91 S.Ct. 2105
Supreme Court of the United States

Alton J. LEMON et al., Appellants,
v.
David H. KURTZMAN, as Superintendent as Public Instruction of the Commonwealth of Pennsylvania, et al.
John R. EARLEY et al., Appellants,
v.
John DiCENSO et al.
William P. ROBINSON, Jr., Commissioner of Education of the State of Rhode Island, et al., Appellants,
v.
John DiCENSO et al.

Nos. 89, 569, 570.
|
Argued March 3, 1971.
|
Decided June 28, 1971.

Synopsis
Actions challenging constitutionality of state aid to, or for the benefit of, nonpublic schools. A three-judge United States District Court for the District of Rhode Island, 316 F.Supp. 112, held the Rhode Island statute unconstitutional, while a three-judge United States District Court for the Eastern District of Pennsylvania, 310 F.Supp. 35, dismissed the complaint challenging the Pennsylvania statute, and appeals were taken. The Supreme Court, Mr. Chief Justice Burger, held that both statutes were unconstitutional under the religion clauses of the First Amendment, though promoting secular legislative purposes, since both involved excessive entanglement of state with church, where the Rhode Island program, consisting of salary supplements paid to teachers of secular subjects in nonpublic schools, operated to the benefit of parochial schools constituting integral part of the religious mission of the church and in which the recipient teachers were under religious control and discipline, and involved necessity of comprehensive and continuing state surveillance to insure obedience to restrictions as to the courses which could be taught, the materials which could be used, where the Pennsylvania program, involving reimbursement of nonpublic schools for teachers' salaries, taxtbooks, and instructional materials used in the teaching of specific secular subjects, provided direct aid to church schools and intimate and continuing relationship arising from state's postaudit power to inspect and evaluate schools' financial records and to determine which expenditures were religious and which were secular, and where both posed danger of divisive political activity and possibility of progression leading toward the establishment of state churches and state religion.

Judgment in Rhode Island cases affirmed; judgment in Pennsylvania case reversed and case remanded.

Mr. Justice Douglas filed concurring opinion in which Mr. Justice Black joined and in which Mr. Justice Marshall joined as to the Rhode Island cases; Mr. Justice Brennan filed a concurring opinion and would reverse outright the judgment in the Pennsylvania case; Mr. Justice White filed an opinion concurring in the judgment in the Pennsylvania case and dissenting in the Rhode Island cases; Mr. Justice Marshall took no part in the consideration or decision of the Pennsylvania case.

For the concurring opinion of Mr. Justice Brennan see 91 S.Ct. 2125.

For the concurring and dissenting opinion of Mr. Justice White see 91 S.Ct. 2135.

****2107 *602** Syllabus*

Rhode Island's 1969 Salary Supplement Act provides for a 15% salary supplement to be paid to teachers in nonpublic schools at which the average perpupil expenditure on secular education is below the average in public schools. Eligible teachers must teach only courses offered in the public schools, using only materials used in the public schools, and must agree not to teach courses in religion. A three-judge court found that about 25% of the State's elementary students attended nonpublic schools, about 95% of whom attended Roman Catholic affiliated schools, and that to date about 250 teachers at Roman Catholic schools are the sole beneficiaries under the Act. The court found that the parochial school system was 'an integral part of the religious mission of the Catholic Church,' and held that the Act fostered 'excessive entanglement' between government and religion, thus violating the Establishment Clause. Pennsylvania's Nonpublic Elementary and Secondary Education Act, passed in 1968, authorizes the state Superintendent of Public Instruction to 'purpose' certain 'secular educational services' from nonpublic schools, directly reimbursing those schools solely for teachers' salaries, textbooks, and instructional materials. Reimbursement is restricted to courses in specific secular subjects, the

textbooks and materials must be approved by the Superintendent, and no payment is to be made for any course containing 'any subject matter expressing religious teaching, or the morals or forms of worship of any sect.' Contracts were made with schools that have more than 20% of all the students in the State, most of which were affiliated with the Roman Catholic Church. The complaint challenging the constitutionality of ***603** the Act alleged that the church-affiliated schools are controlled by religious organizations, have the purpose of propagating and promoting a particular religious faith, and conduct their operations to fulfill that purpose. A three-judge court granted the State's motion to dismiss the complaint for failure to state a claim for relief, finding no violation of the Establishment or Free Exercise Clause. Held: Both statutes are unconstitutional under the Religion Clauses of the First Amendment, as the cumulative impact of the entire relationship arising under the statutes involves excessive entanglement between government and religion. Pp. 2110—2117.

(a) The entanglement in the Rhode Island program arises because of the religious activity, and purpose of the church-affiliated schools, especially with respect to children of impressionable age in the primary grades, and the dangers that a teacher under religious control and discipline poses to the separation of religious from purely secular aspect of elementary education in such schools. These factors require continuing state surveillance to ensure that the statutory restrictions are obeyed and the First Amendment otherwise respected. Furthermore, under the Act the government must inspect school records to determine what part of the expenditures is attributable to secular education as opposed to religious activity, in the event a nonpublic school's expenditures per pupil exceed the comparable figures for public schools. Pp. 2112—2115.

(b) The entanglement in the Pennsylvania program also arises from the restrictions and surveillance necessary to ensure that teachers play a strictly nonideological role and the state supervision of nonpublic school accounting procedures required to establish the cost of secular as distinguished from religious education. In addition, the Pennsylvania statute has the further defect of providing continuing financial aid directly to the church-related schools. Historically ****2108** governmental control and surveillance measures tend to follow cash grant programs, and here the government's post-audit power to inspect the financial records of church-related schools creates an intimate and continuing relationship between church and state. P. 2115.

(c) Political division along religious lines was one of the evils at which the First Amendment aimed, and in these programs, where successive and probably permanent annual appropriations that benefit relatively few religious groups are involved, political ***604** fragmentation and divisiveness on religious lines are likely to be intensified. Pp. 2115—2116.

(d) Unlike the tax exemption for places of religious worship, upheld in Walz v. Tax Commission, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697, which was based on a practice of 200 years, these innovative programs have self-perpetuating and self-expanding propensities which provide a warning signal against entanglement between government and religion. Pp. 2116—2117.

No. 89, 310 F.Supp. 35, reversed and remanded; Nos. 569 and 570, 316 F.Supp. 112, affirmed.

Attorneys and Law Firms

Henry W. Sawyer, III, Philadelphia, Pa., for appellants.

J. Shane Creamer, Philadelphia, Pa., for appellees Kurtzman and Sloan.

William B. Ball, Harrisburg, Pa., for appellee Schools.

***605** Charles F. Cottam, Providence, R.I., for appellants Robinson and others.

Edward Bennett Williams, Washington, D.C., for appellants Earley and others.

Leo Pfeffer, New York City, and Milton Stanzler, Providence, R.I., for appellees Joan DiCenso and others.

Opinion

***606** Mr. Chief Justice BURGER delivered the opinion of the Court.

These two appeals raise questions as to Pennsylvania and Rhode Island statutes providing state aid to church-related elementary and secondary schools. Both statutes are challenged as violative of the Establishment and Free Exercise Clauses of the First Amendment and the Due Process Clause of the Fourteenth Amendment.

