an Upset Student*, APPERSON, <https://www.apperson.com/classroom-management/keep-calm-and-teach-on-10-ways-to-calm-an-upset-student> (last visited May 14, 2019) (enumerating ten non-religious ways to calm students).

211. *Compare* Tzelnic, *supra* note 203 (noting alleged secular benefits of mindfulness), *with Santa Fe*, 530 U.S. at 308 (determining alleged secular benefits were a sham).

212. *Compare* Brown & Santorelli, *supra* note 139 (describing how proponents of mindfulness describe mindfulness as being either nonsectarian or universal), *with Lee*, 505 U.S. at 589-90 (explaining that nonsectarian prayers and practices which are a combination of different religious traditions still violate the Establishment Clause when endorsed by the state), *and Schempp*, 374 U.S. at 224 (stating that even if the school's purpose for reading the Bible in the classroom was secular, the secular purpose was still being accomplished through the religious means of reading the Bible).

213. *Schempp*, 374 U.S. at 225 (stating “[n]othing 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 not be effected consistently with the First Amendment”); *Santa Fe*, 530 U.S. at 313 (determining the Religion Clauses of the First Amendment does not “impose a prohibition on all religious activity in [ ] public schools”).

214. *See Schempp*, 374 U.S. at 225 (explaining that religion may be objectively taught in public in public schools and emphasizing “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”).

215. *E.g., id.* at 224 (noting that the Bible was not read in connection with the teaching of a secular subject).

216. *See Davis*, *supra* note 9 (noting that teachers begin their mindfulness meditations exercises with a Tibetan meditation bell and then provide instruction to the students on their breathing exercises); Garey, *supra* note 8 (explaining the teacher's direction to the students on posture, focus, and closing of the eyes).

any secular instruction, the purpose of the mindfulness instruction is religious.<sup>217</sup>

4. *Including Mindfulness as Part of the Public School Curriculum Coerces Participation in Religious Exercises*

In many of the public schools that have begun practicing mindfulness, the school has made the mindfulness exercises part of the curriculum.<sup>218</sup> Adding mindfulness to the curriculum mandates student participation in these exercises.<sup>219</sup> The Court has stated that the Constitution protects students from being pressured or forced by public schools to participate in religious exercises.<sup>220</sup> The Supreme Court has recognized that religious exercises in public schools carry a particular risk of coercion.<sup>221</sup> This heightened risk of coercion is due to the age and nature of the student, as well as peer and societal pressures.<sup>222</sup>

Schools that mandate mindfulness exercises may claim they are acting in the best interest of their students.<sup>223</sup> However, regardless of its intentions, a school's good faith efforts do not resolve the problem that students are being coerced to engage in Buddhist meditation exercises.<sup>224</sup> What may appear to be a simple breathing exercise to some students, may be objected to by other students as the state forcing them to participate in Buddhist meditation.<sup>225</sup>

Supreme Court precedent supports the contention that peer pressure from other students participating in mindfulness exercises con-

217. Compare Davis, *supra* 9 (noting that teachers begin their mindfulness meditations exercises with a Tibetan meditation bell and then provide instruction to the students on their breathing exercises), and Garey, *supra* note 8 (explaining the teacher's direction to the students on posture, focus, and closing of the eyes), with *Schempp*, 374 U.S. at 224 (noting that the Bible not being read in connection with the teaching of a secular subject indicated the religious, and not secular, purpose of the exercise).

218. Semple, *supra* note 2 at 29, 32, 37, 41-42, 45-46; Davis, *supra* note 9.

219. Semple, *supra* note 2 at 29, 32, 37, 41-42, 45-46; Davis, *supra* note 9.

220. *Lee v. Weisman*, 505 U.S. 577, 592-94 (1992) (stating "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools").

221. *Lee*, 505 U.S. at 592.

222. *Id.* at 593-94.

223. Tzelnic, *supra* note 203 (explaining schools defend teaching mindfulness to students on the basis that it provides students with secular benefits).

224. Compare *id.* (explaining schools defend teaching mindfulness to students on the basis that it provides students with secular benefits), with *Lee*, 505 U.S. at 588 (explaining that a good faith effort by a school to ensure prayers were nonsectarian did not remedy the fact that students were still being coerced to participate in religious exercises).

