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Constitutional Law - Separation of Church and State - Bible Reading in the Public Schools

Frederic F. Brace Jr.
University of Michigan Law School

CONSTITUTIONAL LAW—SEPARATION OF CHURCH AND STATE—BIBLE READING IN THE PUBLIC SCHOOLS—The plaintiff, as a citizen, taxpayer, and parent of school children, sought an injunction to restrain the defendant school board from allowing school teachers to read the Bible aloud to students as required by a Tennessee statute.[1] The plaintiff contended that this practice was offensive to him and in violation of the Tennessee[2] and United States[3] Constitutions. The trial court sustained defendant's demurrer. On appeal, *held,* affirmed. The statute violates neither constitution because it is not an interference with students' or parents' religious beliefs. *Carden v. Bland,* (Tenn. 1956) 288 S. W. (2d) 718.

In interpreting state constitutions, state courts rarely sustain objections to Bible reading in the public schools.[4] In essence these courts reason, as does the principal case, that young people ought to be taught not to forget God.[5] The state decisions usually assign some combination of the following reasons for this attitude: only sectarianism or preference

[1] Tenn. Code Ann. (Williams, 1934) §2343. "It shall be the duty of the teacher: . . . (4) To read, or cause to be read, at the opening of the school every day, a selection from the Bible and the same selection shall not be read more than twice a month."

[2] TENN. CONST., art. 1, §3: "That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister, against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship."

[3] U.S. CONST., Amend. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." U.S. CONST., Amend. XIV: ". . . nor shall any State deprive any person of . . . liberty . . . without due process of law. . . ."

[4] See Keesecker, "Legal Status of Bible Reading and Religious Instruction in the Public Schools," United States Office of Education Bulletin, No. 14 (1930), in which the leading cases are abstracted and discussed. *Contra:* Finger v. Weedman, 55 S.D. 343, 226 N.W. 348 (1929); State ex rel. Weiss v. District Board, 76 Wis. 177 (1890); People ex rel. Ring v. Board of Education, 245 Ill. 334, 92 N.E. 251 (1910); Miller v. Cooper, 56 N.M. 355, 244 P. (2d) 520 (1952); Herold v. Parish Board, 136 La. 1034, 68 S. 116 (1915).

[5] Principal case at 725.

for a particular sect is forbidden, and the Bible is non-sectarian;[6] the public welfare requires moral training, and the Bible is a good moral textbook;[7] Bible reading does not make the school a place of worship or a seminary which the state has established or taxpayers are compelled to support;[8] if Bible reading does convert the school into a place of worship, it does not increase the citizen's tax burden;[9] it is a policy question exclusively for the legislature;[10] it is a question within the proper discretion of the school board;[11] if the state allows children to be excused on their parents' request, they are not compelled to attend a place of worship.[12] The Tennessee court's interpretation of the Tennessee Constitution is, therefore, well in line with the current of state authority, but its interpretation of the United States Constitution seems open to question.

The First Amendment, which has been transmitted as a limitation on the powers of state governments through the due process clause of the Fourteenth Amendment,[13] is double-barrelled: a state can neither establish a religion nor prohibit the free exercise thereof. At times it seems impossible to obey one mandate without infringing the other, as in the case of public transportation for parochial students,[14] but the principal case seems to stand directly in the line of fire of both barrels. As to the non-prohibition clause, which has been fairly well defined in the many cases involving Jehovah's Witnesses,[15] it would seem that compulsory Bible reading interferes with the religious liberty of one whose church forbids Bible reading without doctrinal interpretation,[16] fully as much as does a compulsory flag salute with that of a Jehovah's Witness, whose church forbids saluting the American flag, as equivalent to the worship of idols.[17] As to the non-establishment clause, which has been less litigated

6 Tudor v. Board of Education, 14 N.J. 31, 100 A. (2d) 857 (1953); Doremus v. Board of Education, 5 N.J. 435, 75 A. (2d) 880 (1950). *Contra,* McCollum v. Board of Education, 333 U.S. 203 (1948).

7 Hart v. Sharpsville Borough School District, 2 Lanc. (Pa.) 346 (1885).

8 People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927).

9 Moore v. Monroe, 64 Iowa 367, 20 N.W. 475 (1884).

10 Kaplan v. Independent School District, 171 Minn. 142, 214 N.W. 18 (1927). *Contra,* "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by courts." West Virginia State Board of Education v. Barnette, 319 U.S. 624 at 638 (1942).

11 Donahoe v. Richards, 38 Me. 379 (1854).

12 Moore v. Monroe, note 9 supra.

13 West Virginia State Board of Education v. Barnette, note 10 supra; Cantwell v. Connecticut, 310 U.S. 296 (1940).

14 The dilemma: Is it an establishment of religion to pay Catholic students' bus fare to a parochial school, or would it be restricting their religious liberty not to pay their bus fare? The Supreme Court has held that paying the bus fare of Catholic students was not an establishment of religion because it was in the interests of the public welfare. Four justices dissented. Everson v. Board of Education, 330 U.S. 1 (1947).

15 Cantwell v. Connecticut, note 13 supra.

16 Donahoe v. Richards, note 11 supra.

17 West Virginia State Board of Education v. Barnette, note 10 supra. But see Frankfurter's dissent in that case.

and is consequently of less certain meaning, it seems that the statute in the principal case is far on the unconstitutional side of the line drawn in recent United States Supreme Court decisions,[18] however fuzzy that line may be. At the minimum these cases held that religious instruction by private teachers during school hours violated the Fourteenth Amendment when it involved the use of state compulsory school attendance machinery, tax-supported classrooms, and close cooperation between church and school officials. The principal case not only involved direct official compulsion, without the alternative of non-attendance, and the use of tax-supported classrooms, but also Bible reading by state-paid teachers. There is a general limitation on the doctrine requiring separation of church and state, however, which permits certain public activities which indirectly benefit a particular church group, when those activities are in the interest of public welfare.[19] To uphold the Tennessee statute as moral training for the public welfare would be a considerable extension of this doctrine. If a statute such as the one in the principal case were brought before the Supreme Court and held unconstitutional, it would be necessary for the Court to draw another line: To what extent will the Bible be permitted in the public schools for purposes of cultural instruction? This line-drawing process is inevitable since the Court has taken upon itself the determination of what is God's and what is Caesar's.

Frederic F. Brace, Jr.

[18] McCollum v. Board of Education, note 6 supra; Zorach v. Clauson, 343 U.S. 306 (1952). Note also the Court's indication of its intention to scrutinize more closely its jurisdiction in this class of cases. Doremus v. Board of Education, 342 U.S. 429 (1952). These cases might indicate a trend allowing more leeway to the states in such matters.

[19] Everson v. Board of Education, note 14 supra, at 18 where public transportation for parochial students was held valid as "a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools."