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Constitutional Law: Religious Practices in Public Schools

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CASE COMMENTS

CONSTITUTIONAL LAW: RELIGIOUS PRACTICES IN PUBLIC SCHOOLS

Chamberlin v. Dade County Board of Public Instruction, 160 So. 2d 97 (Fla. 1964), *rev'd in part per curiam*, 84 Sup. Ct. 1272 (1964)

Plaintiffs, parents of school children, brought an action against the Dade County Board of Public Instruction seeking to enjoin a variety of alleged unconstitutional religious practices. The trial court denied relief[1] and an appeal was taken to the Supreme Court of Florida, which affirmed the trial court.[2] Plaintiff then appealed to the Supreme Court of the United States, alleging the following five activities to be unconstitutional as practiced in Dade County public schools:

(1) Bible readings, pursuant to Florida Statutes, section 231.09 (2);[3]
(2) recitation of religious prayers;
(3) religious baccalaureate programs;
(4) religious census among students;
(5) religious tests for teachers.[4]

The United States Supreme Court vacated the judgment and remanded the case for further consideration in light of *School District v. Schempp*,[5] decided by the Court the same day. On remand the Supreme Court of Florida HELD, the Bible readings and prayer recitations constitutional because of the manifest secular intent of the Florida Legislature in enacting section 231.09 (2), and that the plaintiffs had no standing to sue on the baccalaureate, census, and religious test issues. The Florida Supreme Court reasoned that plaintiffs lacked standing on the three latter issues because neither plaintiffs nor their children were school teachers, nor had they been subjected to a religious census or attended schools conducting religious baccalaureate programs. This decision was again appealed to the

1. The trial court enjoined the showing of religious motion pictures, holding of religious holiday pageants, and the permanent use of school property by religious organizations, 17 Fla. Supp. 183 (Cir. Ct. 1961). *Cf.* Southside Estates Baptist Church v. Board of Trustees, 115 So. 2d 697 (Fla. 1959) (temporary use of school property by religious organization not unconstitutional).

2. 143 So. 2d 21 (Fla. 1962).

3. FLA. STAT. §231.09 (2) (1963) provides, "BIBLE READING. — Have, once every school day, reading in the presence of the pupils from the Holy Bible, without sectarian comment."

4. Chamberlin v. Dade County Bd. of Pub. Instruction, 160 So. 2d 97, 98 (Fla. 1964).

5. 374 U.S. 203 (1963).

United States Supreme Court, which reversed[6] the Bible reading and prayer issues on the basis of *School District v. Schempp*. The Court, however, agreed with the Florida court in part by dismissing the baccalaureate, census, and religious test issues for lack of a properly presented federal question in that plaintiffs had not been affected by the alleged unconstitutional practices.[7]

The United States Supreme Court stated that *School District v. Schempp*, decided jointly with *Murray v. Curlett*, controlled the Bible reading and prayer issues. The *Schempp* case involved a Pennsylvania law requiring Bible readings in public schools and the companion *Murray* case dealt with a Baltimore school board rule requiring Bible reading and recitation of prayers pursuant to a Maryland statute. Both laws were invalidated as unconstitutional establishments of religion in violation of the first amendment.

The Florida court attempted to avoid the *Schempp* mandate by relying upon an alleged secular intent on the part of the Florida Legislature in enacting section 231.09 (2), whereas the intent of the Pennsylvania and Maryland statutes involved was not disclosed. When section 231.09 (2) was originally enacted it contained the following explanatory language:[8]

> Whereas, it is in the interest of good moral training, of a life of honorable thought and good citizenship, that the public school children should have lessons of morality brought to their attention during their school day therefore Be it Enacted . . . .

Although the intent of the Maryland Legislature was not disclosed, the asserted distinction between the intent of the Pennsylvania and Florida Legislatures is erroneous. The secular intent of the Pennsylvania Legislature was asserted in the appellant's brief in *Schempp*;[9] moreover, Pennsylvania used language identical with Florida's explanatory language when it enacted its statute requiring Bible readings.[10] Even if the proclaimed legislative intent of Pennsylvania was not disclosed, the alleged distinction is without merit under *Torcaso v. Watkins*,[11] in which the United States Supreme Court prohibited a state from requiring an applicant for a notary commission to take an oath of belief in the existence of God. The rationale of *Torcaso* is that a state cannot constitutionally require participation in a religious activity to accomplish a secular purpose.

