Abington School Dist. v. Schempp **(1963)** - Establishment - Justice Clark/Harlan/Goldberg/Douglas/ Brennan - 8/1.

Issue: A Pennsylvania statute requires the reading of 10 verses from the Holy Bible daily without commentary. A Baltimore statute is similar except the Lord's Prayer is also read. Participation for both is voluntary...a dissenter may be excused.

Held: Both programs are unconstitutional.

Reasoning: A union of government and religion tends to destroy government and to degrade religion. When government allies itself with one particular form of religion, it inevitably incurs the hatred, disrespect and contempt of those who hold contrary beliefs. **To withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion**. It is insisted that unless these religious exercises are permitted, a "religion of secularism is established" in our schools. We agree the State may not "establish a religion of secularism" in the sense of affirmatively opposing religion, thus preferring those who believe in no religion to those who do. *Zorach v Clauson*[1]. We do not agree this decision has that effect. **It might well be said that one's education is not complete without a study of comparative religion...The Bible is worthy of study for its literary and historic qualities. Nothing we say here prevents the foregoing.** But, these readings are "religious exercises," in violation of the command of the 1st Amendment that government must maintain neutrality, neither aiding nor opposing religion. We do not accept that this holding collides with the majority's right to free exercise. While the Free Exercise clause prohibits the State from denying rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice

[1]Case 1A-R-025 on this website.

its beliefs.

Douglas concurrence: Public funds are being used to fund a religious exercise.

Brennan concurrence: **Not every involvement of religion in public life is unconstitutional**, but the exercises are a form of involvement that clearly violates the Establishment Clause. **It may or may not be that Jefferson and Madison would have approved of such exercises. One can find support for either conclusion of "original intent" of the Framers. The more fruitful inquiry is whether these practices threaten those consequences which the Framers deeply feared — whether they tend to promote that type of interdependence between religion and state which the 1st Amendment was designed to prevent.** The structure of American education has greatly changed since the 1st Amendment was adopted. We are far more diverse today. Also, while education is compulsory, attendance at public schools is not. Parents are free to choose private education. The availability of excusing oneself has no relevance to the establishment question. If they are essentially religious exercises for religious aims through the use of public school facilities, they violate the establishment clause regardless of the opt out provision. The more difficult question is whether the availability of excusal for the dissenter serves to refute challenges to these practices under the Free Exercise Clause. **I do not agree that the invalidation of these exercises permits this Court no alternative but to declare unconstitutional every vestige of cooperation or accommodation between religion and government. What is forbidden are those involvements which (1) serve the essentially religious activities of religious institutions, (2) employ the organs of government for essentially religious purposes or (3) use essentially religious means to serve governmental ends where secular means would suffice. On the other hand, there may be myriad forms of involvements of government with religion which do not import such dangers and should not be deemed to violate the Establishment Clause.**

A brief survey of these forms of accommodation will reveal that the 1st Amendment commands not official hostility toward religion, but only a strict neutrality in matters of religion.

A. Provisions for **churches and chaplains at military establishments** or for **chaplains in penal institutions**. Since government has deprived such persons of opportunities to practice their faith where they choose, in order to avoid infringing on free exercise, the government may provide the foregoing. Such a principle would support excusing children from school on their religious holiday. Government may allow temporary use of public buildings by religious organizations when their churches are unavailable because of disaster or emergency.

B. **Legislative prayer and chaplains** may not be violative. Legislators are mature adults who may presumably absent themselves.

C. **Non-devotional use of the Bible in public schools. Today's holding does not foreclose teaching *about* the Holy Scriptures or about comparative religion in literature or history. <u>Any attempt to use rigid limits upon the mere mention of God or references to the Bible would be fraught with dangers</u>**.

D. **Activities which, although religious in origin, have ceased to have religious meaning.** Blue Laws. "In God We Trust." The reference to divinity in the pledge of allegiance may simply recognize the historical fact that our Nation was believed to have been founded "under God." The pledge may be no more of a religious exercise than the reading of Lincoln's Gettysburg Address which contains illusion to the same historical fact.

Goldberg/Harlan concurrence: Teaching *about* religion is ok...the teaching *of* religion is not.

Dissent: Justice Stewart...There is a substantial free exercise claim for those who affirmatively desire to have their children's school day open with the reading of the Bible. Yes, under *Pierce*[2], parents are free to send their kids to a religious school. But, under *Murdock*[3] we learn that "freedom of speech, freedom of the press and freedom of religion are available to all, not merely those who can pay their own way." The majority places religion in an artificial and state-created disadvantage. Permission for such exercises is necessary if schools are to be truly neutral in matters of religion. What our Constitution protects is the freedom of each of us (Jew, Catholic, Baptist, Buddhist) to believe or disbelieve, worship or not, pray or keep silent, according to his own conscience. It is conceivable these school boards would find it impossible to administer a system of religious exercises that are completely free of official coercion for dissenters. But I think we must not assume that school boards so lack the qualities of inventiveness and good will as to make impossible the achievement of that goal.

[2]Case 1A-R-005 on this website.

[3]Case 1A-R-017 on this website.

How about *Zorach* public expenditures, Justice Douglas? The result is not criticized, just the reasoning of Douglas; that is, unless he would now agree (but for his demise) that, given his subsequent penchant for criticizing even one penny spent on religion, his opinion in *Zorach* should be overruled, at least on that basis. Also, look at the religious activities Brennan approves of in his concurrence. All of this is *dicta* because it has nothing to do with the facts of the case before the Court, but please correct your fellow citizens when they have the misguided concept that our Supreme Court is "anti-everything-religious-in-nature." As said when we began, criticize all you want, **but at least be knowledgeable of what you choose to condemn!** By now, you may agree that the Supreme Court is surely deserving of praise in preserving guaranteed freedoms that legislators sometimes trample and, on occasion, they perhaps get it wrong or, if not wrong, fail to find a way to honestly justify an otherwise correct result. But, **let no one be guilty of misquoting what they have done**.