WALZ v. TAX COMMISSION
SUPREME COURT OF THE UNITED STATES
397 U.S. 664
May 4, 1970
[8 - 1]

How about a real estate tax exemption for "religion"?
"Ad valorem": literally, "according to value."
An *ad valorem* tax is assessed based upon the value of the property being taxed.
"De minimis": the law does not concern itself with trifles.

OPINION: Chief Justice Burger...Appellant, owner of real estate in Richmond County, New York, sought an injunction in the New York courts to prevent the New York City Tax Commission from granting **property tax exemptions to religious organizations** for religious properties used solely for religious worship. The exemption...is authorized by...the New York Constitution, which provides...:

> "Real property owned by a corporation or association organized exclusively for the moral or mental improvement of men and women, or for **religious**, **bible**, **tract**, charitable, benevolent, **missionary**, hospital, infirmary, educational, public playground, scientific, literary, bar association, medical society, library, patriotic, historical or cemetery purposes...and used exclusively for carrying out thereupon one or more of such purposes...shall be exempt from taxation as provided in this section."

The essence of appellant's contention was that the...grant of an exemption to church property indirectly requires the appellant to make a contribution to religious bodies and thereby violates provisions prohibiting establishment of religion under the 1st Amendment which under the 14th Amendment is binding on the States...[The lower courts upheld the exemption.] We...affirm.

...**The Court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other**. For example, in *Zorach v. Clauson*[1], Justice Douglas, writing for the Court, noted:

> "**The 1st Amendment, however, does not say that in every and all respects there shall be a separation of Church and State**...We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma."

...The course of constitutional neutrality in this area cannot be an absolutely straight line; rigidity could well defeat the basic purpose of these provisions, which is to insure that no religion be sponsored or favored, none commanded, and none inhibited. **The general principle deducible from the 1st Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference...**

Adherents of particular faiths and individual churches frequently take strong positions on public issues...Of course, churches as much as secular bodies and private citizens have that right. No perfect or absolute separation is really possible; the very existence of the Religion Clauses is an involvement of sorts -- one that seeks to mark boundaries to avoid excessive entanglement.

The hazards of placing too much weight on a few words or phrases of the Court is abundantly illustrated within the pages of the Court's opinion in *Everson*[2]. Justice Black, writing for the Court's majority, said the 1st Amendment "means at least this: Neither a state nor the Federal Government can...pass laws which aid one religion, aid all religions, or prefer one religion over another."

Yet he had no difficulty in holding that:

> "Measured by these standards, we cannot say that the 1st Amendment prohibits New Jersey from spending tax-raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools. It is undoubtedly true that children are helped to get to church schools. There is even a possibility that some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of

---

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

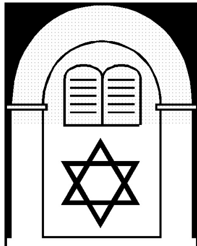
[2]Case 1A-R-022 on this website.

their own pockets..."

The Court did not regard such "aid" to schools teaching a particular religious faith as any more a violation of the Establishment Clause than providing "state-paid policemen, detailed to protect children...[at the schools] from the very real hazards of traffic..."

Mr. Justice Jackson, in perplexed dissent in *Everson*, noted that "the undertones of the opinion, advocating complete and uncompromising separation...seem utterly discordant with its conclusion..."

Perhaps so. One can sympathize with Mr. Justice Jackson's logical analysis but agree with the Court's eminently sensible and realistic application of the language of the Establishment Clause. In *Everson* the Court declined to construe the Religion Clauses with a literalness that would undermine the ultimate constitutional objective as illuminated by history. Surely, bus transportation and police protection to pupils who receive religious instruction "aid" that particular religion to maintain schools that plainly tend to assure future adherents to a particular faith by having control of their total education at an early age. No religious body that maintains schools would deny this as an affirmative if not dominant policy of church schools. But if as in *Everson* buses can be provided to carry and policemen to protect church school pupils, we fail to see how a broader range of police and fire protection given equally to all churches, along with nonprofit hospitals, art galleries, and libraries receiving the same tax exemption, is different for purposes of the Religion Clauses.



