



Lemon v. Kurtzman (1971) - Chief Justice Burger - 8/1.

Issue: Rhode Island adopted a statute that pays teachers in nonpublic schools a supplement of **15% of their annual salary**. Pennsylvania adopted a statute that provides financial support to nonpublic schools via reimbursement of teacher's **salaries, textbooks and instructional material in secular subjects**. The District Court of Rhode Island found its statute to be unconstitutional while the District Court of Pennsylvania upheld its statute.

Held: Both statutes are unconstitutional. Rhode Island is affirmed...Pennsylvania is reversed.

Reasoning: In Rhode Island the teachers in the religious schools applying for the supplement must only use teaching materials used in public schools and must agree in writing not to teach a course in religion while receiving the salary supplement. In Pennsylvania, a school seeking reimbursement must maintain accounting procedures to identify the separate cost of secular educational materials and cannot get reimbursement for any subject matter that contains religious teaching.

To withstand constitutional muster, the statute must (1) have a secular legislative purpose, (2) its primary effect must be one that neither advances religion nor inhibits religion and (3) it must not foster excessive government entanglement with religion. Both statutes had a viable secular purpose; i.e., to enhance the quality of secular education for all schools covered by the compulsory education laws. But, the cumulative impact of both statutes involves **excessive entanglement. Unlike the *Allen*¹ case, teachers have a substantially different ideological character than books.** A continued comprehensive State surveillance will inevitably be required to ensure the restrictions are obeyed. This kind of State inspection is fraught with the sort of entanglement the Constitution forbids. Also, the potential for divisive political issues is high. Parochial schools came into existence because Protestant groups with political power were using the public schools to propagate

¹Case 1A-R-037 on this website.

their faith. The Catholics naturally rebelled. In the early 19th century, the contests between Protestants and Catholics often erupted into violence including the burning of Catholic churches. **We would be blind to reality 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.” Sophisticated attempts to avoid the Constitution are just as invalid as simple-minded ones.** Additionally, when a sectarian institution accepts state aid it becomes obligated under the Equal Protection Clause of the 14th Amendment not to discriminate in admissions policies and faculty selection.

So, Justice Black’s prediction in *Board v Allen* of the slippery slope did not come true. There **are** limits to state aid to religion.

