

Everson v. Board of Education of the Township of Ewing et. al. 1947

Facts: New Jersey reimbursed families with children attending Catholic parochial schools for their bus fare using public funds. This subsidy was the same as provided for students at public schools. The only religious schools in the township were Catholic.

Issue: May a state or local government subsidize the transportation of students to a religious school? What form of transportation and funding mechanisms are appropriate when this is done?

Holding: Yes, a state or local authority may provide reimbursement for public transportation costs to students attending private religious schools. This funding must be available for all students regardless of which school they attend.

Reasoning: Based on Jefferson's VA Statute and Madison's "Memorial and Remonstrance" in addition to the *US v. Reynolds* "wall of separation" doctrine, the court agrees that disestablishment of state religion is essential to upholding the 1st A. The majority argues this NJ law does not establish a state religion as there is no special treatment for parochial students. (Note that all students are riding the same municipal buses on the same routes. This is not a door to door service.)

J. Black (majority) immediately cites 1st A. and originalist interpretations of religious freedom to analyze the fairness of this program . . .

Although many colonists came to the New World to avoid the religious turmoil of Europe but the most powerful group, Protestants, immediately used power to oppress minority groups, incl Catholics, Quakers, and Baptists. The collective response to this state of affairs was a rejection of public assistance for (or taxation against) religion. It became clear that, in the long run, religious freedom was not improved by public assistance. Rather, a secular backlash served to damage religious relations.

A ground-breaking statute was Jefferson's Virginia Statute for Religious Liberty, and a part related to taxation is here:

that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern . . .

(Note that Jefferson is not entirely clear on non-preferentialism here, when he argues against taxation as a way of "depriving him . . . of the giving his contributions to the particular [favored] pastor." However, since the message of the VA statute is against a non-preferential tax, this explanation seems more like a slip of the tongue than anything more.)

Black notes that the 14th A. has previously been used to limit states' power, and that the 1st A. is not especially different in this regard. He explains many implications of the *Reynolds v. US* "wall of separation," which include taxation. However, if children attending public schools enjoy bus service, the same level of support must be provided to parochial students. Otherwise, NJ would be effectively discouraging religious education. (Likewise, a police officer may rightly be assigned to direct traffic outside of a parochial school, provided the heavy traffic warrants his presence.)

J. Jackson (dissenting) uses a historical argument to match Black's originalist argument . . .

(II) Jackson cites Canon Law to demonstrate how the Catholic tradition is insular and runs counter to the secular tradition of American education. First, students in Catholic schools are heavily indoctrinated, ruling out the personal freedom and rational thought that Jackson favors.

"Our public school, if not a product of Protestantism, at least is more consistent with it than with the Catholic culture and scheme of values." Jackson says that since 1840 (related to 2nd great awakening?), American Protestants have made their peace with secular education, even preferring it. It presumes that some worldly education is needed before an individual can freely choose between right and wrong.

(III) Assistance to the students is functionally indistinguishable from direct assistance to the school. An easy rebuttal: What about the police(wo)man directing traffic outside a parochial school? Does this individual assistance also constitute support for the school? Jackson's response: Police and fire cannot ascertain religious affiliations when running to the scene of a crime or when controlling a fire. However, reimbursement for bus service is not an emergency service and so fine distinctions can be made. My rebuttal: If police are posted at a school every morning, they are not responding to an emergency. But Jackson does not disavow police protection at parochial schools. He fails to see the far-reaching consequences of his distinction.

J. Rutledge (dissenting) argues that "religion" as used in 1st A. covers the practice of religion and any curriculum that combines secular and religious teachings.

(II) Rutledge provides a detailed history of the fight against Virginia's establishment of religion, led by Jefferson and Madison. Madison's Memorial and Remonstrance failed in committee but Jefferson's Virginia Statute succeeded. Madison's was ratified later. All of this occurred around late 1785 and January of 1786. Because this principle was settled by Jefferson and Madison, very little debate occurred at Const. Convention. Thus, ambiguity in the 1st A. text should be resolved by reference to Jefferson's and Madison's writings on the matter.

(III) Transportation is as essential to educational process as books, teachers, and campus maintenance. Thus, a provision for transportation is legally equivalent to a provision for teachers' salaries or for educational texts (including, I presume, Bibles and Biblical commentary).

(IV) Repudiation of public welfare argument (something like: everyone loves schools and this pays for children to go to school). Rutledge does not disagree that parochial schools do provide an educational service. However, their service is not any greater than the service provided by the public schools, at least from the viewpoint of the state. Furthermore, if the public welfare argument is used to fund a bus, then why not use it to fund teachers and texts?

(V) Rejection of accusation of discrimination: Every student has an equal right to attend public school and receive an education free of expense. Students and families that do not exercise this right cannot later accuse the government of discriminating against them. They have the same right to a public education.

Smokey Says: The opinion of Black (every student receives an equal transportation subsidy) is logical because no special service is provided for parochial students. (If they had a door to door yellow bus for public schools and another door to door service for parochial schools, the Rutledge opinion may be more compelling.) Jackson's interesting argument regarding Canon Law does make some interesting points about the civic objectives in the two primary educational missions: preparation for civics and preparation for life. However, if a school did indeed indoctrinate students to the degree indicated by the Canons cited in Jackson's opinion, the school should be shut down. (Also, I don't believe that a Catholic school can be assessed using only Canon Law. The actual curriculum used at each school must be independently judged by its merits.) In conclusion, the majority was correct to uphold the NJ law. The funding mechanism would be more efficient (and more convenient for families waiting for checks in the mail) if the fare were simply waived or reduced at the point of sale, but this is an administrative matter.