# Burger: Opinion of the Court

These two appeals raise questions as to Pennsylvania and Rhode Island statutes providing state aid to church-related elementary and secondary schools. Both statutes are challenged as violative of the Establishment and Free Exercise Clauses of the First Amendment and the Due Process Clause of the Fourteenth Amendment.

Pennsylvania has adopted a statutory program that provides financial support to nonpublic elementary and **[p. 607]** secondary schools by way of reimbursement for the cost of teachers' salaries, textbooks, and instructional materials in specified secular subjects. Rhode Island has adopted a statute under which the State pays directly to teachers in nonpublic elementary schools a supplement of 15% of their annual salary. Under each statute, state aid has been given to church-related educational institutions. We hold that both statutes are unconstitutional.

## I

*The Rhode Island Statute*

The Rhode Island Salary Supplement Act[[1]](#footnote-1) was enacted in 1969. It rests on the legislative finding that the quality of education available in nonpublic elementary schools has been jeopardized by the rapidly rising salaries needed to attract competent and dedicated teachers. The Act authorizes state officials to supplement the salaries of teachers of secular subjects in nonpublic elementary schools by paying directly to a teacher an amount not in excess of 15% of his current annual salary. As supplemented, however, a nonpublic school teacher's salary cannot exceed the maximum paid to teachers in the State's public schools, and the recipient must be certified by the state board of education in substantially the same manner as public school teachers.

In order to be eligible for the Rhode Island salary supplement, the recipient must teach in a nonpublic school at which the average per-pupil expenditure on secular education is less than the average in the State's public schools during a specified period. Appellant State Commissioner of Education also requires eligible schools to submit financial data. If this information indicates a per-pupil expenditure in excess of the statutory limitation, **[p. 608]** the records of the school in question must be examined in order to assess how much of the expenditure is attributable to secular education and how much to religious activity.[[2]](#footnote-2)

The Act also requires that teachers eligible for salary supplements must teach only those subjects that are offered in the State's public schools. They must use "only teaching materials which are used in the public schools." Finally, any teacher applying for a salary supplement must first agree in writing "not to teach a course in religion for so long as or during such time as he or she receives any salary supplements" under the Act.

Appellees are citizens and taxpayers of Rhode Island. They brought this suit to have the Rhode Island Salary Supplement Act declared unconstitutional and its operation enjoined on the ground that it violates the Establishment and Free Exercise Clauses of the First Amendment. Appellants are state officials charged with administration of the Act, teachers eligible for salary supplements under the Act, and parents of children in church-related elementary schools whose teachers would receive state salary assistance.

A three-judge federal court was convened pursuant to 28 U.S.C. §§ 2281, 2284. It found that Rhode Island's nonpublic elementary schools accommodated approximately 25% of the State's pupils. About 95% of these pupils attended schools affiliated with the Roman Catholic church. To date, some 250 teachers have applied for benefits under the Act. All of them are employed by Roman Catholic schools. **[p. 609]** The court held a hearing at which extensive evidence was introduced concerning the nature of the secular instruction offered in the Roman Catholic schools whose teachers would be eligible for salary assistance under the Act. Although the court found that concern for religious values does not necessarily affect the content of secular subjects, it also found that the parochial school system was "an integral part of the religious mission of the Catholic Church."

The District Court concluded that the Act violated the Establishment Clause, holding that it fostered "excessive entanglement" between government and religion. In addition, two judges thought that the Act had the impermissible effect of giving "significant aid to a religious enterprise." 316 F.Supp. 112. We affirm.

*The Pennsylvania Statute*

Pennsylvania has adopted a program that has some, but not all, of the features of the Rhode Island program. The Pennsylvania Nonpublic Elementary and Secondary Education Act[[3]](#footnote-3) was passed in 1968 in response to a crisis that the Pennsylvania Legislature found existed in the State's nonpublic schools due to rapidly rising costs. The statute affirmatively reflects the legislative conclusion that the State's educational goals could appropriately be fulfilled by government support of "those purely secular educational objectives achieved through nonpublic education. . . ."

The statute authorizes appellee state Superintendent of Public Instruction to "purchase" specified "secular educational services" from nonpublic schools. Under the "contracts" authorized by the statute, the State directly reimburses nonpublic schools solely for their actual expenditures for teachers' salaries, textbooks, and instructional materials. A school seeking reimbursement must **[p. 610]** maintain prescribed accounting procedures that identify the "separate" cost of the "secular educational service." These accounts are subject to state audit. The funds for this program were originally derived from a new tax on horse and harness racing, but the Act is now financed by a portion of the state tax on cigarettes.