Pennsylvania has adopted a statutory program that provides financial support to nonpublic elementary and ***607** secondary schools by way of reimbursement for the cost of teachers' salaries, textbooks, and instructional

materials in specified secular subjects. Rhode Island has adopted a statute under which the State pays directly to teachers in nonpublic elementary schools a supplement of 15% of their annual salary. Under each statute state aid has been given to church-related educational institutions. We hold that both statutes are unconstitutional.

I

The Rhode Island Statute

The Rhode Island Salary Supplement Act[1] was enacted in 1969. It rests on the legislative finding that the quality of education available in nonpublic elementary schools has been jeopardized by the rapidly rising salaries needed to attract competent and dedicated teachers. The Act authorizes state officials to supplement the salaries of teachers of secular subjects in nonpublic elementary schools by paying directly to a teacher an amount not in excess of 15% of his current annual salary. As supplemented, however, a nonpublic school teacher's salary cannot exceed the maximum paid to teachers in the State's public schools, and the recipient must be certified by the state board of education in substantially the same manner as public school teachers.

In order to be eligible for the Rhode Island salary supplement, the recipient must teach in a nonpublic school at which ****2109** the average per-pupil expenditure on secular education is less than the average in the State's public schools during a specified period. Appellant State Commissioner of Education also requires eligible schools to submit financial data. If this information indicates a per-pupil expenditure in excess of the statutory limitation, ***608** the records of the school in question must be examined in order to assess how much of the expenditure is attributable to secular education and how much to religious activity.[2]

The Act also requires that teachers eligible for salary supplements must teach only those subjects that are offered in the State's public schools. They must use 'only teaching materials which are used in the public schools.' Finally, any teacher applying for a salary supplement must first agree in writing 'not to teach a course in religion for so long as or during such time as he or she receives any salary supplements' under the Act.

Appellees are citizens and taxpayers of Rhode Island. They brought this suit to have the Rhode Island Salary Supplement Act declared unconstitutional and its operation enjoined on the ground that it violates the Establishment and Free Exercise Clauses of the First Amendment. Appellants are state officials charged with administration of the Act, teachers eligible for salary supplements under the Act, and parents of children in church-related elementary schools whose teachers would receive state salary assistance.

A three-judge federal court was convened pursuant to 28 U.S.C. ss 2281, 2284. It found that Rhode Island's nonpublic elementary schools accommodated approximately 25% of the State's pupils. About 95% of these pupils attended schools affiliated with the Roman Catholic church. To date some 250 teachers have applied for benefits under the Act. All of them are employed by Roman Catholic schools.

***609** The court held a hearing at which extensive evidence was introduced concerning the nature of the secular instruction offered in the Roman Catholic schools whose teachers would be eligible for salary assistance under the Act. Although the court found that concern for religious values does not necessarily affect the content of secular subjects, it also found that the parochial school system was 'an integral part of the religious mission of the Catholic Church.'

The District Court concluded that the Act violated the Establishment Clause, holding that it fostered 'excessive entanglement' between government and religion. In addition two judges thought that the Act had the impermissible effect of giving 'significant aid to a religious enterprise.' 316 F.Supp. 112. We affirm.

The Pennsylvania Statute

Pennsylvania has adopted a program that has some but not all of the features of the Rhode Island program. The Pennsylvania Nonpublic Elementary and Secondary Education Act[3] was passed in 1968 in response to a crisis that the Pennsylvania Legislature found existed in the State's nonpublic schools due to rapidly rising costs. The statute affirmatively reflects the legislative conclusion that the State's educational goals could appropriately be fulfilled by government support of 'those purely secular educational objectives achieved through nonpublic education * * *.'

The statute authorizes appellee state Superintendent of Public Instruction to 'purchase' specified 'secular educational services' from nonpublic schools. Under the 'contracts' authorized by the statute, **2110 the State directly reimburses nonpublic schools solely for their actual expenditures for teachers' salaries, textbooks, and instructional materials. A school seeking reimbursement must *610 maintain prescribed accounting procedures that identify the 'separate' cost of the 'secular educational service.' These accounts are subject to state audit. The funds for this program were originally derived from a new tax on horse and harness racing, but the Act is now financed by a portion of the state tax on cigarettes.

There are several significant statutory restrictions on state aid. Reimbursement is limited to courses 'presented in the curricula of the public schools.' It is further limited 'solely' to courses in the following 'secular' subjects: mathematics, modern foreign languages,[4] physical science, and physical education. Textbooks and instructional materials included in the program must be approved by the state Superintendent of Public Instruction. Finally, the statute prohibits reimbursement for any course that contains 'any subject matter expressing religious teaching, or the morals or forms of worship of any sect.'

The Act went into effect on July 1, 1968, and the first reimbursement payments to schools were made on September 2, 1969. It appears that some $5 million has been expended annually under the Act. The State has now entered into contracts with some 1,181 nonpublic elementary and secondary schools with a student population of some 535,215 pupils—more than 20% of the total number of students in the State. More than 96% of these pupils attend church-related schools, and most of these schools are affiliated with the Roman Catholic church.

Appellants brought this action in the District Court to challenge the constitutionality of the Pennsylvania statute. The organizational plaintiffs-appellants are associations of persons resident in Pennsylvania declaring *611 belief in the separation of church and state; individual plaintiffs-appellants are citizens and taxpayers of Pennsylvania. Appellant Lemon, in addition to being a citizen and a taxpayer, is a parent of a child attending public school in Pennsylvania. Lemon also alleges that he purchased a ticket at a race track and thus had paid the specific tax that supports the expenditures under the Act. Appellees are state officials who have the responsibility for administering the Act. In addition seven church-related schools are defendants-appellees.

A three-judge federal court was convened pursuant to 28 U.S.C. ss 2281, 2284. The District Court held that the individual plaintiffs-appellants had standing to challenge the Act, 310 F.Supp. 42. The organizational plaintiffs-appellants were denied standing under Flast v. Cohen, 392 U.S. 83, 99, 101, 88 S.Ct. 1942, 1952, 1953, 20 L.Ed.2d 947 (1968).

The court granted appellees' motion to dismiss the complaint for failure to state a claim for relief.[5] 310 F.Supp. 35. It held that the Act violated neither the Establishment nor the Free Exercise Clause, Chief Judge Hastie dissenting. We reverse.

II

In Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), this Court upheld a state statute that reimbursed the parents of parochial school children for bus transportation **2111 *612 expenses. There Mr. Justice Black, writing for the majority, suggested that the decision carried to 'the verge' of forbidden territory under the Religion Clauses. Id., at 16, 67 S.Ct., at 511. Candor compels acknowledgment, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law.

The language of the Religion Clauses of the First Amendment is at best opaque, particularly when compared with other portions of the Amendment. Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead they commanded that there should be 'no law respecting an establishment of religion.' A law may be one 'respecting' the forbidden objective while falling short of its total realization. A law 'respecting' the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not establish a state religion but nevertheless be one 'respecting' that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment.

In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.' Walz v. Tax Commission, 397 U.S. 664, 668, 90 S.Ct. 1409, 1411, 25 L.Ed.2d 697 (1970).

