# Black: Opinion of the Court

MR. JUSTICE BLACK delivered the opinion of the Court.

This case relates to the power of a state to utilize its tax supported public school system in aid of religious **[p. 205]** instruction insofar as that power may be restricted by the First and Fourteenth Amendments to the Federal Constitution.

The appellant, Vashti McCollum, began this action for mandamus against the Champaign Board of Education in the Circuit Court of Champaign County, Illinois. Her asserted interest was that of a resident and taxpayer of Champaign and of a parent whose child was then enrolled in the Champaign public schools. Illinois has a compulsory education law which, with exceptions, requires parents to send their children, aged seven to sixteen, to its tax-supported public schools, where the children are to remain in attendance during the hours when the schools are regularly in session. Parents who violate this law commit a misdemeanor punishable by fine unless the children attend private or parochial schools which meet educational standards fixed by the State. District boards of education are given general supervisory powers over the use of the public school buildings within the school districts. Ill.Rev.Stat. ch. 122, §§ 123, 301 (1943).

Appellant's petition for mandamus alleged that religious teachers, employed by private religious groups, were permitted to come weekly into the school buildings during the regular hours set apart for secular teaching, and then and there, for a period of thirty minutes, substitute their religious teaching for the secular education provided under the compulsory education law. The petitioner charged that this joint public school religious group program violated the First and Fourteenth Amendments to the United States Constitution. The prayer of her petition was that the Board of Education be ordered to

"adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools in Champaign School District Number 71, . . . and in all public school houses and buildings in said district when occupied by public schools. " **[p. 206]** The board first moved to dismiss the petition on the ground that, under Illinois law, appellant had no standing to maintain the action. This motion was denied. An answer was then filed, which admitted that regular weekly religious instruction was given during school hours to those pupils whose parents consented, and that those pupils were released temporarily from their regular secular classes for the limited purpose of attending the religious classes. The answer denied that this coordinated program of religious instruction violated the State or Federal Constitution. Much evidence was heard, findings of fact were made, after which the petition for mandamus was denied on the ground that the school's religious instruction program violated neither the federal nor state constitutional provisions invoked by the appellant. On appeal, the State Supreme Court affirmed. 396 Ill. 14 71 N.E.2d 161. Appellant appealed to this Court under 28 U.S.C. § 344(a), and we noted probable jurisdiction on June 2, 1947.

The appellees press a motion to dismiss the appeal on several grounds, the first of which is that the judgment of the State Supreme Court does not draw in question the "validity of a statute of any State" as required by 28 U.S.C. § 344(a). This contention rests on the admitted fact that the challenged program of religious instruction was not expressly authorized by statute. But the State Supreme Court has sustained the validity of the program on the ground that the Illinois statutes granted the board authority to establish such a program. This holding is sufficient to show that the validity of an Illinois statute was drawn in question within the meaning of 28 U.S.C. § 344(a). *Hamilton v. Regents of U. of Cal.,* 293 U. S. 245, 293 U. S. 258. A second ground for the motion to dismiss is that the appellant lacks standing to maintain the action, a ground which is also without merit. *Coleman v. Miller,* 307 U. S. 433, 307 U. S. 443,307 U. S. 445, 307 U. S. 464. **[p. 207]** A third ground for the motion is that the appellant failed properly to present in the State Supreme Court her challenge that the state program violated the Federal Constitution. But in view of the express rulings of both state courts on this question, the argument cannot be successfully maintained. The motion to dismiss the appeal is denied.

Although there are disputes between the parties as to various inferences that may or may not properly be drawn from the evidence concerning the religious program, the following facts are shown by the record without dispute.[[1]](#footnote-1) In 1940, interested members of the Jewish, Roman Catholic, and a few of the Protestant faiths formed a voluntary association called the Champaign Council on Religious Education. They obtained permission from the Board of Education to offer classes in religious instruction to public school pupils in grades four to nine, inclusive. Classes were made up of pupils whose parents signed printed cards requesting that their children be permitted to attend;[[2]](#footnote-2) they were held weekly, thirty minutes for **[p. 208]** the lower grades, forty-five minutes for the higher. The council employed the religious teachers at no expense to the school authorities, but the instructors were subject to the approval and supervision of the superintendent of schools.[[3]](#footnote-3) The classes were taught in three **[p. 209]** separate religious groups by Protestant teachers,[[4]](#footnote-4) Catholic priests, and a Jewish rabbi, although, for the past several years, there have apparently been no classes instructed in the Jewish religion. Classes were conducted in the regular classrooms of the school building. Students who did not choose to take the religious instruction were not released from public school duties; they were required to leave their classrooms and go to some other place in the school building for pursuit of their secular studies. On the other hand, students who were released from secular study for the religious instructions were required to be present at the religious classes. Reports of their presence or absence were to be made to their secular teachers.[[5]](#footnote-5)

The foregoing facts, without reference to others that appear in the record, show the use of tax supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. The operation of the State's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects. Pupils compelled by law to go to school for secular education are released **[p. 210]** in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in *Everson v. Board of Education,* 330 U. S. 1. There we said:

"Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.[[6]](#footnote-6) Neither can force or influence a person to go to or to remain away from church against his will, or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion.[[7]](#footnote-7) Neither a state nor **[p. 211]** the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and *vice versa.* In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'"

*Id.* at 330 U. S. 15-16. The majority in the *Everson* case, and the minority as shown by quotations from the dissenting views in our notes 6 and <="" a="" style="box-sizing: border-box;">| 6 and <="" a="" style="box-sizing: border-box;">S. 203fn7|>7, agreed that the First Amendment's language, properly interpreted, had erected a wall of separation between Church and State. They disagreed as to the facts shown by the record and as to the proper application of the First Amendment's language to those facts.

