CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

School Dist. of Abington Tp. v. Schempp, 374 U.S. 203 (1963)

"Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views."

"Men may believe what they cannot

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prove. They may not be put to the proof of their religious doctrines or beliefs. **. . .** Many take their gospel from the New Testament.

It is true that religion has been closely identified with our history and government. As we said in Engel v. Vitale, 370 U. S. 421, 370 U. S. 434 (1962),

"The history of man is inseparable from the history of religion. And . . . , since

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the beginning of that history, many people have devoutly believed that 'More things are wrought by prayer than this world dreams of.'"

In Zorach v. Clauson, 343 U. S. 306, 343 U. S. 313 (1952), we gave specific recognition to the proposition that "[w]e are a religious people whose institutions presuppose a Supreme Being." The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself. This background is evidenced today in our public life through the continuance in our oaths of office from the Presidency to the Alderman of the final supplication, "So help me God."

"The government is neutral, and, while protecting all, it prefers none, and it disparages none."

In a series of cases since Cantwell, the Court has repeatedly reaffirmed that doctrine, and we do so now. Murdock v. Pennsylvania, 319 U. S. 105, 319 U. S. 108 (1943); Everson v. Board of Education, supra; Illinois ex rel. McCollum v. Board of Education, 333 U. S. 203, 333 U. S. 210-211 (1948); Zorach v. Clauson, supra; McGowan v. Maryland, 366 U. S. 420 (1961); Torcaso v. Watkins, 367 U. S. 488 (1961), and Engel v. Vitale, supra.

Second, this Court has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another. Almost 20 years ago in Everson, supra, at 330 U. S. 15, the Court said that

"[n]either a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another."

And Mr. Justice Jackson, dissenting, agreed:

"There is no answer to the proposition . . . that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business, and thereby be supported in whole or in part at taxpayers' expense. . . . This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity."

Id. at 330 U. S. 26.

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Further, Mr. Justice Rutledge, joined by Justices Frankfurter, Jackson and Burton, declared:

"The [First] Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily, it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion."

Id. at 330 U. S. 31-32. The same conclusion has been firmly maintained ever since that time, see Illinois ex rel. McCollum, supra, at pp. 333 U. S. 210-211; McGowan v. Maryland, supra, at 366 U. S. 442-443; Torcaso v. Watkins, supra, at 367 U. S. 492-493, 367 U. S. 495, and we reaffirm it now.

The interrelationship of the Establishment and the Free Exercise Clauses was first touched upon by Mr. Justice Roberts for the Court in Cantwell v. Connecticut, supra, at 310 U. S. 303-304, where it was said that their "inhibition of legislation" had

"a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of

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conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted br law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus, the Amendment embraces two concepts -- freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."

A half dozen years later in Everson v. Board of Education, supra, at 330 U. S. 14-15, this Court, through MR. JUSTICE BLACK, stated that the "scope of the First Amendment . . . was designed forever to suppress" the establishment of religion or the prohibition of the free exercise thereof. In short, the Court held that the Amendment

"requires the state to be a neutral in its relations with groups of religious believers and nonbelievers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them."

"Our constitutional policy . . . does not deny the value or the necessity for religious training, teaching or observance. Rather, it secures their free exercise. But, to that end, it does deny that the state can undertake or sustain them in any form or degree. For this

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reason, the sphere of religious activity, as distinguished from the secular intellectual liberties, has been given the two-fold protection, and, as the state cannot forbid, neither can it perform or aid in performing, the religious function. The dual prohibition makes that function altogether private."

Id. at 330 U. S. 52.

In 1952, in Zorach v. Clauson, supra, MR. JUSTICE DOUGLAS, for the Court, reiterated:

"There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And, so far as interference with the 'free exercise' of religion and an

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'establishment' of religion are concerned, the separation must be complete and unequivocal. The First Amendment, within the scope of its coverage, permits no exception; the prohibition is absolute. The First Amendment, however, does not say that, in every and all respects, there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter."

343 U.S. at 343 U. S. 312.

"We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against nonbelievers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs."

367 U.S. at 367 U. S. 495.

Finally, in Engel v. Vitale, only last year, these principles were so universally recognized that the Court, without

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the citation of a single case and over the sole dissent of MR. JUSTICE STEWART, reaffirmed them.