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, Board of Education v. Allen, 392 U.S. 236, 243, 88 S.Ct. 1923, 1926, 20 L.Ed.2d 1060 (1968); ***613** finally, the statute must not foster 'an excessive government entanglement with religion.' Walz, supra, at 674, 90 S.Ct., at 1414.

Inquiry into the legislative purposes of the Pennsylvania and Rhode Island statutes affords no basis for a conclusion that the legislative intent was to advance religion. On the contrary, the statutes themselves clearly state that they are intended to enhance the quality of the secular education in all schools covered by the compulsory attendance laws. There is no reason to believe the legislatures meant anything else. A State always has a legitimate concern for maintaining minimum standards in all schools it allows to operate. As in Allen, we find nothing here that undermines the stated legislative intent; it must therefore be accorded appropriate deference.

In Allen the Court acknowledged that secular and religious teachings were not necessarily so intertwined that secular textbooks furnished to students by the State were in fact instrumental in the teaching of religion. 392 U.S., at 248, 88 S.Ct., at 1929. The legislatures of Rhode Island and Pennsylvania have concluded that secular and religious education are identifiable and separable. In the abstract we have no quarrel with this conclusion.

The two legislatures, however, have also recognized that church-related elementary and secondary schools have a significant religious mission and that a substantial portion of their activities is religiously oriented. They have therefore sought to create statutory restrictions designed to guarantee the separation between secular and religious educational functions and to ensure that State financial aid supports only the former. All these provisions are precautions taken in candid recognition that these programs approached, even if they did not intrude upon, the forbidden areas under the Religion Clauses. We need not decide whether these legislative precautions restrict the principal or primary effect of the programs to the point where they ****2112** do not offend the Religion ***614** Clauses, for we conclude that the cumulative impact of the entire relationship arising under the statutes in each State involves excessive entanglement between government and religion.

III

In Walz v. Tax Commission, supra, the Court upheld state tax exemptions for real property owned by religious organizations and used for religious worship. That holding, however, tended to confine rather than enlarge the area of permissible state involvement with religious institutions by calling for close scrutiny of the degree of entanglement involved in the relationship. The objective is to prevent, as far as possible, the intrusion of either into the precincts of the other.

Our prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. Zorach v. Clauson, 343 U.S. 306, 312, 72 S.Ct. 679, 683, 96 L.Ed. 954 (1952); Sherbert v. Verner, 374 U.S. 398, 422, 83 S.Ct. 1790, 1803, 10 L.Ed.2d 965 (1963) (Harlan, J., dissenting). Fire inspections, building and zoning regulations, and state requirements under compulsory school-attendance laws are examples of necessary and permissible contacts. Indeed, under the statutory exemption before us in Walz, the State had a continuing burden to ascertain that the exempt property was in fact being used for religious worship. Judicial caveats against entanglement must recognize that the line of separation, far from being a 'wall,' is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.

This is not to suggest, however, that we are to engage in a legalistic minuet in which precise rules and forms must govern. A true minuet is a matter of pure form and style, the observance of which is itself the substantive end. Here we examine the form of the relationship for the light that it casts on the substance.

***615** In order to determine whether the government entanglement with religion is excessive, we must examine the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority. Mr. Justice Harlan, in a separate opinion in Walz, supra, echoed the classic warning as to 'programs, whose very nature is apt to entangle the state in details of administration. * * *' Id., at 695, 90 S.Ct., at 1425. Here we find that both statutes foster an impermissible degree of entanglement.

(a) Rhode Island program

The District Court made extensive findings on the grave potential for excessive entanglement that inheres in the religious character and purpose of the Roman Catholic elementary schools of Rhode Island, to date the sole beneficiaries of the Rhode Island Salary Supplement Act.

The church schools involved in the program are located close to parish churches. This understandably permits convenient access for religious exercises since instruction in faith and morals is part of the total educational process. The school buildings contain identifying religious symbols such as crosses on the exterior and crucifixes, and religious paintings and statutes either in the classrooms or hallways. Although only approximately 30 minutes a day are devoted to direct religious instruction, there are religiously oriented extracurricular activities. Approximately two-thirds of the teachers in these schools are nuns of various religious orders. Their dedicated efforts provide an atmosphere in which religious instruction and religious vocations are natural and proper parts of life in such schools. Indeed, as the District Court found, the role of teaching nuns in enhancing the religious atmosphere has led the parochial school authorities ****2113 *616** to attempt to maintain a one-to-one ratio between nuns and lay teachers in all schools rather than to permit some to be staffed almost entirely by lay teachers. On the basis of these findings the District Court concluded that the parochial schools constituted 'an integral part of the religious mission of the Catholic Church.' The various characteristics of the schools make them 'a powerful vehicle for transmitting the Catholic faith to the next generation.' This process of inculcating religious doctrine is, of course, enhanced by the impressionable age of the pupils, in primary schools particularly. In short, parochial schools involve substantial religious activity and purpose.[6]

The substantial religious character of these church-related schools gives rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid. Although the District Court found that concern for religious values did not inevitably or necessarily intrude into the content of secular subjects, the considerable religious activities of these schools led the legislature to provide for careful governmental controls and surveillance by state authorities in order to ensure that state aid supports only secular education.

The dangers and corresponding entanglements are enhanced by the particular form of aid that the Rhode Island Act provides. Our decisions from Everson to Allen have permitted the States to provide church-related schools with secular, neutral, or nonideological services, facilities, or materials. Bus transportation, school lunches, public health services, and secular textbooks supplied in common to all students were not ***617** thought to offend the Establishment Clause. We note that the dissenters in Allen seemed chiefly concerned with the pragmatic difficulties involved in ensuring the truly secular content of the textbooks provided at state expense.

In Allen the Court refused to make assumptions, on a meager record, about the religious content of the textbooks that the State would be asked to provide. We cannot, however, refuse here to recognize that teachers have a substantially different ideological character from books. In terms of potential for involving some aspect of faith or morals in secular subjects, a textbook's content is ascertainable, but a teacher's handling of a subject is not. We cannot ignore the danger that a teacher under religious control and discipline poses to the separation of the religious from the purely secular aspects of precollege education. The conflict of functions inheres in the situation.

In our view the record shows these dangers are present to a substantial degree. The Rhode Island Roman Catholic elementary schools are under the general supervision of the Bishop of Providence and his appointed representative, the Diocesan Superintendent of Schools. In most cases, each individual parish, however, assumes the ultimate financial responsibility for the school, with the parish priest authorizing the allocation of parish funds. With only two exceptions, school principals are nuns appointed either by the Superintendent or the Mother Provincial of the order whose members staff the school. By 1969 lay teachers constituted more than a third of all teachers in the parochial elementary schools, and their number is growing. They are first interviewed by the superintendent's office and then by the school principal. The contracts are signed by the parish priest, and he retains some discretion in negotiating salary levels. Religious authority necessarily pervades the school system.

