2nd Draft

The Commonwealth of Pennsylvania by law, 24 P.S. § 15-1516, as amended P.L. 1928, 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 Schempp family, husband and wife and two minor children, contend that their rights under the Fourteenth 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 Schempp 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 district court for the Eastern District of Pennsylvania has agreed that the statute is violative of the establishment 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);

What about f.n. to procedural history, since we now remanded 364 US 298, in light of the amended laws (removing the mandatory requirement)?

* Quote 1st Amendment

Insert x
p 2

In 1905 the Board of School Commissioners of Baltimore City adopted a rule pursuant to Article 77 § 202 of the Annotated Code of Maryland. The rule provides for the holding of opening exercises in the schools of the city at which one chapter of the Bible "and/or" the recitation of the Lord's Prayer, both without comment, would be read. The rule was amended in 1960 to permit any objectors to be excused from attending the exercises. ~~The Murray family sought a rescission of the rule and their child was excused.~~ Mrs. Murray, one of the petitioners, requested and the respondent Board granted an excuse for her son, Wm. Murray III, from attending the exercises. Thereafter the petitioners, after exhausting administrative remedies, filed a complaint in the Superior Court seeking a mandamus commanding the Board to rescind the rule. A demurrer was sustained by that court without leave to amend. The Maryland Court of Appeals affirmed by a divided four to three decision of the justices. 228 Md. 239. We granted certiorari.

Petitioners contend that both the Establishment and the Free Exercise Clauses of the First Amendment are violated by the required rule of the Board. The state counters that the Bible reading is not in the form of religious instruction or service but is used as an inspirational appeal to inculcate moral and ethical precepts of value to the beginning of the school day; it contends that the use of the Bible sources is neither the composition nor the sanctioning of an "official prayer". As to the Free Exercise Clause they claim the right to be excused removes any coercion from the exercises; and finally the state says that the striking down of the exercise will foreclose the elimination in any form

of [that Church-State relation in which statistics and incidents innumerable facets of our public and private life. Since the similarity of the cases are so striking we have considered them, as at argument, together for disposition and the references in the opinion apply equally to each where relevant.

195 F. Supp. 518 (1961); 201 F. Support. 815 (1962). On appeal by the district, its officials and the Superintendent, under 28 U.S.C. § 1253, we noted probable jurisdiction.

I

Edward Lewis Schempp and his wife Sidney, the parents of Roger Schempp, age 15 years, and Donna Schempp, age 12, are of the Unitarian faith and are members of the Unitarian Church in Germantown, Philadelphia, Pennsylvania, where they regularly attend religious services with Roger and Donna, as well as their son, Ellary. The latter was originally a party here but having graduated from appellant school pendente lite was voluntarily dismissed from the action. The other children attend the Abington Senior High School which is a public school operated by appellant district.

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, Opening Exercises are conducted over the public address system going into each of those rooms in the school building. ~~The~~ P programs over this intercommunications system ~~is in charge of~~ are conducted by students attending ~~composing~~ the school's Radio and Television Workshop ~~of the school~~ and are under the supervision of a teacher. Selected students from this course gather each morning in the school's Workshop Studio ~~in the school building and~~ FOR the exercises which include readings by ~~those~~ ONE OF THE students of ten verses of

the Holy Bible broadcast ~~over the system~~ to each of the various rooms in the building. This is followed by the recitation ~~saying~~ of the Lord's Prayer, likewise over the intercommunications system, but also ~~in this instance~~ by the students IN THE VARIOUS CLASSROOMS who are asked to stand and join ~~in unison~~ in repeating the prayer in unison. The exercises are closed with the flag salute and such pertinent student affair announcements as ~~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 and read from any version he chooses. During the period in which the exercises have been conducted the King James, the Catholic Douay and the Revised Standard versions of the Bible have been used, (A copy of the King James version was circulated to each teacher by the school district.) 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 given at or during the exercises. Nor is any instruction contemplated or carried on or any student required to participate. The students and parents are advised that the student MAY absent himself from ~~need not be present during~~ the classroom or, should he elect to remain, not participate in the exercises, ~~this period.~~

It appears that in ~~the~~ schools not having the intercommunications system the Bible reading and the recitation of the Lord's Prayer ~~was~~ were conducted by the home room teacher who chose the text of the verses and read them herself or had 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 together with the Pledge of Allegiance to the flag and a closing announcement of routine school items of interest.

* The statute ~~has~~ imposes no penalty upon a teacher refusing to obey its mandate. However, one refusing may have his contract of employment terminated pursuant to Pennsylvania law (24 P.S. §11-1122, Supp 1960).