Recognizing that the Illinois program is barred by the First and Fourteenth Amendments if we adhere to the views expressed both by the majority and the minority in the *Everson* case, counsel for the respondents challenge those views as dicta, and urge that we reconsider and repudiate them. They argue that, historically, the First Amendment was intended to forbid only government preference of one religion over another, not an impartial governmental assistance of all religions. In addition, they ask that we distinguish or overrule our holding in the *Everson* case that the Fourteenth Amendment made the "establishment of religion" clause of the First Amendment applicable as a prohibition against the States. After giving full consideration to the arguments presented, we are unable to accept either of these contentions.

To hold that a state cannot, consistently with the First and Fourteenth Amendments, utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free

 **[p. 212]** exercise of religion. For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the *Everson* case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable.

Here not only are the State's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the State's compulsory public school machinery. This is not separation of Church and State.

The cause is reversed and remanded to the State Supreme Court for proceedings not inconsistent with this opinion.

*Reversed and remanded.*

1. Appellant, taking issue with the facts found by the Illinois courts, argues that the religious education program in question is invalid under the Federal Constitution for any one of the following reasons: (1) In actual practice certain Protestant groups have obtained an overshadowing advantage in the propagation of their faiths over other Protestant sects; (2) the religious education program was voluntary in name only, because, in fact, subtle pressures were brought to bear on the students to force them to participate in it, and (3) the power given the school superintendent to reject teachers selected by religious groups and the power given the local Council on Religious Education to determine which religious faiths should participate in the program was a prior censorship of religion.

In view of our decision, we find it unnecessary to consider these arguments or the disputed facts upon which they depend. [↑](#footnote-ref-1)
2. The Supreme Court described the request card system as follows:

". . . Admission to the classes was to be allowed only upon the express written request of parents, and then only to classes designated by the parents. . . . Cards were distributed to the parents of elementary students by the public school teachers requesting them to indicate whether they desired their children to receive religious education. After being filled out, the cards were returned to the teachers of religious education classes either by the public school teachers or the children. . . ."

On this subject, the trial court found that

". . . those students who have obtained the written consent of their parents therefor are released by the school authorities from their secular work, and in the grade schools for a period of thirty minutes' instruction in each week during said school hours, and forty-five minutes during each week in the junior high school, receive training in religious education. . . . Certain cards are used for obtaining permission of parents for their children to take said religious instruction courses, and they are made available through the offices of the superintendent of schools and through the hands of principals and teachers to the pupils of the school district. Said cards are prepared at the cost of the council of religious education. The handling and distribution of said cards does not interfere with the duties or suspend the regular secular work of the employees of the defendant. . . ." [↑](#footnote-ref-2)
3. The State Supreme Court said:

"The record further discloses that the teachers conducting the religious classes were not teachers in the public schools, but were subject to the approval and supervision of the superintendent. . . ."

The trial court found:

"Before any faith or other group may obtain permission from the defendant for the similar, free and equal use of rooms in the public school buildings, said faith or group must make application to the superintendent of schools of said School District Number 71, who in turn will determine whether or not it is practical for said group to teach in said school system."

The president of the local school board testified:

". . . The Protestants would have one group and the Catholics, and would be given a room where they would have the class and we would go along with the plan of the religious people. They were all to be treated alike, with the understanding that the teachers they would bring into the school were approved by the superintendent. . . . The superintendent was the last word so far as the individual was concerned. . . ." [↑](#footnote-ref-3)
4. There were two teachers of the Protestant faith. One was a Presbyterian, and had been a foreign missionary for that church. The second testified as follows:

"I am affiliated with the Christian church. I also work in the Methodist Church, and I taught at the Presbyterian. I am married to a Lutheran." [↑](#footnote-ref-4)
5. The director of the Champaign Council on Religious Education testified:

". . . If any pupil is absent, we turn in a slip just like any teacher would to the superintendent's office. The slip is a piece of paper with a number of hours in the school day and a square, and the teacher of the particular room for the particular hour records the absentees. It has their names and the grade and the section to which they belong. It is the same sheet that the geography and history teachers and all the other teachers use, and is furnished by the school. . . ." [↑](#footnote-ref-5)
6. The dissent, agreed to by four judges, said:

"The problem then cannot be cast in terms of legal discrimination or its absence. This would be true even though the state, in giving aid, should treat all religious instruction alike. . . . Again, it was the furnishing of 'contributions of money for the propagation of opinions which he disbelieves' that the fathers outlawed. That consequence and effect are not removed by multiplying to all-inclusiveness the sects for which support is exacted. The Constitution requires, not comprehensive identification of state with religion, but complete separation."

Everson v. Board of Education, 330 U. S. 1, 330 U. S. 59, 330 U. S. 60. [↑](#footnote-ref-6)
7. The dissenting judges said:

"In view of this history, no further proof is needed that the Amendment forbids any appropriation, large or small, from public funds to aid or support any and all religious exercises. . . . Legislatures are free to make, and courts to sustain, appropriations only when it can be found that, in fact, they do not aid, promote, encourage or sustain religious teaching or observances, be the amount large or small."

Everson v. Board of Education, 330 U. S. 1, 330 U. S. 41, 330 U. S. 52-53. [↑](#footnote-ref-7)