CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

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

Although these two clauses may, in certain instances, overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. ***The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not.*** *This is not to say, of course, that*

Page 370 U. S. 431

laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. 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. **But the purposes underlying the Establishment Clause go much further than that.** Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. 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. [Footnote 13] That same history showed that many people had lost their respect for any religion that had relied upon the support of government to spread its faith. [Footnote 14] ***The Establishment Clause***

Page 370 U. S. 432

thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its "unhallowed perversion" by a civil magistrate. [Footnote 15] Another purpose of the Establishment Clause rested upon an awareness of the historical fact that governmentally established religions and religious persecutions go hand in hand. [Footnote 16]

To those who may subscribe to the view that, because the Regents' official prayer is so brief and general there can be no danger to religious freedom in its governmental establishment, however, it may be appropriate to say in the words of James Madison, the author of the First Amendment:

"[I]t is proper to take alarm at the first experiment on our liberties. . . . Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment may force him to conform to any other establishment in all cases whatsoever? [Footnote 22]"

"We are a religious people whose institutions presuppose a Supreme Being." Zorach v. Clauson, 343 U. S. 306, 343 U. S. 313. Under our Bill of Rights, free play is given for

Page 370 U. S. 443

making religion an active force in our lives. [Footnote 2/9] But "if a religious leaven is to be worked into the affairs of our people, it is to be done by individuals and groups, not by the Government." McGowan v. Maryland, 366 U. S. 420, 366 U. S. 563 (dissenting opinion). By reason of the First Amendment, government is commanded "to have no interest in theology or ritual" (id. at 366 U. S. 564), for on those matters "government must be neutral." Ibid. The First Amendment leaves the Government in a position not of hostility to religion, but of neutrality. The philosophy is that the atheist or agnostic -- the nonbeliever -- is entitled to go his own way. The philosophy is that, if government interferes in matters spiritual, it will be a divisive force. The First Amendment teaches that a government neutral in the field of religion better serves all religious interests.

It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an

Page 370 U. S. 434

establishment of religious services in public schools is to indicate a hostility toward religion or toward prayer. Nothing, of course, could be more wrong. The history of man is inseparable from the history of religion. And perhaps it is not too much to say that, since the beginning of that history, many people have devoutly believed that "More things are wrought by prayer than this world dreams of." It was doubtless largely due to men who believed this that there grew up a sentiment that caused men to leave the cross-currents of officially established state religions and religious persecution in Europe and come to this country filled with the hope that they could find a place in which they could pray when they pleased to the God of their faith in the language they chose. [Footnote 20] And there were men of this same faith in the

Page 370 U. S. 435

power of prayer who led the fight for adoption of our Constitution and also for our Bill of Rights with the very guarantees of religious freedom that forbid the sort of governmental activity which New York has attempted here. These men knew that the First Amendment, which tried to put an

end to governmental control of religion and of prayer, was not written to destroy either. They knew, rather, that it was written to quiet well justified fears which nearly all of them felt arising out of an awareness that governments of the past had shackled men's tongues to make them speak only the religious thoughts that government wanted them to speak and to pray only to the God that government wanted them to pray to. It is neither sacrilegious nor anti-religious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance. [Footnote 21]

Page 370 U. S. 436

"[A]ttempts to enforce by legal sanctions acts obnoxious to so great a proportion of Citizens tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous?, and what may be the effect of so striking an example of impotency in the Government, on its general authority."

Memorial and Remonstrance against Religious Assessments, II Writings of Madison 183, 190.

[Footnote 14]

"It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence and the patronage of its Author, and to foster in those who still reject it a suspicion that its friends are too conscious of its fallacies to trust it to its own merits. . . . [E]xperience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less, in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect point to the ages prior to its incorporation with Civil policy."

Id. at 187.

[Footnote 15]

MR. JUSTICE DOUGLAS, concurring.

It is customary in deciding a constitutional question to treat it in its narrowest form. Yet at times the setting of the question gives it a form and content which no abstract treatment could give. The point for decision is whether the Government can constitutionally finance a religious exercise. Our system at the federal and state levels is presently honeycombed with such financing. [Footnote 2/1] Nevertheless, I think it is an unconstitutional undertaking whatever form it takes.

First, a word as to what this case does not involve.

Page 370 U. S. 438

Plainly, our Bill of Rights would not permit a State or the Federal Government to adopt an official prayer and penalize anyone who would not utter it. This, however, is not that case, for there is no

element of compulsion or coercion in New York's regulation requiring that public schools be opened each day with the following prayer:

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."

The prayer is said upon the commencement of the school day, immediately following the pledge of allegiance to the flag. The prayer is said aloud in the presence of a teacher, who either leads the recitation or selects a student to do so. No student, however, is compelled to take part. The respondents have adopted a regulation which provides that

"Neither teachers nor any school authority shall comment on participation or non-participation . . . , nor suggest or request that any posture or language be used or dress be worn or be not used or not worn."

Provision is also made for excusing children, upon written request of a parent or guardian, from the saying of the prayer or from the room in which the prayer is said. A letter implementing and explaining this regulation has been sent to each taxpayer and parent in the school district. As I read this regulation, a child is free to stand or not stand, to recite or not recite, without fear of reprisal or even comment by the teacher or any other school official.

In short, the only one who need utter the prayer is the teacher, and no teacher is complaining of it. Students can stand mute, or even leave the classroom, if they desire. [Footnote 2/2]

Page 370 U. S. 439

McCollum v. Board of Education, 333 U. S. 203, does not decide this case. It involved the use of public school facilities for religious education of students. Students either had to attend religious instruction or

"go to some other place in the school building for pursuit of their secular studies. . . . Reports of their presence or absence were to be made to their secular teachers."

Id. at 333 U. S. 209. The influence of the teaching staff was therefore brought to bear on the student body to support the instilling of religious principles. In the present case, school facilities are used to say the prayer, and the teaching staff is employed to lead the pupils in it. There is, however, no effort at indoctrination, and no attempt at exposition. Prayers, of course, may be so long and of such a character as to amount to an attempt at the religious instruction that was denied the public schools by the McCollum case. But New York's prayer is of a character that does not involve any element of proselytizing, as in the McCollum case.

Mr. Justice Rutledge stated in dissent what I think is durable First Amendment philosophy:

The reasons underlying the Amendment's policy have not vanished with time or diminished in force.

Page 370 U. S. 444