In discussing the reach of the Establishment and Free Exercise Clauses of the First Amendment, the Court said:

"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 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."

Id. at 370 U. S. 430-431.

The Free Exercise Clause, likewise considered many times here, withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise

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of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority. Hence, it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion. The distinction between the two clauses is apparent -- a violation of the Free Exercise Clause is predicated on coercion, while the Establishment Clause violation need not be so attended.

It is insisted that, unless these religious exercises are permitted, a "religion of secularism" is established in the schools. We agree, of course, that the State may not establish a "religion of secularism" in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe." Zorach v. Clauson, supra, at 343 U. S. 314. We do not agree, however, that this decision in any sense has that effect.

The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and

concisely stated in the words of the First Amendment. Applying that rule to the facts of these cases, we affirm the judgment in No. 142.

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MR. JUSTICE DOUGLAS, concurring.

I join the opinion of the Court and add a few words in explanation.

MR. JUSTICE BRENNAN, concurring.

Almost a century and a half ago, John Marshall, in M'Culloch v. Maryland, enjoined: ". . . we must never forget, that it is a constitution we are expounding." 4 Wheat. 316, 17 U. S. 407. The Court's historic duty to expound the meaning of the Constitution has encountered few issues more intricate or more demanding than that of the relationship between religion and the public schools. Since undoubtedly we are "a religious people whose institutions presuppose a Supreme Being," Zorach v. Clauson, 343 U. S. 306, 343 U. S. 313, deep feelings are aroused when aspects of that relationship are claimed to violate the injunction of the First Amendment that government may make "no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government. It is therefore understandable that the constitutional prohibitions encounter their severest test when they are sought to be applied in the school classroom.

A more fruitful inquiry, it seems to me, is whether the practices here challenged threaten those consequences which the Framers deeply feared; whether, in short, they tend to promote that type of interdependence between religion and state which the First Amendment was designed to prevent. [Footnote 3/5] Our task is to translate

"the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials

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dealing with the problems of the twentieth century. . . ."

West Virginia State Board of Education v. Barnette, 319 U. S. 624, 319 U. S. 639.

The mandate of judicial neutrality in theological controversies met its severest test in United States v. Ballard, 322 U. S. 78. That decision put in sharp relief certain principles which bear directly upon the questions presented in these cases. Ballard was indicted for fraudulent use of the mails in the dissemination of religious literature. He requested that the trial court submit to the jury the question of the truthfulness of the religious views he championed. The requested charge was refused, and we upheld that refusal, reasoning that the First Amendment foreclosed any judicial inquiry into the truth or falsity of the defendant's religious beliefs. We said:

"Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views."

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prove. *They may not be put to the proof of their religious doctrines or beliefs.* . . . Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations."

322 U.S. at 322 U. S. 86-87.

Third. It is true, as the Court says, that the "two clauses [Establishment and Free Exercise] may overlap." Because of the overlap, however, our decisions under the Free Exercise Clause bear considerable relevance to the problem now before us, and should be briefly reviewed. The early free exercise cases generally involved the objections of religious minorities to the application to them of general nonreligious legislation governing conduct. Reynolds v. United States, 98 U. S. 145, involved the claim that a belief in the sanctity of plural marriage precluded the conviction of members of a particular sect under nondiscriminatory legislation against such marriage. The Court rejected the claim, saying:

"Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices. . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances. [Footnote 3/14]"

98 U.S. at 98 U. S. 166-167.

Davis v. Beason, 133 U. S. 333, similarly involved the claim that the First Amendment insulated from civil punishment certain practices inspired or motivated by religious beliefs. The claim was easily rejected:

"It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society."

133 U.S. at 133 U. S. 342. See also Mormon Church v. United States, 136 U. S. 1; Jacobson v. Massachusetts, 197 U. S. 11; Prince v. Massachusetts, 321 U. S. 158; Cleveland v. United States, 329 U. S. 14.

But we must not confuse the issue of governmental power to regulate or prohibit conduct motivated by religious beliefs with the quite different problem of governmental authority to compel behavior offensive to religious principles.