

1<sup>st</sup> - Court has ruled that the 1<sup>st</sup> Amend mandate that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof has been made wholly applicable to the states by the 14<sup>th</sup> Amend  
Cantwell 310/296, 303 (1940) *Murdock v. La* 319/105, 108 (1943); *Everson*  
v Bd. of Ed. 330/1, 5 (1947); *Zorach v. Clausen* 343/306, 309 (1952)  
*Torcaso v. Watkins* 367/488, 492 (1961) *Engel v. Vitale* 370/42,  
423, 430 (1962).

2<sup>nd</sup> Court has rejected that purpose of the establishment clause is one to forbid governmental preference of one religion over another *Ill.-In re M'Collum v. Board* 333/203, 211 (1968).

3<sup>rd</sup> Establishment clause bars certain governmental aids to religion even if impartially applied to all sects - *Everson*, 15,  
(*In Chamberlain v. Dade County* 143 So.2d 21, 24-25.)

*M'Collum*, 210-211; *McGraw v. Md* 366/420, 443 (1961)  
*Torcaso* 495

4. Establishment clause extends beyond the establishment of a ~~charter~~ state church *M'Collum* 213 *McGraw* 442

~~problems~~ Desirable course is to frame a principle grounded in history & language of 1<sup>st</sup> Amend but which is also capable of consistent application to relevant problems -  
accounting for those values now cherished in our <sup>Society</sup> ~~society~~

The Commonwealth of Pennsylvania by law, 24 P.S.

§ 15 - 1516, as amended P.L. 1918, December 17, 1959, [Supp. 1960] requires that "at least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian." The Schenck family, husband and wife and two minor children, contend that their rights under the 14<sup>th</sup> Amendment of the Constitution of the United States are, have been and will continue to be violated unless this statute be declared unconstitutional as an establishment of religion and a prohibiting of the free exercise thereof under the First Amendment to the Constitution of the United States.

They seek to enjoin the appellant school district, wherein the <sup>Schenck</sup> children attend school, and its officers and the Superintendent of Public Instruction of the Commonwealth from continuing to conduct such readings pursuant to the statute in the public schools of the district. A three judge statutory <sup>district</sup> court for the Eastern District of Pennsylvania has agreed that the statute is violation of the establishment ~~and free~~ clause of the First Amendment as carried over against the states by the due process clause of the Fourteenth Amendment. It has directed that appropriate injunctive relief issue. 177 F. Supp. 398 (1959); 184 F. Supp. 381 (1959); 195 F. Supp. 518 (1961); 201 F. Supp. 815 (1962). On appeal by the district, its officials and the Superintendent, ~~we noted~~ under 28 U.S.C.<sup>3</sup> 1253, we noted probable jurisdiction. (cite)

## I

Edward Harris Schenck and his wife Sidney, the parents of Roger Schenck, age 15 years and Donna Schenck,

age 12, are of the Unitarian faith and are members of the Unitarian Church in Germantown, Philadelphia, Pa., where they regularly attend services with Roger and Donna as well as their son,

Elroy. The latter was originally a party here but having graduated from appellant school <sup>had little</sup> was voluntarily dismissed from the action.

The other children attend the Abington Senior High School which is a public school operated by appellant district.

At the Abington Senior High School the requirements of the statute are recognized by conducting

On each school day at the Abington Senior High School between 8:15 and 8:30 A.M. while the pupils are attending their Home Rooms or Advisory Sections <sup>Opening Exercises are</sup> a program is conducted over the public address system going into each room in the building.

~~The program is conducted by the Radio and Television Work shop of the school under the instruction of a teacher. Selected students assemble in the workshop studios in the school building each morning and are directed to conduct the exercises over this intercommunication system.~~

~~The program over this intercommunication system is in charge of students composing the Radio and Television Workshop of the school and are under the supervision of a teacher. Selected students gather each morning in the Workshop studios in the school building and the exercises include readings by these students of ten verses of the Holy Bible over the system to each of the various rooms in the building. This is followed by the saying of the Lord's Prayer, likewise over the system, ~~but also~~ <sup>in the instance</sup> who wished to stand and join also followed in but also by the students in each room in unison in repeating the prayer.~~

The Exercises are closed with the flag salute and such pertinent student affairs announcements that are of interest to the students. Participation in the Opening Exercises, as directed by the Statute,

is voluntary.\* The student reading the verses from the Bible may select the passages read from any version he chooses. During the period in which the Exercises have been conducted the King James, ~~the~~ the Catholic Douay and the Revised standard versions of the Bible have been used, as well as the Jewish Holy Scriptures. There are no prefatory statements, no questions asked or solicited, no comments or explanations made and no interpretations ~~are~~ given<sup>at or during the Exercises.</sup> Nor is any instruction contemplated or carried on~~as~~ by any student required to participate. The students and parents are advised that the student need not be present during this period.