***618** The schools are governed by the standards set forth in a 'Handbook of School Regulations,' which has the force of ****2114** synodal law in the diocese. It emphasizes the role and importance of the teacher in parochial schools: 'The prime factor for the success or the failure of the school is the spirit and personality, as well as the professional competency, of the teacher * * *.' The Handbook also states that: 'Religious formation is not confined to formal courses; nor is it restricted to a single subject area.' Finally, the Handbook advises teachers to stimulate interest in religious vocations and missionary work. Given the mission of the church school, these instructions are consistent and logical.

Several teachers testified, however, that they did not inject religion into their secular classes. And the District Court found that religious values did not necessarily affect the content of the secular instruction. But what has been recounted suggests the potential if not actual hazards of this form of state aid. The teacher is employed by a religious organization, subject to the direction and discipline of religious authorities, and works in a system dedicated to rearing children in a particular faith. These controls are not lessened by the fact that most of the lay teachers are of the Catholic faith. Inevitably some of a teacher's responsibilities hover on the border between secular and religious orientation.

We need not and do not assume that teachers in parochial schools will be guilty of bad faith or any conscious design to evade the limitations imposed by the statute and the First Amendment. We simply recognize that a dedicated religious person, teaching in a school affiliated with his or her faith and operated to inculcate its tenets, will inevitably experience great difficulty in remaining religiously neutral. Doctrines and faith are not inculcated or advanced by neutrals. With the best of intentions such a teacher would find it hard to make ***619** a total separation between secular teaching and religious doctrine. What would appear to some to be essential to good citizenship might well for others border on or constitute instruction in religion. Further difficulties are inherent in the combination of religious discipline and the possibility of disagreement between teacher and religious authorities over the meaning of the statutory restrictions.

We do not assume, however, that parochial school teachers will be unsuccessful in their attempts to segregate their religious beliefs from their secular educational responsibilities. But the potential for impermissible fostering of religion is present. The Rhode Island Legislature has not, and could not, provide state aid on the basis of a mere assumption that secular teachers under religious discipline can avoid conflicts. The State must be certain, given the Religion Clauses, that subsidized teachers do not inculcate religion—indeed the State here has undertaken to do so. To ensure that no trespass occurs, the State has therefore carefully conditioned its aid with pervasive restrictions. An eligible recipient must teach only those courses that are offered in the public schools and use only those texts and materials that are found in the public schools. In addition the teacher must not engage in teaching any course in religion.

A comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions are obeyed and the First Amendment otherwise respected. Unlike a book, a teacher cannot be inspected once so as to determine the extent and intent of his or her personal beliefs and subjective acceptance of the limitations imposed by the First Amendment. These prophylactic contacts will involve excessive and enduring entanglement between state and church.

***620** There is another area of entanglement in the Rhode Island program that gives concern. The statute excludes teachers employed by nonpublic schools whose average per-pupil expenditures on secular education equal or exceed the comparable figures for public schools. In the event that the total expenditures of an otherwise eligible school exceed this norm, the program requires the government to examine ****2115** the school's records in order to determine how much of the total expenditures is attributable to secular education and how much to religious activity. This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids. It is a relationship pregnant with dangers of excessive government direction of church schools and hence of churches. The Court noted 'the hazards of government supporting churches' in Walz v. Tax Commission, supra, 397 U.S., at 675, 90 S.Ct., at 1414, and we cannot ignore here the danger that pervasive modern governmental power will ultimately intrude on religion and thus conflict with the Religion Clauses.

(b) Pennsylvania program

The Pennsylvania statute also provides state aid to church-related schools for teachers' salaries. The complaint describes an educational system that is very similar to the one existing in Rhode Island. According to the allegations, the church-related elementary and secondary schools are controlled by religious organizations, have the purpose of propagating and promoting a particular religious faith, and conduct their operations to fulfill that purpose. Since this complaint was dismissed for failure to state a claim for relief, we must accept these allegations as true for purposes of our review.

As we noted earlier, the very restrictions and surveillance necessary to ensure that teachers play a strictly non-ideological role give rise to entanglements between ***621** church and state. The Pennsylvania statute, like that of Rhode Island, fosters this kind of relationship. Reimbursement is not only limited to courses offered in the public schools and materials approved by state

officials, but the statute excludes 'any subject matter expressing religious teaching, or the morals or forms of worship of any sect.' In addition, schools seeking reimbursement must maintain accounting procedures that require the State to establish the cost of the secular as distinguished from the religious instruction.

The Pennsylvania statute, moreover, has the further defect of providing state financial aid directly to the church-related schools. This factor distinguishes both Everson and Allen, for in both those cases the Court was careful to point out that state aid was provided to the student and his parents—not to the church-related school. Board of Education v. Allen, supra, 392 U.S., at 243—244, 88 S.Ct., at 1926—1927; Everson v. Board of Education, supra, 330 U.S., at 18, 67 S.Ct., at 512. In Walz v. Tax Commission, supra, 397 U.S., at 675, 90 S.Ct., at 1414, the Court warned of the dangers of direct payments to religious organizations:

> 'Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards * * *.'

The history of government grants of a continuing cash subsidy indicates that such programs have almost always been accompanied by varying measures of control and surveillance. The government cash grants before us now provide no basis for predicting that comprehensive measures of surveillance and controls will not follow. In particular the government's post-audit power to inspect and evaluate a church-related school's financial records and to determine which expenditures are religious and ***622** which are secular creates an intimate and continuing relationship between church and state.

IV

A broader base of entanglement of yet a different character is presented by the divisive political potential of these state programs. In a community where such a large number of pupils are served by church-related schools, it can be assumed ****2116** that state assistance will entail considerable political activity. Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail. Candidates will be forced to declare and voters to choose. It would be unrealistic to ignore the fact that many people confronted with issues of this kind will find their votes aligned with their faith.

Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. Freund, Comment, Public Aid to Parochial Schools, 82 Harv.L.Rev. 1680, 1692 (1969). The potential divisiveness of such conflict is a threat to the normal political process. Walz v. Tax Commission, supra, at 695, 90 S.Ct., at 1424. (separate opinion of Harlan, J.). See also Board of Education v. Allen, 392 U.S., at 249, 88 S.Ct., at 1929 (Harlan, J., concurring); Abington School District v. Schempp, 374 U.S. 203, 307, 83 S.Ct. 1560, 1616, 10 L.Ed.2d 844 (1963) (Goldberg, J., concurring). To have States or communities divide on the issues presented by state aid to parochial schools would tend to confuse ***623** and obscure other issues of great urgency. We have an expanding array of vexing issues, local and national, domestic and international, to debate and divide on. It conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government. The highways of church and state relationships are not likely to be one-way streets, and the Constitution's authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion's intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief.

Of course, as the Court noted in Walz, '(a)dherents of particular faiths and individual churches frequently take strong positions on public issues.' Walz v. Tax Commission, supra, at 670, 90 S.Ct., at 1412. We could not expect otherwise, for religious values pervade the fabric of our national life. But in Walz we dealt with a status under state tax laws for the benefit of all religious groups. Here we are confronted with successive and very

likely permanent annual appropriations that benefit relatively few religious groups. Political fragmentation and divisiveness on religious lines are thus likely to be intensified.