There are several significant statutory restrictions on state aid. Reimbursement is limited to courses "presented in the curricula of the public schools." It is further limited "solely" to courses in the following "secular" subjects: mathematics, modern foreign languages,[[4]](#footnote-4) physical science, and physical education. Textbooks and instructional materials included in the program must be approved by the state Superintendent of Public Instruction. Finally, the statute prohibits reimbursement for any course that contains "any subject matter expressing religious teaching, or the morals or forms of worship of any sect."

The Act went into effect on July 1, 1968, and the first reimbursement payments to schools were made on September 2, 1969. It appears that some $5 million has been expended annually under the Act. The State has now entered into contracts with some 1,181 nonpublic elementary and secondary schools with a student population of some 535,215 pupils -- more than 20% of the total number of students in the State. More than 96% of these pupils attend church-related schools, and most of these schools are affiliated with the Roman Catholic church.

Appellants brought this action in the District Court to challenge the constitutionality of the Pennsylvania statute. The organizational plaintiffs appellants are associations of persons resident in Pennsylvania declaring **[p. 611]** belief in the separation of church and state; individual plaintiffs appellants are citizens and taxpayers of Pennsylvania. Appellant Lemon, in addition to being a citizen and a taxpayer, is a parent of a child attending public school in Pennsylvania. Lemon also alleges that he purchased a ticket at a race track, and thus had paid the specific tax that supports the expenditures under the Act. Appellees are state officials who have the responsibility for administering the Act. In addition seven church-related schools are defendants appellees.

A three-judge federal court was convened pursuant to 28 U.S.C. §§ 2281, 2284. The District Court held that the individual plaintiffs appellants had standing to challenge the Act, 310 F.Supp. 42. The organizational plaintiffs appellants were denied standing under *Flast v. Cohen,* 392 U. S. 83,392 U. S. 99, 101 (1968).

The court granted appellees' motion to dismiss the complaint for failure to state a claim for relief.[[5]](#footnote-5) 310 F.Supp. 35. It held that the Act violated neither the Establishment nor the Free Exercise Clause, Chief Judge Hastie dissenting. We reverse.

## II

In *Everson v. Board of Education,* 330 U. S. 1 (1947), this Court upheld a state statute that reimbursed the parents of parochial school children for bus transportation **[p. 612]** expenses. There, MR. JUSTICE BLACK, writing for the majority, suggested that the decision carried to "the verge" of forbidden territory under the Religion Clauses. *Id.* at 330 U. S. 16. Candor compels acknowledgment, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law.

The language of the Religion Clauses of the First Amendment is, at best, opaque, particularly when compared with other portions of the Amendment. Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead, they commanded that there should be "no law respecting an establishment of religion." A law may be one "respecting" the forbidden objective while falling short of its total realization. A law "respecting" the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not establish a state religion, but nevertheless be one "respecting" that end in the sense of being a step that could lead to such establishment, and hence offend the First Amendment.

In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: "sponsorship, financial support, and active involvement of the sovereign in religious activity." *Walz v. Tax Commission,* 397 U. S. 664, 397 U. S. 668 (1970).

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, *Board of Education v. Allen,* 392 U. S. 236, 392 U. S. 243(1968); **[p. 613]** finally, the statute must not foster "an excessive government entanglement with religion." *Walz, supra,* at 397 U. S. 674.

Inquiry into the legislative purposes of the Pennsylvania and Rhode Island statutes affords no basis for a conclusion that the legislative intent was to advance religion. On the contrary, the statutes themselves clearly state that they are intended to enhance the quality of the secular education in all schools covered by the compulsory attendance laws. There is no reason to believe the legislatures meant anything else. A State always has a legitimate concern for maintaining minimum standards in all schools it allows to operate. As in *Allen,* we find nothing here that undermines the stated legislative intent; it must therefore be accorded appropriate deference.

In *Allen,* the Court acknowledged that secular and religious teachings were not necessarily so intertwined that secular textbooks furnished to students by the State were, in fact, instrumental in the teaching of religion. 392 U.S. at 392 U. S. 248. The legislatures of Rhode Island and Pennsylvania have concluded that secular and religious education are identifiable and separable. In the abstract, we have no quarrel with this conclusion.