It appears that in the schools not having the intercommunication system the Bible reading and the recitation of the Lord's Prayer was conducted by the home room teacher who chose the text of the verses and read them herself or had <sup>9</sup> students do the same, in rotation or by volunteers. This was followed by a standing recitation by the class in unison of the Lord's Prayer <sup>together with a</sup> and a closing Pledge of Allegiance to the Flag and a closing announcement of routine ~~school~~ <sup>school</sup> announcements, items of interest.

## II

The Schenpps ~~contend~~ decided not to request, as was their right under the statute, that the children be excused from the Opening Exercises. Mr Schenpp testified that "The reading of the King James version of the Bible... was against our particular family religious beliefs." The price which would be exacted of having the children ~~totaled~~ labeled "odd balls" ~~was too much if they left the room~~ if they did not participate was too much. He contended that the classmates of the children would tend to equate their religious

difference with atheism which had popular connotations of un-Americanism and immorality. The inclusion of the Flag salute also gave rise to ~~dangerous~~ implications of disloyalty on the part of those not participating. He also pointed out that the morning announcements made during the exercises "are very important to a child" and should not be missed. In sum, he thought that leaving the room or remaining and not participating would set his children apart from their classmates and "would be very detrimental to the psychological well-being of <sup>our</sup> children".

The Schempps claimed that the exercises were a religious practice and were common, known as the "morning devotional".

The Schempps produced theological evidence <sup>in support of</sup> to support their claim. It consisted of expert testimony that there were marked differences between the Jewish Holy Scriptures and the Holy Bible, the most obvious of which is the absence of the New Testament in the former; that the concept of Jesus Christ as the Son of God was "practically blasphemous" to one of the Jewish faith; that portions of the New Testament were sectarian in nature and scorned the Jewish religious hierarchy; that the mere reading of passages of the New Testament as to the trial and crucifixion of Jesus, without explanation, would be psychologically harmful to a child of Jewish descent; and that there were significant differences with reference to the respective holy books of the Jewish and Christian religions.

It was also shown that while a King James version of the Bible ~~was~~ was purchased by the appellant district and a copy given to every teacher that no other versions were so purchased and circulated.

The State also produced theological testimony claiming that the King James version of the Holy Bible was not a sectarian work among the various Christian denominations, ~~nor~~ with some doubts as to the Catholic church.

The State contended that the exercises neither affected the Schenckers as taxpayers or interfered with their right to exercise freely their religion because there was no compulsion against them nor pecuniary loss. In addition it too produced theological testimony ~~to~~<sup>only</sup> to the effect that the New Bible and particularly the New Testament was not sectarian in so far as the Christian denominations concerned. It was also shown that the King James version of the Bible was circulated to each teacher in the District at the latter's expense.

Commonwealth

The State claimed that the practice of reading the Bible at the opening of each school day had existed in Pennsylvania for a century or more and had been codified <sup>into</sup> its Statutes since 1913. It contended that Bible reading was not a religious practice but merely a voluntary participation in readings, without comment, from a great work that possesses many values, including the religious, moral, literary and historical. It placed emphasis on the fact that no avowal of faith or acceptance of doctrine or belief was present which distinguished the exercises from religious acts where such avowals were included. Moreover, it argued that the exercises neither affected the Schencks as taxpayers or interfere with their right to exercise free, thus religion because there was no compulsion against them nor did they suffer pecuniary loss. They, therefore, had notwithstanding to sue. In addition the Commonwealth produced theological evidence to the effect that the Holy Bible and particularly the New Testament was not sectarian in so far as Christian denominations <sup>were</sup> concerned. It was also shown that the appellant district paid and circulated to each teacher a copy of the King James Version of the Bible.