225. Compare Davis, *supra* note 9 (noting that one student in particular initially objected to practicing mindfulness in the classroom), with *Lee*, 505 U.S. at 595-96 (explaining that just because a majority of the public school community approves of the religious exercise does not mean that the Establishment Clause has not been violated).

stitutes subtle and indirect coercion.<sup>226</sup> Even if an objecting student simply sits quietly during the Buddhist meditation exercises, that student's First Amendment rights have still been violated.<sup>227</sup> Therefore, public schools violate the Establishment Clause when implementing mindfulness as part of their curriculums.<sup>228</sup>

5. *When Mindfulness is Part of the Curriculum, Participation can Never Truly be Voluntary*

Even if public schools acknowledged the religious nature of mindfulness exercises and allowed students to opt out of the exercises, the mindfulness programs would still violate the Establishment Clause.<sup>229</sup> By making mindfulness part of the curriculum, schools have compelled student attendance and participation in an explicitly religious exercise.<sup>230</sup> The Constitution demands that schools not force students to make the difficult choice between following their own religious beliefs or succumbing to the pressure of the majority.<sup>231</sup> Even if every student consented, or desired, to participate in the mindfulness exercises, the exercises are still state-sponsored religious exercises that have the improper effect of coercing students to participate in a religious exercise.<sup>232</sup>

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226. Compare Davis, *supra* note 9 (noting that one student in particular initially objected to practicing mindfulness in the classroom, but later acquiesced to the practice), with Lee, 505 U.S. at 593 (explaining how classmates participating in religious exercises constituted subtle and indirect coercion).

227. Lee, 505 U.S. at 593-94 (stating that primary and secondary schools may not put students who object to participating in a religious exercise in a situation where their presence may signify acceptance or approval of the exercise).

228. Compare KABAT-ZINN, *supra* note 4 (defining mindfulness as "a form of meditation originally developed in the Buddhist traditions of Asia"), and Semple, *supra* note 2 at 29, 32, 37, 41-42, 45-46 (surveying mindfulness based programs and noting three such programs, which have been implemented in public schools), and Strauss, *supra* note 149 (stating two nonprofit organizations have taught mindfulness to 800,000 students in the last five to ten years), with Lee, 505 U.S. at 599 (iterating "[n]o holding by this Court suggests that a school can persuade or compel a student to participate in a religious exercise," and that such an act "is forbidden by the Establishment Clause of the First Amendment").

229. Compare Engel v. Vitale, 370 U.S. 421, 430-31 (1962) (stating that making the religious activity voluntary does not protect it from violating the Establishment Clause), with Santa Fe Ind. Sch. Dist. v. Doe, 530 U.S. 290, 311-12 (2000) (explaining that schools cannot force students to make the difficult choice between participating in the religious activity to avoid public ridicule and peer pressure and "avoiding personally offensive religious rituals").

230. Compare Semple, *supra* note 2 at 29, 32, 37, 41-42, 45-46 (surveying mindfulness based programs and noting three such programs, which have been implemented in public schools), with Lee v. Weisman, 505 U.S. 577, 598 (1992) (explaining student attendance was essentially compelled at an optional graduation ceremony that included a Rabbi opening the ceremony with a prayer).

231. Santa Fe, 530 U.S. at 312.

232. *Id.* The Supreme Court explained the heightened analysis of whether the Establishment Clause has been violated in situations where students are involved:

6. *The Pervasiveness of Mindfulness Exercises in Public Schools Plainly Suggests State Endorsement of Religious Activity*

The level of school involvement in a religious activity may lead to a finding that the state endorsed the religious activity.<sup>233</sup> In *Lee v. Weisman*,<sup>234</sup> the Supreme Court found a middle school's involvement in a graduation invocation troubling.<sup>235</sup> The Court emphasized that the school's principal chose the speaker for the invocation.<sup>236</sup> Likewise, it was the school's principal who provided the rabbi with instruction on what could and could not be said during the invocation.<sup>237</sup>

Just like in *Lee*, the public schools that have adopted mindfulness programs choose who leads the religious exercises.<sup>238</sup> Similarly, the schools provide their teachers with instructions on how to lead the religious exercises.<sup>239</sup> The schools choose the religious leader, the religious medium, and the method in which the religious exercises are practiced.<sup>240</sup> The Court's concern with the school's involvement in *Lee*, which only involved a single ceremony, should be even greater in this situation due to the frequency of the mindfulness exercises.<sup>241</sup>