The two legislatures, however, have also recognized that church-related elementary and secondary schools have a significant religious mission, and that a substantial portion of their activities is religiously oriented. They have therefore sought to create statutory restrictions designed to guarantee the separation between secular and religious educational functions, and to ensure that State financial aid supports only the former. All these provisions are precautions taken in candid recognition that these programs approached, even if they did not intrude upon, the forbidden areas under the Religion Clauses. We need not decide whether these legislative precautions restrict the principal or primary effect of the programs to the point where they do not offend the Religion **[p. 614]** Clauses, for we conclude that the cumulative impact of the entire relationship arising under the statutes in each State involves excessive entanglement between government and religion.

## III

In *Walz v. Tax Commission, supra,* the Court upheld state tax exemptions for real property owned by religious organizations and used for religious worship. That holding, however, tended to confine, rather than enlarge, the area of permissible state involvement with religious institutions by calling for close scrutiny of the degree of entanglement involved in the relationship. The objective is to prevent, as far as possible, the intrusion of either into the precincts of the other.

Our prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. *Zorach v. Clauson,* 343 U. S. 306, 343 U. S. 312 (1952); *Sherbert v. Verner,*374 U. S. 398, 374 U. S. 422 (1963) (HARLAN, J., dissenting). Fire inspections, building and zoning regulations, and state requirements under compulsory school attendance laws are examples of necessary and permissible contacts. Indeed, under the statutory exemption before us in *Walz,* the State had a continuing burden to ascertain that the exempt property was, in fact, being used for religious worship. Judicial caveats against entanglement must recognize that the line of separation, far from being a "wall," is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.

This is not to suggest, however, that we are to engage in a legalistic minuet in which precise rules and forms must govern. A true minuet is a matter of pure form and style, the observance of which is itself the substantive end. Here we examine the form of the relationship for the light that it casts on the substance. **[p. 615]** In order to determine whether the government entanglement with religion is excessive, we must examine the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority. MR. JUSTICE HARLAN, in a separate opinion in *Walz, supra,* echoed the classic warning as to "programs, whose very nature is apt to entangle the state in details of administration. . . ."*Id.* at 397 U. S. 695. Here we find that both statutes foster an impermissible degree of entanglement.

### (a) Rhode Island program

The District Court made extensive findings on the grave potential for excessive entanglement that inheres in the religious character and purpose of the Roman Catholic elementary schools of Rhode Island, to date the sole beneficiaries of the Rhode Island Salary Supplement Act.

The church schools involved in the program are located close to parish churches. This understandably permits convenient access for religious exercises, since instruction in faith and morals is part of the total educational process. The school buildings contain identifying religious symbols such as crosses on the exterior and crucifixes, and religious paintings and statues either in the classrooms or hallways. Although only approximately 30 minutes a day are devoted to direct religious instruction, there are religiously oriented extracurricular activities. Approximately two-thirds of the teachers in these schools are nuns of various religious orders. Their dedicated efforts provide an atmosphere in which religious instruction and religious vocations are natural and proper parts of life in such schools. Indeed, as the District Court found, the role of teaching nuns in enhancing the religious atmosphere has led the parochial school authorities **[p. 616]** to attempt to maintain a one-to-one ratio between nuns and lay teachers in all schools, rather than to permit some to be staffed almost entirely by lay teachers.

On the basis of these findings, the District Court concluded that the parochial schools constituted "an integral part of the religious mission of the Catholic Church." The various characteristics of the schools make them "a powerful vehicle for transmitting the Catholic faith to the next generation." This process of inculcating religious doctrine is, of course, enhanced by the impressionable age of the pupils, in primary schools particularly. In short, parochial schools involve substantial religious activity and purpose.[[6]](#footnote-6)

The substantial religious character of these church-related schools gives rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid. Although the District Court found that concern for religious values did not inevitably or necessarily intrude into the content of secular subjects, the considerable religious activities of these schools led the legislature to provide for careful governmental controls and surveillance by state authorities in order to ensure that state aid supports only secular education.