Similarly, making textbooks available to pupils in parochial schools in common with public schools was surely an "aid" to the sponsoring churches because it relieved those churches of an enormous aggregate cost for those books. Supplying of costly teaching materials was not seen either as manifesting a legislative purpose to aid or as having a primary effect of aid contravening the 1st Amendment. *Board v. Allen.*[3] In so holding the Court was heeding both its own prior decisions and our religious tradition. Justice Douglas, in *Zorach v. Clauson,* after recalling that we "are a religious people whose institutions presuppose a Supreme Being," went on to say: "We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary...When the state encourages religious instruction...it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs."

With all the risks inherent in programs that bring about administrative relationships between public education bodies and church-sponsored schools, we have been able to chart a course that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion. **This is a "tight rope" and one we have successfully traversed.**

[3]Case 1A-R-037 on this website.

The legislative purpose of the property tax exemption is neither the advancement nor the inhibition of religion; it is neither sponsorship nor hostility. New York, in common with the other States, has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its "moral or mental improvement," should not be inhibited in their activities by property taxation or the hazard of loss of those properties for nonpayment of taxes. It has not singled out one particular church or religious group or even churches as such; rather, it has granted exemption to all houses of religious worship within a broad class of property owned by nonprofit, quasi-public corporations which include hospitals, libraries, playgrounds, scientific, professional, historical, and patriotic groups. The State has an affirmative policy that considers these groups as beneficial and stabilizing influences in community life and finds this classification useful, desirable, and in the public interest. Qualification for tax exemption is not perpetual or immutable; some tax-exempt groups lose that status when their activities take them outside the classification and new entities can come into being and qualify for exemption.

Governments have not always been tolerant of religious activity, and hostility toward religion has taken many shapes and forms -- economic, political, and sometimes harshly oppressive. Grants of exemption historically reflect the concern of authors of constitutions and statutes as to the latent dangers inherent in the imposition of property taxes; exemption constitutes a reasonable and balanced attempt to guard against those dangers. **The limits of permissible state accommodation to religion are by no means co-extensive with the noninterference mandated by the Free Exercise Clause. To equate the two would be to deny a national heritage with roots in the Revolution itself. We cannot read New York's statute as attempting to establish religion; it is simply sparing the exercise of religion from the burden of property taxation levied on private profit institutions...**

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. The test is inescapably one of degree.** Either course, taxation of churches or exemption, occasions some degree of involvement with religion. Elimination of exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes.

Granting tax exemptions to churches necessarily operates to afford an indirect economic benefit and also gives rise to some, but yet a lesser, involvement than taxing them. In analyzing either alternative the questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement...

The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state. No one

has ever suggested that tax exemption has converted libraries, art galleries, or hospitals into arms of the state or put employees "on the public payroll." There is no genuine nexus between tax exemption and establishment of religion...The exemption creates only a minimal and remote involvement between church and state and far less than taxation of churches. It restricts the fiscal relationship between church and state, and tends to complement and reinforce the desired separation insulating each from the other...

All of the 50 States provide for tax exemption of places of worship, most of them doing so by constitutional guarantees. For so long as federal income taxes have had any potential impact on churches -- over 75 years -- religious organizations have been expressly exempt from the tax. Such treatment is an "aid" to churches no more and no less in principle than the real estate tax exemption granted by States. Few concepts are more deeply embedded in the fabric of our national life, beginning with pre-Revolutionary colonial times, than for the government to exercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference.

It is significant that Congress, from its earliest days, has viewed the Religion Clauses of the Constitution as authorizing statutory real estate tax exemption to religious bodies...It is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it. Yet an unbroken practice of according the exemption to churches...is not something to be lightly cast aside...

Nothing in this national attitude toward religious tolerance and two centuries of uninterrupted freedom from taxation has given the remotest sign of leading to an established church or religion and on the contrary it has operated affirmatively to help guarantee the free exercise of all forms of religious belief. Thus, it is hardly useful to suggest that tax exemption is...the "nose of the camel in the tent" leading to an established church. If tax exemption can be seen as this first step toward "establishment" of religion, as Justice Douglas fears, the second step has been long in coming... Judgment Affirmed...