7. *An Objective Observer Would Perceive Mindfulness Exercises as an Endorsement of Buddhist Meditation*

In *Santa Fe Independent School District v. Doe*,<sup>242</sup> the Court based its analysis on whether an objective observer would believe the

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Even if we regard every high school student's decision to attend a home football game as purely voluntary, we are nevertheless persuaded that the delivery of a pregame prayer has the improper effect of coercing those present to participate in an act of religious worship. For 'the government may no more use social pressure to enforce orthodoxy than it may use more direct means.'

*Id.* (quoting *Lee*, 505 U.S. at 594).

233. *Lee v. Weisman*, 505 U.S. 577, 587 (1992).

234. 505 U.S. 577 (1992).

235. *Lee*, 505 U.S. at 587.

236. *Id.*

237. *Id.*

238. Compare *Davis*, *supra* note 9 (explaining how a public school's administrators agreed to pay for a teacher's year-long mindfulness certification because it would ultimately benefit students), with *Lee*, 505 U.S. at 588 (noting that the school principal selected the rabbi who gave the invocation at the middle school graduation ceremony).

239. Compare *Mindfulness Activities for the Elementary Classroom*, *supra* note 157 (encouraging teachers to instruct their students to "sit as still as possible and if their thoughts wander, instruct them to kindly bring them back to the breath"), with *Lee*, 505 U.S. at 588 (explaining that the school principal provided the rabbi with a pamphlet detailing what could and could not be said).

240. *Davis*, *supra* note 9; *Mindfulness Activities for the Elementary Classroom*, *supra* note 157.

241. Compare *Lee*, 505 U.S. at 587 (stating the schools involvement with the rabbi's invocation "is as troubling as it is undeniable"), with *Davis*, *supra* note 9 (describing a New York public school's practice of beginning its English classes with five-minute mindfulness exercises).

242. 530 U.S. 290 (2000).

school had endorsed the invocation at its football games.<sup>243</sup> The Court determined that an objective observer would have believed the invocation was endorsed by the school.<sup>244</sup> The Court also factored in the school's history of giving invocations before football games.<sup>245</sup>

If an objective observer walked into a public school and saw a teacher leading students in Buddhist meditation, it is likely that the observer would conclude that he or she is in a Buddhist monastery.<sup>246</sup> Such an observer's conclusions would be validated by the history of mindfulness.<sup>247</sup> There is no doubt that an objective observer would believe the Buddhist meditation was an official state-sponsored religious practice.<sup>248</sup> Similar to *Santa Fe*, public schools' promotion of mindfulness exercises reveals an actual endorsement of Buddhist meditation.<sup>249</sup>

In *Engel v. Vitale*,<sup>250</sup> the Court, in an opinion that predated its objective observer analysis, reasoned there was no doubt that prayer in a public school classroom established the religious beliefs expressed by the prayer.<sup>251</sup> Likewise, there is no doubt that mindfulness exercises establish the Buddhist meditation practices contained therein.<sup>252</sup> Just the practice of Buddhist meditation in the classroom indicates an endorsement of religion that violates the Establishment Clause.<sup>253</sup>

243. *Santa Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000).

244. *Santa Fe*, 530 U.S. at 309. The Court determined that an objective observer would have believed the invocation before the football game indicated that the school endorsed the religious activity. Therefore, the Court determined the prayer spoken during the invocation constituted a state-sponsored religious practice. *Id.*

245. *Id.*

246. *Compare id.* (reasoning that an objective observer would have determined the school had endorsed the religion of the invocation), *with Davis*, *supra* note 9 (noting that classrooms begin their mindfulness meditation sessions with a Tibetan meditation bell and detailing student breathing exercises during mediation), *and Garey*, *supra* note 8 (describing student posture during meditation exercises).

247. *Compare Santa Fe*, 503 U.S. at 309 (reasoning that an objective observer would have determined the school had endorsed the religion of the invocation), *with KABAT-ZINN*, *supra* note 4 (stating mindfulness meditation is based on Buddhism).

248. *Engel v. Vitale*, 370 U.S. 421, 430 (1962) (stating there was no doubt the classroom prayer established the religious beliefs associated with the prayer).