6. 84 Sup. Ct. 1272 (1964), per curiam.
7. *Id.* citing Asbury Hosp. v. Cass County, 326 U.S. 207, 213-14 (1945).
8. Fla. Laws 1925, ch. 10262.
9. Brief for the Appellant, p. 18, School District v. Schempp, 374 U.S. 203 (1963).
10. Pa. Gen. Laws 1913, at 226; PA. STAT. ANN. tit. 24, §15-1516 (1959).
11. 367 U.S. 488 (1961).

The oath in *Torcaso*, similar to the Bible readings and prayer recitations in *Chamberlin*, represent an attempt by a state to use a religious means to accomplish a secular end. Therefore the legislature's intent, even if secular, is not a proper basis for allowing the religious practices in question.

The Florida Supreme Court stated at the end of the *Chamberlin* opinion:[12]

> We have, without avail, endeavored to find, in the diverse views expressed by the several justices of the United States Supreme Court who participated in these decisions [*Schempp* and *Murray*] a clear course for us to follow. It seems, therefore, more fitting that the responsibility for an enlargement be left to that Court . . . .

Apparently the Supreme Court of Florida is saying that if the plaintiffs wish to have their civil rights determined they must go to the federal courts. This is strange language from those who most loudly profess a desire to minimize federal intervention. In light of this language and the apparent disregard of the *Schempp* case it appears that extra-legal factors must have played a large role in the Florida court's decision. Perhaps one such factor was a desire to avoid a publicly unpopular decision. Although the past Bible reading cases[13] arguably protect religious freedom, a substantial segment of the public disagrees with the decisions and feel they are morally wrong. Another probable factor in the *Chamberlin* decision was a desire to resist federal intervention. It should be realized, however, that to resist in a negative and arbitrary manner can lead only to increased federal activity. If a state desires to lessen federal intervention the only reasonable course open is the positive action of assuring all litigants a forum for redress against alleged violations of their constitutional rights.

Although dismissed for lack of standing, the three remaining issues of the *Chamberlin* case involve an interesting set of constitutional problems. The religious census, which involved keeping a record of religious preference of students, appears to be constitutional so long as the information is taken on a voluntary and confidential basis and used only for bona fide school purposes by professional personnel. On the other hand, religious tests requiring teacher applicants to answer the question, "Do you believe in God?"[14] and the

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12. 160 So. 2d at 99.

13. School District v. Schempp, 374 U.S. 203 (1963).

14. Chamberlin v. Dade County Bd. of Pub. Instruction, 84 Sup. Ct. 1272 (1964).

consideration of religious attitudes in making promotions,[15] appear to be unconstitutional under the *Torcaso* rationale. Significantly, Mr. Justice Douglas, concurring in part,[16] cited *Torcaso* and stated he felt the religious test issue was properly presented.

The most uncertain question in *Chamberlin* is the constitutionality of religious baccalaureate programs. The first amendment provides that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."[17] It is submitted that the relationship of the "free exercise" and "establishment" clauses will be a determinative factor in the constitutionality of the baccalaureate programs. The United States Supreme Court clearly does not consider all school activities of a religious nature to be an unconstitutional establishment of religion.[18] It has distinguished Bible reading and prayer recitation from activities such as the singing of "God Bless America" — the latter being considered as merely ceremonial.[19] The degree of threat to "free exercise" by an alleged unconstitutional religious practice will affect the amount of state activity necessary to become an "establishment of religion." This principle can be demonstrated by comparing *McCollum v. Board of Education*[20] and *Zorach v. Clauson*.[21] In *McCollum*, sectarian religious instruction was given on public school property during school hours by teachers working for private religious groups. Students not wishing to take religious instruction were required to go to other classrooms and continue their secular studies. The United States Supreme Court held the program to be an unconstitutional establishment of religion. In *Zorach*, sectarian religious instruction was given on nonschool property at various religious centers. The students who wished to have the instruction were dismissed from classes while all others remained at their secular work. The United States Supreme Court held this program to be constitutional despite a contention that "the weight and influence of the school is put behind . . . [the] program . . . ."[22] Apparently the different results on similar religious programs stemmed from the Court's belief that the *McCollum* plan constituted a greater danger to the free exercise of religion than the *Zorach* plan.

The instructional plans of *McCollum* and *Zorach* are analogous to the baccalaureate programs of *Chamberlin*. Thus, the constitutionality of baccalaureate programs will apparently be determined by the

15. *Ibid.*
16. *Ibid.*
17. U. S. CONST. amend. 1.
18. *Cf.* Engel v. Vitale, 370 U.S. 421 (1962) (concurring opinion).
19. Engel v. Vitale, 370 U.S. 421, 435 n.21 (1962).
20. 333 U.S. 203 (1948).
21. 343 U.S. 306 (1952).
22. *Id.* at 309.