The potential for political divisiveness related to religious belief and practice is aggravated in these two statutory programs by the need for continuing annual appropriations and the likelihood of larger and larger demands as costs and populations grow. The Rhode Island District Court found that the parochial school system's 'monumental and deepening financial crisis' would 'inescapably' require larger annual appropriations subsidizing greater percentages of the salaries of lay teachers. Although no facts have been developed in this respect ***624** in the Pennsylvania case, it appears that such pressures for expanding aid have already required the state legislature to include a portion of the state revenues from cigarette taxes in the program.

V

In Walz it was argued that a tax exemption for places of religious worship would prove to be the first step in an inevitable progression leading to the ****2117** establishment of state churches and state religion. That claim could not stand up against more than 200 years of virtually universal practice imbedded in our colonial experience and continuing into the present.

The progression argument, however, is more persuasive here. We have no long history of state aid to church-related educational institutions comparable to 200 years of tax exemption for churches. Indeed, the state programs before us today represent something of an innovation. We have already noted that modern governmental programs have self-perpetuating and self-expanding propensities. These internal pressures are only enhanced when the schemes involve institutions whose legitimate needs are growing and whose interests have substantial political support. Nor can we fail to see that in constitutional adjudication some steps, which when taken were thought to approach 'the verge,' have become the platform for yet further steps. A certain momentum develops in constitutional theory and it can be a 'downhill thrust' easily set in motion but difficult to retard or stop. Development by momentum is not invariably bad; indeed, it is the way the common law has grown, but it is a force to be recognized and reckoned with. The dangers are increased by the difficulty of perceiving in advance exactly where the 'verge' of the precipice lies. As well as constituting an independent evil against which the Religion Clauses were intended to protect, involvement ***625** or entanglement between government and religion serves as a warning signal.

Finally, nothing we have said can be construed to disparage the role of church-related elementary and secondary schools in our national life. Their contribution has been and is enormous. Nor do we ignore their economic plight in a period of rising costs and expanding need. Taxpayers generally have been spared vast sums by the maintenance of these educational institutions by religious organizations, largely by the gifts of faithful adherents.

The merit and benefits of these schools, however, are not the issue before us in these cases. The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn.

The judgment of the Rhode Island District Court in No. 569 and No. 570 is affirmed. The judgment of the Pennsylvania District Court in No. 89 is reversed, and the case is remanded for further proceedings consistent with this opinion.

Mr. Justice MARSHALL took no part in the consideration or decision of No. 89.

Mr. Justice DOUGLAS, whom Mr. Justice BLACK joins, concurring.

While I join the opinion of the Court. I have expressed at some length my views as to the rationale of today's decision in these three cases.

***626** They involve two different statutory schemes for providing aid to parochial schools. Lemon deals with the Pennsylvania Nonpublic Elementary and Secondary Education Act, Laws 1968, Act No. 109. By its terms the Pennsylvania Act allows the State to provide funds directly to private schools to purchase 'secular educational service' such as teachers' salaries, textbooks,

and educational materials. Pa.Stat.Ann., Tit. 24, s 5604 (Supp.1971). Reimbursement for these services may be made only for courses in mathematics, modern foreign languages, physical science, and physical education. Reimbursement is prohibited for any course containing subject matter 'expressing religious teaching, or the morals or forms of worship of any sect.' s 5603 (Supp.1971). To qualify, a school must demonstrate that its pupils achieve a satisfactory level of performance in standardized tests approved by the Superintendent of Public Instruction, ****2118** and that the textbooks and other instructional materials used in these courses have been approved by the Superintendent of Public Instruction. The three-judge District Court below upheld this statute against the argument that it violates the Establishment Clause. We noted probable jurisdiction. 397 U.S. 1034, 91 S.Ct. 1354, 25 L.Ed.2d 646.

The DiCenso cases involve the Rhode Island Salary Supplement Act, Laws 1969, c. 246. The Rhode Island Act authorizes supplementing the salaries of teachers of secular subjects in nonprofit private schools. The supplement is not more than 15% of an eligible teacher's current salary but cannot exceed the maximum salary paid to teachers in the State's public schools. To be eligible a teacher must teach only those subjects offered in public schools in the State, must be certified in substantially the same manner as teachers in public schools, and may use only teaching materials which are used in the public schools. Also the teacher must agree in writing ***627** 'not to teach a course in religion for so long as or during such time as he or she receives any salary supplements.' R.I.Gen.Laws Ann. s 16—51—3 (Supp.1970). The schools themselves must not be operated for profit, must meet state educational standards, and the annual per-student expenditure for secular education must not equal or exceed 'the average annual per student expenditure in the public schools in the state at the same grade level in the second preceding fiscal year.' s 16—51—2 (Supp. 1970). While the Rhode Island Act, unlike the Pennsylvania Act, provides for direct payments to the teacher, the three-judge District Court below found it unconstitutional because it 'results in excessive government entanglement with religion.' Probable jurisdiction was noted and the cases were set for oral argument with the other school cases. 400 U.S. 901, 91 S.Ct. 142, 27 L.Ed.2d 137.

In Walz v. Tax Commission, 397 U.S. 664, 674, 90 S.Ct. 1409, 1414, 25 L.Ed.2d 697, the Court in approving a tax exemption for church property said:

> 'Determining that the legislative purpose of tax exemption is not aimed at establishing, sponsoring, or supporting religion does not end the inquiry, however. We must also be sure that the end result—the effect—is not an excessive government entanglement with religion.'

There is in my view such an entanglement here. The surveillance or supervision of the States needed to police grants involved in these three cases, if performed, puts a public investigator into every classroom and entails a pervasive monitoring of these church agencies by the secular authorities. Yet if that surveillance or supervision does not occur the zeal of religious proselytizers promises to carry the day and make a shambles of the Establishment Clause. Moreover, when taxpayers of ***628** many faiths are required to contribute money for the propagation of one faith, the Free Exercise Clause is infringed.

The analysis of the constitutional objections to these two state systems of grants to parochial or sectarian schools must start with the admitted and obvious fact that the raison d'e tre of parochial schools is the propagation of a religious faith. They also teach secular subjects; but they came into existence in this country because Protestant groups were perverting the public schools by using them to propagate their faith. The Catholics naturally rebelled. If schools were to be used to propagate a particular creed or religion, then Catholic ideals should also be served. Hence the advent of parochial schools.