249. *Compare Chapman*, *supra* note 5 (describing mindfulness as stealth Buddhism), *with Santa Fe*, 530 U.S. at 309 (iterating that the school's history of promoting the invocations shed light on the school's motivation to continue the practice).

250. 370 U.S. 421 (1962).

251. *Engel*, 370 U.S. at 430 (determining there was no doubt the classroom prayer established the religious beliefs associated with the prayer).

252. *Compare Chapman*, *supra* note 5 (describing mindfulness as stealth Buddhism), *with Engel*, 370 U.S. at 430 (determining that classroom religious activity establishes the religious beliefs associated with the religious activity).

253. *See Lee*, 505 U.S. at 585 (explaining the practice of prayer in public schools "creates an identification of governmental power with religious practice, endorses religion, and violates the Establishment Clause").

School endorsement of religion, in addition to violating the Establishment Clause, sends a message to students who are nonadherents of the promoted religion.<sup>254</sup> The Court described that by endorsing religion, schools send a message to nonpractitioners that they are political outsiders who are not full members of the community.<sup>255</sup> The Court explained that school endorsement of religion also reinforces the belief amongst the practitioners that they are political insiders and favored members of the community.<sup>256</sup> Therefore, school endorsement of mindfulness sends a message to students who refuse to participate in Buddhist meditation that they are outsiders and not true members of the school community.<sup>257</sup> Conversely, it also sends a message to the students who do participate in the mindfulness exercises that they are insiders and favored members of the school community.<sup>258</sup>

#### IV. CONCLUSION

The United States Supreme Court has warned that “great consequences can grow from small beginnings.”<sup>259</sup> What may appear to be simple breathing exercises to help students cope with stress might lead to the religious indoctrination of an entire generation. Mindfulness is Buddhist meditation repackaged to be more palatable to a western audience.<sup>260</sup> Proponents of mindfulness teach Buddhism to non-Buddhists while intentionally avoiding using Buddhist terminology.<sup>261</sup> This stealth Buddhism, branded as mindfulness, has infiltrated all aspects of American life, including public education.<sup>262</sup>

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254. *Santa Fe*, 530 U.S. at 309.

255. *Id.*

256. *Id.* at 309-10.

257. Compare *KABAT-ZINN*, *supra* note 4 (stating mindfulness is based on Buddhism), and *Chapman*, *supra* note 5 (describing mindfulness as stealth Buddhism), with *Santa Fe*, 530 U.S. at 309 (providing that schools endorsing religion send the message to nonpractitioners that they are political outsiders who are not full members of the community).

258. See *Santa Fe*, 530 U.S. at 309-10 (explaining school endorsement of religion reinforces the belief amongst practitioners that they are political insiders and favored members of the community).

259. *Lee v. Weisman*, 505 U.S. 577, 598 (1992) (quoting *Schempp*, 374 U.S. at 308 (Goldberg, J., concurring)).

260. *Wilks*, *supra* note 6.

261. See *Chapman*, *supra* note 5 (explaining that disclosing the Buddhist origins of mindfulness lead to its rejection, and that proponents of mindfulness should not mention Buddhism, or any Buddhist terms, while discussing it).

262. Compare *id.* (providing that Buddhist traditions have been widely incorporated into American culture without explicit reference to their Buddhist roots), with *Semple*, *supra* note 2 (surveying mindfulness based programs and noting three such programs, which have been implemented in public schools).

Public schools have adopted mindfulness into the curriculum.<sup>263</sup> Public schools are having teachers trained in mindfulness.<sup>264</sup> School teachers are responsible for leading students in the Buddhist meditation practices of mindfulness exercises.<sup>265</sup>

Through the adoption and promotion of mindfulness in public schools, the state has determined what religion is to be taught, who is to teach it, and how it is to be taught. No previous Supreme Court cases, involving religious activity at a school, had this level of government entanglement with religion. And yet, proponents of mindfulness hope that parents will continue to stay silent and deny what is clear: public schools are teaching children Buddhism in violation of the Establishment Clause.

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263. Semple, *supra* note 2.

264. See Davis, *supra* note 9 (detailing how a public school paid for a teacher to become certified to teach mindfulness to students).

265. Davis, *supra* note 9.