DISSENT: Justice Douglas...Petitioner is the owner of real property in New York and is a Christian. But he is not a member of any of the religious organizations, "rejecting them as hostile."...The question in the case therefore is whether believers -- organized in church groups -- can be made exempt from real estate taxes, merely because they are believers, while nonbelievers, whether organized or not, must pay the real estate taxes. My Brother Harlan says he "would suppose" that the tax exemption extends to "groups whose avowed tenets may be antitheological, atheistic, or agnostic." If it does, then the line between believers and nonbelievers has not been drawn. But, with all respect, there is not even a suggestion in the present record that the statute covers property used exclusively by organizations for "antitheological purposes," "atheistic purposes," or "agnostic purposes."

In *Torcaso v. Watkins*[4], we held that a State could not bar an atheist from public office...Neither the State nor the Federal Government, we said, "can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." That principle should govern this case. There is a line between what a State may do in encouraging "religious" activities, *Zorach v. Clauson,* and what a State may not do by using its resources to promote "religious" activities, *McCollum v. Board of Education*[5], or bestowing benefits because of them. Yet that line may not always be clear. Closing public schools on Sunday is in the former category; subsidizing churches, in my view, is in the latter. Indeed I would suppose that in common understanding one of the best ways to "establish" one or more religions is to subsidize them, which a tax exemption does. The State may not do that any more than it may prefer "those who believe in no religion over those who do believe." *Zorach v. Clauson.*

...With all due respect the governing principle is not controlled by *Everson v. Board of Education. Everson* involved the use of public funds to bus children to parochial as well as to public schools. Parochial schools teach religion; yet they are also educational institutions offering courses competitive with public schools. They prepare students for the professions and for activities in all walks of life. Education in the secular sense was combined with religious indoctrination at the parochial schools involved in *Everson*. Even so, the *Everson* decision was five to four and, though one of the five, I have since had grave doubts about it, because I have become convinced that grants to institutions teaching a sectarian creed violate the Establishment Clause. *Engel v. Vitale*[6].

This case, however, is quite different. Education is not involved. The financial support rendered here is to the church, the place of worship. **A tax exemption is a subsidy**. Is my Brother Brennan correct in saying that we would hold that state or federal grants to churches, say, to construct the edifice itself would be unconstitutional? What is the difference between that kind of subsidy and the present subsidy?...We should adhere to what we said in *Torcaso v. Watkins,* that neither a State nor the Federal Government "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."

Unless we adhere to that principle, we do not give full support either to the Free Exercise Clause or to the Establishment Clause...If believers are entitled to public financial support, so are nonbelievers. A believer and nonbeliever under the present law are treated differently because of the articles of their faith. Believers are doubtless comforted that the cause of religion is being fostered by this legislation. Yet one of the mandates of the 1st Amendment is to promote a viable, pluralistic society and to keep government neutral, not only between sects, but also between believers and nonbelievers.

---

[4]Case 1A-R-032 on this website.

[5]Case 1A-R-023 on this website.

[6]Case 1A-R-033 on this website.

The present involvement of government in religion may seem *de minimis*. But it is, I fear, a long step down the Establishment path. Perhaps I have been misinformed. But as I have read the Constitution and its philosophy, I gathered that independence was the price of liberty. I conclude that this tax exemption is unconstitutional.

One problem with the Douglas dissent is that, contrary to his assumption, the majority indicates the "National Atheists of America" would also be exempt. **The case represents a classic collision of "free exercise" with "establishment" and is likely correctly decided for two reasons.** First, religion is not the only type of organization that gets exempted...so do educational and non-religious charitable organizations. Second, isn't the potential for government/religious strife far greater if exemptions are not allowed? There is some entanglement to be sure with exemptions (for example, the fundamental issue of whether an organization is a "religion" at all), but probably far less so than by denying exemptions.