By 1840 there were 200 Catholic parish schools in the United States.[1] By 1964 there were 60 times as many.[2] Today 57% of the 9,000 Catholic parishes in the country have their church schools. '(E)very diocesan chancery has its school department, and it enjoys a primacy ****2119** of status.'[3] The parish schools indeed consume 40% to 65% of the parish's total income.[4] The parish is so 'school centered' that '(t)he school almost becomes the very reason for being.'[5]

Early in the 19th century the Protestants obtained control of the New York school system and used it to promote reading and teaching of the Scriptures as revealed in the King James version of the Bible.[6] The contests ***629** between Protestants and Catholics, often erupting into violence including the burning of Catholic churches, are a twice-told tale;[7] the Know-Nothing Party, which included in its platform 'daily Bible reading in the schools,'[8] carried three States in 1854—Massachusetts, Pennsylvania, and Delaware.[9] Parochial schools grew, but not Catholic schools alone. Other dissenting sects

established their own schools—Lutherans, Methodists, Presbyterians, and others.[10] But the major force in shaping the pattern of education in this country was the conflict between Protestants and Catholics. The Catholics logically argued that a public school was sectarian when it taught the King James version of the Bible. They therefore wanted it removed from the public schools; and in time they tried to get public funds for their own parochial schools.[11]

The constitutional right of dissenters to substitute their parochial schools for public schools was sustained by the Court in Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070.
The story of conflict and dissension is long and well known. The result was a state of so-called equilibrium where religious instruction was eliminated from public schools and the use of public funds to support religious schools was deemed to be banned.[12]

But the hydraulic pressures created by political forces and by economic stress were great and they began to ***630** change the situation. Laws were passed—state and federal—that dispensed public funds to sustain religious schools and the plea was always in the educational frame of reference: education in all sectors was needed, from languages to calculus to nuclear physics. And it was forcefully argued that a linguist or mathematician or physicist trained in religious schools was just as competent as one trained in secular schools.
And so we have gradually edged into a situation where vast amounts of public funds are supplied each year to sectarian schools.[13]

And the argument is made that the private parochial school system takes about $9 billion a year off the back of government[14]—as if that were enough to justify violating the Establishment Clause.

****2120** While the evolution of the public school system in this country marked an escape from denominational control and was therefore admirable as seen through the eyes of those who think like Madison and Jefferson, it has disadvantages. The main one is that a state system may attempt to mold all students alike according to the views of the dominant group and to discourage the emergence of individual idiosyncrasies.

Sectarian education, however, does not remedy that condition. The advantages of sectarian education relate solely to religious or doctrinal matters. They give the ***631** church the opportunity to indoctrinate its creed delicately and indirectly, or massively through doctrinal courses.

Many nations follow that course: Moslem nations teach the Koran in their schools; Sweden vests its elementary education in the parish; Newfoundland puts its school system under three superintendents—one from the Church of England, one from the Catholic church, one from the United Church. In Ireland the public schools are under denominational managership—Catholic, Episcopalian, Presbyterian, and Hebrew.
England puts sectarian schools under the umbrella of its school system. It finances sectarian education; it exerts control by prescribing standards; it requires some free scholarships; it provides nondenominational membership on the board of directors.[15]

The British system is, in other words, one of surveillance over sectarian schools. We too have surveillance over sectarian schools but only to the extent of making sure that minimum educational standards are met, viz., competent teachers, accreditation of the school for diplomas, the number of hours of work and credits allowed, and so on.
But we have never faced, until recently, the problem of policing sectarian schools. Any surveillance to date has been minor and has related only to the consistently unchallenged matters of accreditation of the sectarian school in the State's school system.[16]

The Rhode Island Act allows a supplementary salary to a teacher in a sectarian school if he or she 'does not teach a course in religion.'

***632** The Pennsylvania Act provides for state financing of instruction in mathematics, modern foreign languages, physical science, and physical education, provided that the instruction in those courses 'shall not include any subject matter expressing religious teaching, or the morals or forms of worship of any sect.'

Public financial support of parochial schools puts those schools under disabilities with which they were not previously burdened. For, as we held in Cooper v. Aaron, 358 U.S. 1, 19, 78 S.Ct. 1401, 1410, 3 L.Ed.2d 5, governmental activities relating to schools 'must be exercised consistently with federal constitutional requirements.' There we were concerned with equal protection; here we are faced with issues of Establishment of religion and its Free Exercise as those concepts are used in the First Amendment.

Where the governmental activity is the financing of the private school, the various limitations or restraints imposed by the Constitution on state governments come into play. Thus, Arkansas, as part of its attempt to avoid the consequences of Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, 349 U.S. 294, 75

S.Ct. 753, 99 L.Ed. 1083, withdrew its financial support from some public schools and sent the funds instead to private schools. That state action was held to violate the Equal Protection Clause. Aaron v. McKinley, D.C., 173 F.Supp. 944, 952. We affirmed, sub nom. ****2121** Faubus v. Aaron, 361 U.S. 197, 80 S.Ct. 291, 4 L.Ed.2d 237. Louisiana tried a like tactic and it too was invalidated. Poindexter v. Louisiana Financial Assistance Commission, D.C., 296 F.Supp. 686. Again we affirmed. Louisiana Ed. Commission for Needy Children v. Poindexter, 393 U.S. 17, 89 S.Ct. 48, 21 L.Ed.2d 16. Whatever might be the result in case of grants to students,[17] it is clear that once ***633** one of the States finances a private school, it is duty-bound to make certain that the school stays within secular bounds and does not use the public funds to promote sectarian causes.

The government may, of course, finance a hospital though it is run by a religious order, provided it is open to people of all races and creeds. Bradfield v. Roberts, 175 U.S. 291, 20 S.Ct. 121, 44 L.Ed. 168. The government itself could enter the hospital business; and it would, of course, make no difference if its agents who ran its hospitals were Catholics, Methodists, agnostics, or whatnot. For the hospital is not indulging in religious instruction or guidance or indoctrination. As Mr. Justice Jackson said in Everson v. Board of Education, 330 U.S. 1, 26, 67 S.Ct. 504, 516, 91 L.Ed. 711 (dissenting):

> '(Each State has) great latitude in deciding for itself, in the light of its own conditions, what shall be public purposes in its scheme of things. It may socialize utilities and economic enterprises and make taxpayers' business out of what conventionally had been private business. It may make public business of individual welfare, health, education, entertainment or security. But it cannot make public business of religious worship or instruction, or of attendance at religious institutions of any character.'

The reason is that given by Madison in his Remonstrance:[18]
'(T)he same authority which can force a citizen to contribute three pence only of his property for ***634** the support of any one establishment, may force him to conform to any other establishment * * *.'

When Madison in his Remonstrance attacked a taxing measure to support religious activities, he advanced a series of reasons for opposing it. One that is extremely relevant here was phrased as follows:[19] '(I)t will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects.' Intermeddling, to use Madison's word, or 'entanglement,' to use what was said in Watz, has two aspects. The intrusion of government into religious schools through grants, supervision, or surveillance may result in establishment of religion in the constitutional sense when what the State does enthrones a particular sect for overt or subtle propagation of its faith. Those activities of the State may also intrude on the Free Exercise Clause by depriving a teacher, under threats of reprisals, ****2122** of the right to give sectarian construction or interpretation of, say, history and literature, or to use the teaching of such subjects to inculcate a religious creed or dogma.
Under these laws there will be vast governmental suppression, surveillance, or meddling in church affairs. As I indicated in Tilton v. Richardson, 403 U.S. 672, 91 S.Ct. 2091, 29 L.Ed.2d 790, decided this day, school prayers, the daily routine of parochial schools, must go if our decision in Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601, is honored. If it is not honored, then the state has established a religious sect. Elimination of prayers is only part of the problem. The curriculum presents subtle and difficult problems. The constitutional mandate can in part be carried out by censoring the curricula. What is palpably a sectarian course can be marked for ***635** deletion. But the problem only starts there. Sectarian instruction, in which, of course, a State may not indulge, can take place in a course on Shakespeare or in one on mathematics. No matters what the curriculum offers, the question is, what is taught? We deal not with evil teachers but with zealous ones who may use any opportunity to indoctrinate a class.[20]

It is well known that everything taught in most parochial schools is taught with the ultimate goal of religious education in mind. Rev. Joseph H. Fichter, S.J., stated in Parochial School: A Sociological Study 86 (1958):
'It is a commonplace observation that in the parochial school religion permeates the whole curriculum, and is not confined to a single half-hour period of the day. Even arithmetic can be used as an instrument of pious thoughts, as in the case of the teacher who gave this problem to her class: 'If it takes forty thousand priests and a hundred and forty thousand sisters to care for forty million Catholics in the United States, how many more priests and sisters will be needed to convert and care for the hundred million non-Catholics in the United States?''