This is in lieu of pp 4-5-6 in typed copy

No fns

The trial court characterized the expert testimony as follows: copy R. 182 & 183

The trial Court also found that "Edward Schempp (copy p. 231)-

The trial court concluded: "The attendance by the minor plaintiffs, Roger and Donna Schempp, at the Abington Senior High School is compulsory. See §13-1327 (Supp. 1960) The reading of ten verses of the Holy Bible under the [present] statute ~~is also compulsory~~ also is compelled by law. The reading of the verses, even without comment, possesses a [devotional and] religious character and constitutes in effect a religious observance. The devotional and religious nature of the morning exercises is made all the more apparent by the fact that the Bible reading is followed immediately by a recital in unison by the pupils of the Lord's Prayer. The fact that some pupils, or theoretically all pupils, might be excused from attendance at the exercises does not mitigate the obligatory nature of the ceremony for ... Section 1516 ... unequivocally requires exercises to be held every school day in every school in the Commonwealth. The exercises are held in the school buildings and purposes are conducted by and under the authority of the local school authorities and during school sessions. Since the statute requires the reading of the "Holy Bible", a Christian document, the practice ... prefers the Christian religion. The record demonstrates that it was the intention of the Commonwealth to introduce a religious ceremony into the public schools of the Commonwealth."

manifested in our military forces where those of our citizens who are under the restrictions of military service are afforded avenues of voluntary worship. Indeed, only last year an official survey of the country indicated that 64% of our people have church membership, Bureau of Census, U.S. Department of Commerce, Statistical Abstract of the United States, 48 (83rd Ed. 1962), while less than 3% profess no religion whatever. Id. at p. 46. It can be truly said, therefore, that today as in the beginning, our national life reflects a religious people who, as Madison said, are "earnestly praying, as . . . in duty bound, that the Supreme Lawgiver of the Universe . . . guide them into every measure which may be worthy of his blessing . . ." Memorial and Remonstrance Against Religious Assessments. See Appendix Everson v Board of Education 330 US 1, —.

This is not to say, however, that religion has been so identified with our history and government that its handmaiden freedom ~~of religion~~ is not likewise as strongly imbedded in our public and private life. Nothing but the most telling of personal experiences in religious persecution suffered by our forebears, see Everson v. Board of Education, supra, at pp. 508-510, could have planted our belief in

liberty of religious opinion any more deeply in our heritage. It is true that this liberty frequently was not realized by the colonists but this is readily accountable to their close ties to the Mother country.*

However, the views of Roger Williams came to be incorporated not only in our own Constitution but likewise in the Federal forty-nine of those of our States:

> "There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or human combination, or society. It hath fallen out sometimes, that both Papists and Protestants, Jews and Turks, may be embarked in one ship; upon which supposal, I affirm that all the liberty of conscience I ever pleaded for, turns upon these two things, that none of the Papists, Protestants, Jews, or Turks be forced to come to the ship's prayers or worship, nor compelled from their own particular prayers or worship, if they practice any."

This was freedom to worship was indispensable in a country whose people came from the four quarters of the earth and brought with them a diversity of religious opinion. Today authorities list 256 separate and substantial religious bodies existing among our people. (cite?) FF in Eisenhower McCollum Library could find reference

Almost a hundred years ago in John D. Minor, et al. v. The Board of Education of the City of Cincinnati, Judge Alphonzo

Taft, father of the revered Chief Justice, in an unpublished opinion stated the ideal of our people as to religious freedom in this language:

> "The ideal is absolute equality under the law of all religious opinions and sects . . . . The government is neutral, and, while protecting all, it prefers none, and it disparages none. The State while it does not profess to be Christian, exercises a truly Christian charity toward all. Its impartial charity extends to all kinds of Protestants, Roman Catholics, Jews and Rationalists alike, and covers them with its mantle of protection and encouragement; and no one of them, however numberous, can boast of peculiar favor with the state."

II

Before examining this "neutral" position in which the Establishment and Free Exercise Clauses of the First Amendment places our government it is well that we discuss the reach of the Amendment under the cases of this Court. ~~clarify the field in so far as presently settled and accepted legal propositions are concerned~~.

