



SUPREME COURT CASE 15

Everson v. Board of Education 1947

HISTORICAL BACKGROUND

FREEDOM of religion has played a major role in shaping American history since well before the Republic was founded. The Puritans, among the first European settlers on these shores, came to the New World in search of religious freedom. When the Constitution established our present system of government in 1788–1789, religious freedom ranked first among the guarantees ensured by the Bill of Rights—the first 10 amendments. As the opening words of the 1st Amendment read: “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof. . . .” Two instructions given in this amendment—one preventing the establishment of religion, known as the Establishment Clause; the other ensuring freedom of belief, known as the Free Exercise Clause—are at the heart of what we commonly refer to as “the separation of church and state.” But since the Framers dedicated scarcely more than a dozen words to explaining that relationship, many questions concerning the relations between church and the state, such as the question considered in this case, must be settled in the courts.

CIRCUMSTANCES OF THE CASE

A New Jersey State law authorized local school districts to make arrangements and rules for transporting children to public and private nonprofit schools. One school district, Ewing Township, directed students to use the public bus system to get to and from school, and then reimbursed their parents for the costs. The township made payments to parents of both public school students *and* students of private, Catholic schools—payments that were permitted under State law.

One taxpayer, a Mr. Everson, brought suit against the Board of Education. In State court, he argued that money collected as taxes for public education was being used instead to help support students of private schools—private schools that provided religious education on behalf of a particular church. Everson claimed that the payments to parents of parochial school students violated the constitutional guarantee against the “establishment” of a religion contained in the 1st Amendment. The school board, Everson believed, had violated the constitutionally guaranteed “separation of church and state.”

CONSTITUTIONAL ISSUES

The case centered on the Establishment Clause of the 1st Amendment, and on the incorporation of the Bill of Rights into State constitutions as established by the 14th Amendment. Did the use of public funds to pay for transporting children to parochial schools violate the 1st Amendment prohibition against the establishment of a state religion? Or, would withholding public money from assisting the transportation of children to parochial schools interfere with the 1st Amendment mandate that a State not interfere with the free exercise of any religion? Does the 14th Amendment incorporate *all* of the rights of the 1st Amendment in relation to the States, so that individual States are bound to act in the same way as the Federal Government in relation to religion?

SUPREME COURT CASE 15

(continued)



ARGUMENTS



For Everson: The 1st Amendment prohibits a State from establishing an official religion. The use of tax money to transport parochial school students constituted State assistance and tacit *endorsement* of religious instruction. Therefore, using tax money to transport parochial school students violated the Establishment Clause.

For Board of Education: Regarding the Constitution, the 1st Amendment, in addition to prohibiting the establishment of a State religion, also prohibits actions which prevent the free exercise of religion. To withhold assistance to parents for the transportation of their children to parochial schools would be to discriminate against parents of Catholic school children and thereby violate the Free Exercise Clause.

DECISION AND RATIONALE



The Court decided 5–4 in favor of allowing townships to reimburse parents for the costs of transporting their children to parochial schools. In expressing the opinion of the majority, Justice Hugo Black agreed with the State of New Jersey's interpretation of religious freedom under the 1st Amendment. The State provided some general benefits to all citizens, including reimbursement for transportation to school. These benefits should not be taken away because of the parents' religious beliefs or their choice of State-accredited schools.

Justice Black wrote that "Neither a State nor the Federal Government can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities, whatever they may be called, or whatever form they may adopt to teach or practice religion. . . ."

However, Black also argued that the 1st Amendment did not prohibit a State from providing *other* activities of benefit to children attending parochial schools, or their parents. Police officers,

for example, protect children on their way to and from school, and they prevent traffic accidents by enforcing traffic laws while children—including parochial school children—travel to and from school. Black called these activities "general State law benefits to all citizens." To cut these services off for parochial schools would make it much harder for those schools to operate—discriminating, in effect, against parochial school children, their parents, and the schools. It would, Black argued, establish the state as religion's "adversary" rather than a "neutral" party as intended by the 1st Amendment.

Justice Robert Jackson issued an incisive dissent based on two penetrating points. First, the township's payments in no way helped the child's "safety or expedition in transit" since the buses were run safely and expeditiously whether the parents were reimbursed or not. Jackson also suggested that the State law was unfair because it authorized reimbursement for children in public and parochial schools, but not private schools "operated in whole or in part for profit."

The *Everson* decision, also known as the *New Jersey School Bus* case, marked the first occasion that the Court clearly acknowledged the incorporation of the 1st Amendment limits on the States.

QUESTIONS FOR DISCUSSION



1. Why is the "wall" between church and state so important? Did this case make that wall stronger or weaker?
2. In your view, was the Court's decision in this case the correct one? Would the withholding of transportation funds from Catholic school students have been a discriminatory practice in violation of the Free Exercise Clause? Or would the students' parents, who freely sent their children to Catholic schools, merely have to pay extra costs as a result of their own decisions?