CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Zorach v. Clauson, 343 U.S. 306 (1952)

Under § 3210 of the New York Education Law and the regulations thereunder, New York City permits its public schools to release students during school hours, on written requests of their parents, so that they may leave the school buildings and grounds and go to religious centers for religious instruction or devotional exercises. The same section makes school attendance compulsory; students not released stay in the classrooms, and the churches report to the schools the names of children released from public schools who fail to report for religious instruction. The program involves neither religious instruction in public schools nor the expenditure of public funds.

Held: This program does not violate the First Amendment, made applicable to the States by the Fourteenth Amendment. *McCollum v. Board of Education,* 333 U. S. 203, distinguished. Pp. 343 U. S. 308-315.

(a) By this system, New York has neither prohibited the "free exercise" of religion nor made a law "respecting an establishment of religion" within the meaning of the First Amendment. Pp. 343 U. S. 310-315.

(b) There is no evidence in the record in this case to support a conclusion that the system involves the use of coercion to get public school students into religious classrooms. Pp. 343 U. S. 311-312.

303 N.Y. 161, 100 N.E.2d 463, affirmed.

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of

man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state

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encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. *To hold that it may not would be to find in the Constitution a requirement that the government show a* ***callous indifference*** *to religious groups.* That would be preferring those who believe in no religion over those who do believe. Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. *But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence.* **The government must be neutral when it comes to competition between sects.** It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction. No more than that is undertaken here.

This program may be unwise and improvident from an educational or a community viewpoint. That appeal is made to us on a theory, previously advanced, that each case must be decided on the basis of "our own prepossessions." *See McCollum v. Board of Education, supra,* p. 333 U. S. 238. Our individual preferences, however, are not the constitutional standard. The constitutional standard is the separation of Church and State. The problem, like many problems in constitutional law, is one of degree. *See McCollum v. Board of Education, supra,* p. 333 U. S. 231.

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In the *McCollum* case, the classrooms were used for religious instruction and the force of the public school was used to promote that instruction. Here, as we have said, the public schools do no more than accommodate their schedules to a program of outside religious instruction. We follow the *McCollum* case. [Footnote 8] But we cannot expand it to cover the present released time program unless separation of Church and State means that public institutions can make no adjustments of their schedules to accommodate the religious needs of the people. We cannot read into the Bill of Rights such a philosophy of hostility to religion.

Affirmed.