First, ~~that~~ this Court has decisively settled that the first Amendment's 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 Fourteenth Amendment. Twenty-three years ago in Cantwell v. Connecticut,

310 U.S. 296 (1940) this Court, through Mr. Justice Roberts, said:

> "The fundamental concept of liberty embodied in that [Fourteenth Amendment] embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetant as Congress to enact such laws . . . ." *

In a series of cases since Cantwell the Court has repeatedly reaffirmed that doctrine, and we do so now. Murdock v. Pennsylvania, 319 U.S. 105, 108 (1943); Everson v. Board of Education, 330 U.S. 1, 5 (1947); Illinois ex rel McCollum v. Board of Education, 333 U.S. 203, 210-11 (1948); Zorach v. Clauson, 343 U.S. 306, 309 (1952); McGOWAN v MARYLAND, 366 US 420 (1961); Torcaso v. Watkins, 367 U.S. 488 (1961); Engel v. Vitale, 370 U.S. 421, 423, 430 (1962).

Second, ~~that~~ this Court has rejected unequivocally, ~~indeed unanimously,~~ the contention that the establishment clause only forbids governmental preference of one religion over another.

Almost twenty years ago in Everson v. Board of Education, 330 U.S. 1 (1947), the Court said:

> "Neither a state nor the Federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another . . . ." At 511.

And Mr. Justice Jackson, dissenting, agreed:

> "There is no answer to the proposition . . . that the effect of the religious freedom Amendment to our Constitution was to take every form of propogation of religion out of the realm of things which directly or indirectly be made public business and thereby be supported in whole or in part at the taxpayers expense . . . This freedom was first in the Bill of Rights because it was first in the forefather's minds; it was set forth in absolute terms and its strength is its rigidity." At pp. 516-17.

And Mr. Justice Rutledge, joined by Mx. Justices Frankfurter, Jackson and Burton, declared:

> "The [First] Amendment's purpose was not to strike evenly at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the Colonies. Necessarily it was to uproot all such relationships . . . . It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion." At p. 519.

The same conclusion has been firmly maintained ever since that time and we reaffirm it now. See Illinois ex rel McCollum, supra, at pp. 210-11; McGowan v. Maryland, 366 U.S. 420, 442-43 (1961);

Torcaso v. Watkins, supra, at pp. 492-93; 495.

While none of the parties to either this action or its companion case, Wm. J. Murray, III, et al. v. John N. Curlett, et al., No. 119, have even questioned these basic conclusions of the Court, both of which have been long established, recognized and consistently reaffirmed, others continue to question their history, logic and efficacy. Such contentions in the light of the cases of this Court are not only entirely untenable but are purely frivolous and have value only to academicians.

The ~~meaning of~~ interrelation of the Establishment and the Free Exercise clauses was first touched upon by Mr Justice Roberts for the Court in Cantwell v. Connecticut, supra, a free exercise case, where Mr. Justice ~~first held that "the fundamental concept of liberty" embodied in the 14th Amendment "embraces the liberties guaranteed by the First Amendment." He then went on to point out that the constitutional~~ in Cantwell v Connecticutt, supra, where it was said that their ~~clauses~~ "inhibition of legislation" had a "double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts -- freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be .... The freedom to act must have appropriate definition to preserve the enforcement of that protection ... a state may by general and nondiscriminatory legislation regulate the times, the places and the manner of ... holding meetings ..., and may in other respects safeguard the peace, good order and comfort of the community, without

unconstitutionally invading the liberties protected by the Fourteenth Amendment."

A half dozen years later in Everson v. Board of Education, supra, this Court, through Mr. Justice Black, held that the First Amendment's Establishment and Free Exercise clause "had the same objective and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute." [Bill for Religious Liberty]. This objective was to relieve the people of "all attempts to influence it [the mind] by temporal punishment, or burthens or by civil incapacitations..." The statute itself provided that "no man shall be compelled to frequent or support any religious worship or ministry whatsoever... or otherwise suffer on account of his religious opinions or belief..." The Court found that the "meaning and scope of the First Amendment ... was designed forever to suppress" the establishment of religion or prohibiting the free exercise thereof. It borrowed and approved the holding of the Court of Appeals of South Carolina in Watson v. Jones, 13 Wall. 679, at p. 730 (1871)*/, declaring: "The structure of our government has, for the preservation of civil liberty, rescued the temporal

*/ Citing Harmon v. Dreher, 2 Speer's Equity, 87 (1843).

Note: Library says only one Vol Speer's Equity
so citation in 13 Wall. wrong.

institutions from religious interference. On the other hand, it has secured religious liberty from the invasions of the civil authority."

In short, the Court held ~~that the First Amendment's Establishment and Free Exercise clause~~ THAT THE Amendment

> "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions, than it is to favor them."

And Mr. Justice Jackson, in dissent, declared that ~~as~~ public schools are organized

> "on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion. The assumption is that after the individual has been instructed in worldy wisdom he will be better fitted to choose his religion." At p. 515.