The dangers and corresponding entanglements are enhanced by the particular form of aid that the Rhode Island Act provides. Our decisions from *Everson* to *Allen* have permitted the States to provide church-related schools with secular, neutral, or nonideological services, facilities, or materials. Bus transportation, school lunches, public health services, and secular textbooks supplied in common to all students were not **[p. 617]** thought to offend the Establishment Clause. We note that the dissenters in *Allen* seemed chiefly concerned with the pragmatic difficulties involved in ensuring the truly secular content of the textbooks provided at state expense.

In *Allen,* the Court refused to make assumptions, on a meager record, about the religious content of the textbooks that the State would be asked to provide. We cannot, however, refuse here to recognize that teachers have a substantially different ideological character from books. In terms of potential for involving some aspect of faith or morals in secular subjects, a textbook's content is ascertainable, but a teacher's handling of a subject is not. We cannot ignore the danger that a teacher under religious control and discipline poses to the separation of the religious from the purely secular aspects of pre-college education. The conflict of functions inheres in the situation.

In our view, the record shows these dangers are present to a substantial degree. The Rhode Island Roman Catholic elementary schools are under the general supervision of the Bishop of Providence and his appointed representative, the Diocesan Superintendent of Schools. In most cases, each individual parish, however, assumes the ultimate financial responsibility for the school, with the parish priest authorizing the allocation of parish funds. With only two exceptions, school principals are nuns appointed either by the Superintendent or the Mother Provincial of the order whose members staff the school. By 1969, lay teachers constituted more than a third of all teachers in the parochial elementary schools, and their number is growing. They are first interviewed by the superintendent's office and then by the school principal. The contracts are signed by the parish priest, and he retains some discretion in negotiating salary levels. Religious authority necessarily pervades the school system. **[p. 618]** The schools are governed by the standards set forth in a "Handbook of School Regulations," which has the force of synodal law in the diocese. It emphasizes the role and importance of the teacher in parochial schools:

"The prime factor for the success or the failure of the school is the spirit and personality, as well as the professional competency, of the teacher. . . ."

The Handbook also states that: "Religious formation is not confined to formal courses; nor is it restricted to a single subject area." Finally, the Handbook advises teachers to stimulate interest in religious vocations and missionary work. Given the mission of the church school, these instructions are consistent and logical.

Several teachers testified, however, that they did not inject religion into their secular classes. And the District Court found that religious values did not necessarily affect the content of the secular instruction. But what has been recounted suggests the potential, if not actual, hazards of this form of state aid. The teacher is employed by a religious organization, subject to the direction and discipline of religious authorities, and works in a system dedicated to rearing children in a particular faith. These controls are not lessened by the fact that most of the lay teachers are of the Catholic faith. Inevitably, some of a teacher's responsibilities hover on the border between secular and religious orientation.

We need not and do not assume that teachers in parochial schools will be guilty of bad faith or any conscious design to evade the limitations imposed by the statute and the First Amendment. We simply recognize that a dedicated religious person, teaching in a school affiliated with his or her faith and operated to inculcate its tenets, will inevitably experience great difficulty in remaining religiously neutral. Doctrines and faith are not inculcated or advanced by neutrals. With the best of intentions, such a teacher would find it hard to make **[p. 619]** a total separation between secular teaching and religious doctrine. What would appear to some to be essential to good citizenship might well for others border on or constitute instruction in religion. Further difficulties are inherent in the combination of religious discipline and the possibility of disagreement between teacher and religious authorities over the meaning of the statutory restrictions.

We do not assume, however, that parochial school teachers will be unsuccessful in their attempts to segregate their religious belief from their secular educational responsibilities. But the potential for impermissible fostering of religion is present. The Rhode Island Legislature has not, and could not, provide state aid on the basis of a mere assumption that secular teachers under religious discipline can avoid conflicts. The State must be certain, given the Religion Clauses, that subsidized teachers do not inculcate religion -- indeed, the State here has undertaken to do so. To ensure that no trespass occurs, the State has therefore carefully conditioned its aid with pervasive restrictions. An eligible recipient must teach only those courses that are offered in the public schools and use only those texts and materials that are found in the public schools. In addition, the teacher must not engage in teaching any course in religion.

A comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions are obeyed and the First Amendment otherwise respected. Unlike a book, a teacher cannot be inspected once so as to determine the extent and intent of his or her personal beliefs and subjective acceptance of the limitations imposed by the First Amendment. These prophylactic contacts will involve excessive and enduring entanglement between state and church. **[p. 620]** There is another area of entanglement in the Rhode Island program that gives concern. The statute excludes teachers employed by nonpublic schools whose average per-pupil expenditures on secular education equal or exceed the comparable figures for public schools. In the event that the total expenditures of an otherwise eligible school exceed this norm, the program requires the government to examine the school's records in order to determine how much of the total expenditures is attributable to secular education and how much to religious activity. This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids. It is a relationship pregnant with dangers of excessive government direction of church schools, and hence of churches. The Court noted "the hazards of government supporting churches" in *Walz v. Tax Commission, supra,* at 397 U. S. 675, and we cannot ignore here the danger that pervasive modern governmental power will ultimately intrude on religion and thus conflict with the Religion Clauses.

### (b) Pennsylvania program

The Pennsylvania statute also provides state aid to church-related schools for teachers' salaries. The complaint describes an educational system that is very similar to the one existing in Rhode Island. According to the allegations, the church-related elementary and secondary schools are controlled by religious organizations, have the purpose of propagating and promoting a particular religious faith, and conduct their operations to fulfill that purpose. Since this complaint was dismissed for failure to state a claim for relief, we must accept these allegations as true for purposes of our review.

As we noted earlier, the very restrictions and surveillance necessary to ensure that teachers play a strictly nonideological role give rise to entanglements between **[p. 621]** church and state. The Pennsylvania statute, like that of Rhode Island, fosters this kind of relationship. Reimbursement is not only limited to courses offered in the public schools and materials approved by state officials, but the statute excludes "any subject matter expressing religious teaching, or the morals or forms of worship of any sect." In addition, schools seeking reimbursement must maintain accounting procedures that require the State to establish the cost of the secular, as distinguished from the religious, instruction.

The Pennsylvania statute, moreover, has the further defect of providing state financial aid directly to the church-related school. This factor distinguishes both *Everson* and *Allen,* for, in both those cases, the Court was careful to point out that state aid was provided to the student and his parents -- not to the church-related school. *Board of Education v. Allen, supra,* at 392 U. S. 243-244; *Everson v. Board of Education, supra,* at 330 U. S. 18. In *Walz v. Tax Commission, supra,* at 397 U. S. 675, the Court warned of the dangers of direct payments to religious organizations:

"Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards. . . ."

The history of government grants of a continuing cash subsidy indicates that such programs have almost always been accompanied by varying measures of control and surveillance. The government cash grants before us now provide no basis for predicting that comprehensive measures of surveillance and controls will not follow. In particular, the government's post-audit power to inspect and evaluate a church-related school's financial records and to determine which expenditures are religious and **[p. 622]** which are secular creates an intimate and continuing relationship between church and state.

## IV

A broader base of entanglement of yet a different character is presented by the divisive political potential of these state programs. In a community where such a large number of pupils are served by church-related schools, it can be assumed that state assistance will entail considerable political activity. Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail. Candidates will be forced to declare, and voters to choose. It would be unrealistic to ignore the fact that many people confronted with issues of this kind will find their votes aligned with their faith.

Ordinarily, political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. Freund, Comment, Public Aid to Parochial Schools, 82 Harv.L.Rev. 1680, 1692 (1969). The potential divisiveness of such conflict is a threat to the normal political process. *Walz v. Tax Commission, supra,* at 397 U. S. 695 (separate opinion of HARLAN, J.). *See also Board of Education v. Allen,* 392 U.S. at 392 U. S. 249 (HARLAN, J., concurring); *Abington School District v. Schempp,* 374 U. S. 203, 374 U. S. 307 (1963) (Goldberg, J., concurring). To have States or communities divide on the issues presented by state aid to parochial schools would tend to confuse **[p. 623]** and obscure other issues of great urgency. We have an expanding array of vexing issues, local and national, domestic and international, to debate and divide on. It conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government. The highways of church and state relationships are not likely to be one-way streets, and the Constitution's authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion's intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief.

Of course, as the Court noted in *Walz,* "[a]dherents of particular faiths and individual churches frequently take strong positions on public issues." *Walz v. Tax Commission, supra,* at 397 U. S. 670. We could not expect otherwise, for religious values pervade the fabric of our national life. But, in *Walz,* we dealt with a status under state tax laws for the benefit of all religious groups. Here we are confronted with successive and very likely permanent annual appropriations that benefit relatively few religious groups. Political fragmentation and divisiveness on religious lines are thus likely to be intensified.