One can imagine what a religious zealot, as contrasted to a civil libertarian, can do with the Reformation ***636** or with the Inquisition. Much history can be given the gloss of a particular religion. I would think that policing these grants to detect sectarian instruction would be insufferable to religious partisans and would breed division and dissension between church and state.

This problem looms large where the church controls the hiring and firing of teachers:
'(I)n the public school the selection of a faculty and the administration of the school usually rests with a school board which is subject to election and recall by the voters, but in the parochial school the selection of a faculty and the administration of the school is in the hands of the bishop alone, and usually is administered through the local priest. If a faculty member in the public school believes that he has been treated unjustly in being disciplined or dismissed, he can seek redress through the civil court and he is guaranteed a hearing. But if a faculty member in a parochial school is disciplined or dismissed he has no recourse whatsoever. The word of the bishop or priest is final, even without explanation if he so chooses. The tax payers have a voice in the way their money is used in the ****2123** public school, but the people who support a parochial school have no voice at all in such affairs.' L. Boettner, Roman Catholicism 375 (1962).

Board of Education v. Allen, 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d 1060, dealt only with textbooks. Even so, some had difficulty giving approval. Yet books can be easily examined independently of other aspects of the teaching process. In the present cases we deal with the totality of instruction destined to be sectarian, at least in part, if the religious character of the school is to be maintained. A school which operates to commingle religion with other instruction plainly cannot completely secularize its instruction. ***637** Parochial schools, in large measure, do not accept the assumption that secular subjects should be unrelated to religious teaching.

Lemon involves a state statute that prescribes that courses in mathematics, modern foreign languages, physical science, and physical education 'shall not include any subject matter expressing religious teaching, or the morals or forms of worship of any sect.' The subtleties involved in applying this standard are obvious. It places the State astride a sectarian school and gives it power to dictate what is or is not secular, what is or is not religious. I can think of no more disrupting influence apt to promote rancor and ill-will between church and state than this kind of surveillance and control. They are the very opposite of the 'moderation and harmony' between church and state which Madison thought was the aim and purpose of the Establishment Clause.

The DiCenso cases have all the vices which are in Lemon, because the supplementary salary payable to the teacher is conditioned on his or her not teaching 'a course in religion.'
Moreover the DiCenso cases reveal another, but related, knotty problem presented when church and state launch one of these educational programs. The Bishop of Rhode Island has a Handbook of School Regulations for the Diocese of Providence.[21]

The school board supervises 'the education, both spiritual and secular, in the parochial schools and diocesan high schools.'

The superintendent is an agent of the bishop and he interprets and makes 'effective state and diocesan educational directives.'

***638** The pastors visit the schools and 'give their assistance in promoting spiritual and intellectual discipline.'

Community supervisors 'assist the teacher in the problems of instruction' and these duties are:
'I. To become well enough acquainted with the teachers of their communities so as to be able to advise the community superiors on matters of placement and reassignment.

II. To act as liaison between the provincialate and the religious teacher in the school.

'III. To cooperate with the superintendent by studying the diocesan school regulations and to encourage the teachers of their community to observe these regulations.

'IV. To avoid giving any orders or directions to the teachers of their community that may be in conflict with diocesan regulations or policy regarding curriculum, testing, textbooks, method, or administrative matters.

'V. To refer questions concerning school administration beyond the scope of their own authority to the proper diocesan school authorities, namely, the superintendent of schools or the pastor.'

****2124** The length of the school day includes Mass:

> 'A full day session for Catholic schools at the elementary level consists of five and one-half hours, exclusive of lunch and Mass,[22] but

> inclusive of recess for pupils in grades 1—3.'

A course of study or syllabus prescribed for an elementary or secondary school is 'mandatory.'

***639** Religious instruction is provided as follows:
'A. Systematic religious instructions must be provided in all schools of the diocese.

'B. Modern catechetics requires a teacher with unusual aptitudes, specialized training, and such unction of the spirit that his words possess the force of a personal call. He should be so filled with his subject that he can freely improvize in discussion, dramatization, drawing, song, and prayer. A teacher so gifted and so permeated by the message of the Gospel is rare. Perhaps no teacher in a given school attains that ideal. But some teachers come nearer it than others. If our pupils are to hear the Good News so that their minds are enlightened and their hearts respond to the love of God and His Christ, if they are to be formed into vital, twentieth-century Christians, they should receive their religious instructions only from the very best teachers.

'C. Inasmuch as the textbooks employed in religious instruction above the fifth grade require a high degree of catechetical preparation, religion should be a departmentalized subject in grade six through twelve.'

Religious activities are provided, through observance of specified holy days and participation in Mass.

'Religious formation' is not restricted to courses but is achieved 'through the example of the faculty, the tone of the school * * * and religious activities.'

No unauthorized priest may address the students.

> 'Retreats and days of recollection form an integral part of our religious program in the Catholic schools.'

Religious factors are used in the selection of students:

> 'Although wealth should never serve as a criterion for accepting a pupil into a Catholic school, all other ***640** things being equal, it would seem fair to give preference to a child whose parents support the parish. Regular use of the budget, rather than the size of the contributions, would appear equitable. It indicates whether parents regularly attend Mass.'

These are only highlights of the handbook. But they indicate how pervasive is the religious control over the school and how remote this type of school is from the secular school. Public funds supporting that structure are used to perpetuate a doctrine and creed in innumerable and in pervasive ways. Those who man these schools are good people, zealous people, dedicated people. But they are dedicated to ideas that the Framers of our Constitution placed beyond the reach of government.

If the government closed its eyes to the manner in which these grants are actually used it would be allowing public funds to promote sectarian education. If it did not close its eyes but undertook the surveillance needed, it would, I fear, intermeddle in parochial affairs in a way that would breed only rancor and dissension.

We have announced over and over again that the use of taxpayers' money to support parochial schools violates the First Amendment, applicable to the States by virtue of the Fourteenth.

****2125** We said in unequivocal words in Everson v. Board of Education, 330 U.S. 1, 16, 67 S.Ct. 504, 511, 91 L.Ed. 711, 'No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.' We reiterated the same idea in Zorach v. Clauson, 343 U.S. 306, 314, 72 S.Ct. 679, 684, 96 L.Ed. 954, and in McGowan v. Maryland, 366 U.S. 420, 443, 8u S.Ct. 1101, 1114, 6 L.Ed.2d 393, and in Torcaso v. Watkins, 367 U.S. 488, 493, 81 S.Ct. 1680, 1682, 6 L.Ed.2d 982. We repeated the same idea in McCollum v. Board of Education, 333 U.S. 203, 210, 68 S.Ct. 461, 464, 92 L.Ed. 648, and added that a State's ***641** tax-supported public schools could not be used 'for the dissemination of religious doctrines' nor could a State provide the church 'pupils for their religious classes through use of the state's compulsory public school machinery.' Id., at 212, 68 S.Ct., at 466.