And all of the four dissenters speaking through Mr. Justice Rutledge said:

> "Our constitutional policy ... does not deny the value or necessity for religious training, teaching or observance. Rather it secures their free exercise. But to that end it does

> deny that the state can undertake or sustain them in any form or degree. For this reason the sphere of religious activity, as distinquished from the secular intellectual liberties, has been given the two-fold protection, and, as the state cannot forbid, neither can it perform or aid in performing the religious function ... [at p. 529] it is only by observing the prohibition rigidly that the state can maintain its neutrality and avoid partisanship in the dissentions inevitable when sect opposes sect over demands ... to further religious education, teaching or training in any form or degree, directly or indirectly."
> At pp. 532-533.

Only two years later the Court was asked to reconsider and repudiate the doctrine of these cases in McCollum v. Board of Education, supra. It was argued that "historically the First Amendment was intended to forbid only government preference of one religion over another .. [and] they ask that we distinguish or overrule ~~ours~~ our holding in the Everson case that the Fourteenth Amendment made the 'establishment of religion' clause of the First Amendment applicable as a prohibition against the States ..." The Court, with Mr. Justice Reed alone dissenting, was unable to "accept either of these contentions." At p. 211. Mr. Justice Frankfurter joined by Justices Jackson, Rutledge

and Burton wrote a very comprehensive and scholarly concurrence in which he said:

> "Separation is a requirement to abstain from fusing functions of government and religious sects, not merely to treat them all equally [At 227] ... the Constitution ... prohibited the government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages." At 228.

In 1952 in Zorach v. Clauson, supra, Mr. Justice Douglas for the Court reiterated:

> "There can not be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the 'free exercise' of religion and an 'establishment' of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter." At p. .

And Mr. Justice Black in dissenting placed his reliance on the fact that the machinery of New York's released time program channelled children into "sectarian classes." In his view this was an entering by the state into the forbidden field where "the question is not whether it has entered too far but whether it has entered at all." At p. , and was, therefore, an abandonment of "neutrality" on the part of the state. Mr. Justice Frankfurter dissented only on the ground that " it is a strange procedure indeed not to permit the facts to be established" with regard to coercion when the basis of the opinion of the Court was that the presence of coercion would present a wholly different case. But what is significant is that Mr. Justice Frankfurter noted that "Happily" the "principles that received unanimous acceptance by this Court barring only a single vote" in McCollum " are not disavowed by the Court." At pp . Mr. Justice Jackson's dissent likewise was based on the McCollum criteria.

And then in 1961 in Torcaso v. Watkins, supra, each of these cases was discussed and approved. Mr. Justice Black for the Court, without dissent but with Justices Frankfurter and Harlan concurring in the result used

for a unanimous court on the point,

Chief Justice Warren in McGowan | said :-

"But the First Amendment, in its final form, did not simply bar a congressional enactment establishing a church; it forbade all laws respecting an establishment of religion. Thus, this Court has given the Amendment a "broad interpretation", in the light of its history and evils it was designed forever to suppress..."

this language:

> "We repeat and again reaffirm that neither a State nor the Federal government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither 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 the religions founded on different beliefs."

And finally in Engel v. Vitale, supra, only last year, these principles were ~~re-affirmed but~~ so universally recognized that the Court without the ~~single~~ citation of a single case ~~any~~ case and over the ~~single~~ sole dissent of Mr. Justice Stewart. reaffirmed them. The Court found the twenty-two word prayer used in "New York's program of daily classroom invocation of God's blessings as prescribed in the Regents' prayer ... [to be] a religious activity." It held that "it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by the government." At pp and . In discussing the ~~teachings~~ reach of the Establishment and Free Exercise clauses of the First Amendment the Court said:

"Although these two clauses may in certain instances overlap, they forbid two quite different kinds of government encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct government compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce non-observing individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain."

Want your understanding added? NO

And in further ~~elaborating upon the Establishment Clause~~ elaboration [OF THE ESTABLISHMENT CLAUSE] the Court found that the "first and most immediate purpose rested on a belief that a union of government and religion tends to destroy government and to degrade religion." When government, the Court said, "allies" itself with one particular form of religion, the inevitable result..." is that it incurs "the hatred, disrespect and even contempt of those who held contrary beliefs."