The potential for political divisiveness related to religious belief and practice is aggravated in these two statutory programs by the need for continuing annual appropriations and the likelihood of larger and larger demands as costs and populations grow. The Rhode Island District Court found that the parochial school system's "monumental and deepening financial crisis" would "inescapably" require larger annual appropriations subsidizing greater percentages of the salaries of lay teachers. Although no facts have been developed in this respect **[p. 624]** in the Pennsylvania case, it appears that such pressures for expanding aid have already required the state legislature to include a portion of the state revenues from cigarette taxes in the program.

## V

In *Walz,* it was argued that a tax exemption for places of religious worship would prove to be the first step in an inevitable progression leading to the establishment of state churches and state religion. That claim could not stand up against more than 200 years of virtually universal practice imbedded in our colonial experience and continuing into the present.

The progression argument, however, is more persuasive here. We have no long history of state aid to church-related educational institutions comparable to 200 years of tax exemption for churches. Indeed, the state programs before us today represent something of an innovation. We have already noted that modern governmental programs have self-perpetuating and self-expanding propensities. These internal pressures are only enhanced when the schemes involve institutions whose legitimate needs are growing and whose interests have substantial political support. Nor can we fail to see that, in constitutional adjudication, some steps which, when taken, were thought to approach "the verge" have become the platform for yet further steps. A certain momentum develops in constitutional theory, and it can be a "downhill thrust" easily set in motion but difficult to retard or stop. Development by momentum is not invariably bad; indeed, it is the way the common law has grown, but it is a force to be recognized and reckoned with. The dangers are increased by the difficulty of perceiving in advance exactly where the "verge" of the precipice lies. As well as constituting an independent evil against which the Religion Clauses were intended to protect, involvement **[p. 625]** or entanglement between government and religion serves as a warning signal.

Finally, nothing we have said can be construed to disparage the role of church-related elementary and secondary schools in our national life. Their contribution has been and is enormous. Nor do we ignore their economic plight in a period of rising costs and expanding need. Taxpayers generally have been spared vast sums by the maintenance of these educational institutions by religious organizations, largely by the gifts of faithful adherents.

The merit and benefits of these schools, however, are not the issue before us in these cases. The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system, the choice has been made that government is to be entirely excluded from the area of religious instruction, and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that, while some involvement and entanglement are inevitable, lines must be drawn.

The judgment of the Rhode Island District Court in No. 569 and No. 570 is affirmed. The judgment of the Pennsylvania District Court in No. 89 is reversed, and the case is remanded for further proceedings consistent with this opinion.

MR. JUSTICE MARSHALL took no part in the consideration or decision of No. 89.

\* Together with No. 569, *Earley et al. v. DiCenso et al.,* and No. 570, *Robinson, Commissioner of Education of Rhode Island, et al. v. DiCenso et al.,* on appeal from the United States District Court for the District of Rhode Island.

1. R.I.Gen.Laws Ann. § 16-51-1 et seq. (Supp. 1970). [↑](#footnote-ref-1)
2. The District Court found only one instance in which this breakdown between religious and secular expenses was necessary. The school in question was not affiliated with the Catholic church. The court found it unlikely that such determinations would be necessary with respect to Catholic schools, because their heavy reliance on nuns kept their wage costs substantially below those of the public schools. [↑](#footnote-ref-2)
3. Pa.Stat.Ann., Tit. 24, §§ 5601-5609 (Supp. 1971). [↑](#footnote-ref-3)
4. Latin, Hebrew, and classical Greek are excluded. [↑](#footnote-ref-4)
5. Plaintiffs appellants also claimed that the Act violated the Equal Protection Clause of the Fourteenth Amendment by providing state assistance to private institutions that discriminated on racial and religious grounds in their admissions and hiring policies. The court unanimously held that no plaintiff had standing to raise this claim because the complaint did not allege that the child of any plaintiff had been denied admission to any nonpublic school on racial or religious grounds. Our decision makes it unnecessary for us to reach this issue. [↑](#footnote-ref-5)
6. See, e.g., J. Fichter, Parochial School: A Sociological Study 77-108 (1958); Giannella, Religious Liberty, Nonestablishment, and Doctrinal Development, pt. II, The Nonestablishment Principle, 81 Harv.L.Rev. 513, 574 (1968). [↑](#footnote-ref-6)