Yet in spite of this long and consistent history there are those who have the courage to announce that a State may

nonetheless finance the secular part of a sectarian school's educational program. That, however, makes a grave constitutional decision turn merely on cost accounting and bookkeeping entries. A history class, a literature class, or a science class in a parochial school is not a separate institute; it is part of the organic whole which the State subsidizes. The funds are used in these cases to pay or help pay the salaries of teachers in parochial schools; and the presence of teachers is critical to the essential purpose of the parochial school, viz., to advance the religious endeavors of the particular church. It matters not that the teacher receiving taxpayers' money only teaches religion a fraction of the time. Nor does it matter that he or she teaches no religion. The school is an organism living on one budget. What the taxpayers give for salaries of those who teach only the humanities or science without any trace of proselytizing enables the school to use all of its own funds for religious training. As Judge Coffin said, 316 F.Supp. 112, 120, we would be blind to realities if we let 'sophisticated bookkeeping' sanction 'almost total subsidy of a religious institution by assigning the bulk of the institution's expenses to 'secular' activities.' And sophisticated attempts to avoid the Constitution are just as invalid as simple-minded ones. Lane v. Wilson, 307 U.S. 268, 275, 59 S.Ct. 872, 876, 83 L.Ed. 1281.

In my view the taxpayers' forced contribution to the ***642** parochial schools in the present cases violates the First Amendment.

Mr. Justice MARSHALL, who took no part in the consideration or decision of No. 89, see ante, p. 2117, while intimating no view as to the continuing vitality of Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), concurs in MR. JUSTICE DOUGLAS' opinion covering Nos. 569 and 570.

All Citations

403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745

Footnotes

* NOTE: The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 R.I.Pen.Laws Ann. s 16—51—1 et seq. (Supp.1970).

2 The District Court found only one instance in which this breakdown between religious and secular expenses was necessary. The school in question was not affiliated with the Catholic church. The court found it unlikely that such determinations would be necessary with respect to Catholic schools because their heavy reliance on nuns kept their wage costs substantially below those of the public schools.

3 Pa.Stat.Ann., Tit. 24, ss 5601—5609 (Supp.1971).

4 Latin, Hebrew, and classical Greek are excluded.

5 Plaintiffs-appellants also claimed that the Act violated the Equal Protection Clause of the Fourteenth Amendment by providing state assistance to private institutions that discriminated on racial and religious grounds in their admissions and hiring policies. The court unanimously held that no plaintiff had standing to raise this claim because the complaint did not allege that the child of any plaintiff had been denied admission to any nonpublic school on racial or religious grounds. Our decision makes it unnecessary for us to reach this issue.

6 See, e.g., J. Fichter, Parochial School: A Sociological Study 77—108 (1958); Giannella, Religious Liberty, Nonestablishment, and Doctrinal Development, pt. II, The Nonestablishment Principle, 81 Harv.L.Rev. 513, 574 (1968).

1 A. Stokes & L. Pfeffer, Church and State in the United States, 229 (1964).

2 Ibid.

3 Deedy, Should Catholic Schools Survive?, New Republic, Mar. 13, 1971, pp. 15, 16.

4 Id., at 17.

5 Ibid.

6 Stokes & Pfeffer, supra, n. 1, at 231.

7 Id., at 231—239.

8 Id., at 237.

9 Ibid.

10 R. Butts, The American Tradition in Religion and Education 115 (1950).

11 Id., at 118. And see R. Finney, A Brief History of the American Public School 44—45 (1924).

12 See E. Knight, Education in the United States 3, 314 (3d rev. ed. 1951); E. Cubberley, Public Education in the United States 164 et seq. (1919).

13 In 1960 the Federal Government provided $500 million to private colleges and universities. Amounts contributed by state and local governments to private schools at any level were negligible. Just one decade later federal aid to private colleges and universities had grown to. $2.1 billion. State aid had begun and reached $100 million. Statistical Abstract of the United States 105 (1970). As the present cases demonstrate, we are now reaching a point where state aid is being given to private elementary and secondary schools as well as colleges and universities.

14 Deedy, supra, n. 3, at 16.

15 S. Curtis, History of Education in Great Britain 316—383 (5th ed. 1963); W. Alexander, Education in England, c II (2d ed. 1964).

16 See Pierce v. Society of Sisters, 268 U.S. 510, 534, 45 S.Ct. 571, 573, 69 L.Ed. 1070; Meyer v. Nebraska, 262 U.S. 390, 402, 43 S.Ct. 625, 627, 67 L.Ed. 1042.

17 Grants to students in the context of the problems of desegregated public schools have without exception been stricken down as tools of the forbidden discrimination. See Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256; Hall v. St. Helena Parish School Bd., D.C., 197 F.Supp. 649, aff'd, 368 U.S. 515, 82 S.Ct. 529, 7 L.Ed.2d 521; Lee v. Macon County Bd., D.C., 267 F.Supp. 458, aff'd sub nom. Wallace v. United States, 389 U.S. 215, 88 S.Ct. 415, 19 L.Ed.2d 422; Poindexter v. Louisiana Financial Assistance Commission, D.C., 275 F.Supp. 833, aff'd, 389 U.S. 571, 88 S.Ct. 693, 19 L.Ed.2d 780; Brown v. South Carolina State Bd., 296 F.Supp. 199, aff'd, 393 U.S. 222, 89 S.Ct. 449, 21 L.Ed.2d 391; Coffey v. State Educ. Finance Commission, D.C., 296 F.Supp. 1389; Lee v. Macon County Bd., D.C., 231 F.Supp. 743.

18 Remonstrance 3. The Memorial and Remonstrance Against Religious Assessments has been reproduced in appendices to the opinion of Rutledge, J., in Everson, 330 U.S., at 63, 67 S.Ct., at 534, and to that of Douglas, J., in Walz, 397 U.S., at 719, 90 S.Ct., at 1437.

19 Remonstrance 11.

20 'In the parochial schools Roman Catholic indoctrination is included in every subject. History, literature, geography, civics, and

science are given a Roman Catholic slant. The whole education of the child is filled with propaganda. That, of course, is the very purpose of such schools, the very reason for going to all of the work and expense of maintaining a dual school system. Their purpose is not so much to educate, but to indoctrinate and train, not to teach Scripture truths and Americanism, but to make loyal Roman Catholics. The children are regimented, and are told what to wear, what to do, and what to think.' L. Boettner, Roman Catholicism 360 (1962).

21 It was said on oral argument that the handbook shown as an exhibit in the record had been superseded. The provisions hereinafter quoted are from the handbook as it reads after all the deletions to which we were referred.

22 'The use of school time to participate in the Holy Sacrifice of the Mass on the feasts of All Saints, Ascension, and the patronal saint of the parish or school, as well as during the 40 Hours Devotion, is proper and commendable.'