IV

The wholesome "neutrality" of which this Court's cases speak thus recognizes the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the state or federal government would be placed behind the tenets of one or ~~all religious sects~~ OF ALL ORTHODOXIES. This the Establishment Clause prohibits. And in order to maintain and make more secure this perfect neutrality the Founders incorporated the Free Exercise Clause, recognizing "the value or necessity for religious training, teaching and observance" and more particularly the right of every person to freely choose his own course with reference thereto free of any compulsion from the state. This the Free Exercise Clause guarantees. While these two clauses may overlap they never collide, ~~for their mandate, As North~~

Carolina's court so well taught a century and a quarter ago, the Establishment Clause "secured the temporal institutions from religious interference" while the Free Exercise one "secured religious liberty from the invasions of the civil authority." Harrison v Dreher, supra.

As indicated supra the Establishment Clause has been directly considered by this Court eight times in the past score of years and in each instance, with only one justice dissenting on the point, it has held that the Clause withdrew from legislative power the making of religion as such, an object of legislation. And all during that time the Court has consistently adhered to the proposition that both the Congress and the states are prohibited from exerting any power respecting religious belief or the expression thereof. The test is a simple one, namely, what is the primary end of the enactment? If that end derives from the advancement of religion the enactment is beyond all legislative power. That is to say there must be a legitimate and substantial legislative purpose other than the religious one. Everson v Board of Education, supra; McGowan v Maryland, supra. The Free Exercise Clause, likewise considered many times here, withdraws from legislative power, state and federal, any restraint on the free exercise of religion. Its purpose was to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority. Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him (in the practice of his religion.) The distinction between the two clauses is apparent, the Establishment Clause need not be accompanied by coercion while the Free Exercise one must be so attended.

Applying the Establishment Clause principles to the case at bar we note that the state is requiring the selection and reading at the opening of the school day of ten verses of the Holy Bible and the recitation by the students in unison of the Lord's Prayer. This opening exercise is held in the public schools by students who are required by law to attend school

We cannot say that such a finding is clearly erroneous. Given that finding the exercise violates the Establishment Clause.

~~of which the~~ the required curriculum of which includes this program of devotionals. It is true that any child may absent himself from his classroom during this period OR remain there and not participate as he chooses provided request is so made by his parent or guardian. ~~It appears, as~~ The trial court has found, that such an opening exercise is a solely religious activity, ~~and~~ would seem afoul the First Amendment unless there is a substantial purpose therefor other than religious. We cannot say that such a finding is clearly erroneous.

The State contends, ~~that such a purpose is present in the provisions~~ in the program of "moral values," the contradiction to the "materialistic trends of our times," the promotion of the "perpetuation of our institutions" and the teaching of literature. ~~The state statute itself states is~~ In this connection the preamble of the statute itself states the purpose to be to foster "good moral training" and a "life of honorable thought." But this end is accomplished solely through the advancement of the Christian religion. The State also stresses the fact that a student may absent himself but this takes nothing from the inherent nature of the program i.e. its purely religious character. Such permission might well be relevant to a decision on the Free Exercise Clause where ~~coercion~~ state compulsion must be present. It has no bearing, however, on the Establishment Clause once it is found that the exercise is of a solely religious character without substantial secular purpose aside therefrom.

However, that the program is an effort to extend its benefits to all public school children without regard to their religious belief. Included within its secular purposes, it says, is the promotion

It is also insisted that in prohibiting this morning opening exercise "a religion of secularism" is established in the schools. We think not. ~~The~~ Certainly one's education is ~~certainly~~ not complete without a study of the history of religion, of its interrelation to the advancement of civilization and of comparative religion when not presented as the teaching of a specific ~~creed, religion.~~ ~~to the doctrines of the various denominations~~ This all of this can be accomplished without violation of the First Amendment. ~~What the legislatures~~ The legislatures were stripped of the power only to place

the weight of the state behind any one or all religious faiths not ~~the~~ an objective teaching about such doctrines. In prohibiting this opening exercise the state merely maintains that perfect neutrality of which we have spoken with regard to the propagation of religion and its principles. To say that the Free Exercise Clause collides with this is to pass from the sublime to the ridiculous. What liberty does the individual have to propagate his religious belief during a class period in a public school? Certainly the state has the power to regulate the times as well as the manner of use of public property, particularly so as not to interrupt the conduct of its educational system. It was Justice Holmes, no novice at the use of example to point up the frivolity of a constitutional claim, who disposed of such a contention by a reminder that liberty did not include the right to shout "fire, fire" in a crowded theater in which no ~~fire~~ flame was present.

Three hundred and twenty years ago it was Roger Williams who declared:-

> "God requireth not any uniformity of religion to be enacted and enforced in any civil state; which enforced uniformity (sooner or later) is the greatest occasion of civil war, ransacking of conscience, persecution of Jesus Christ in His servants, and of the hypocrisy and destruction of millions of souls." "The Bloody Tenent of Persecution," 1644.

Approved