# Reed: Dissent

MR. JUSTICE REED, dissenting.

The decisions reversing the judgment of the Supreme Court of Illinois interpret the prohibition of the First Amendment against the establishment of religion, made effective as to the states by the Fourteenth Amendment, to forbid pupils of the public schools electing, with the approval of their parents, courses in religious education. The courses are given, under the school laws of Illinois as approved by the Supreme Court of that state, by lay or clerical teachers supplied and directed by an interdenominational, local council of religious education.[[1]](#footnote-1) The classes are held in the respective school buildings of the pupils at study or released time periods so as to avoid conflict with recitations. The teachers and supplies are paid for by the interdenominational group.[[2]](#footnote-2) As I am **[p. 239]** convinced that this interpretation of the First Amendment is erroneous, I feel impelled to express the reasons for my disagreement. By directing attention to the many instances of close association of church and state in American society, and by recalling that many of these relations are so much a part of our tradition and culture that they are accepted without more, this dissent may help in an appraisal of the meaning of the clause of the First Amendment concerning the establishment of religion and of the reasons which lead to the approval or disapproval of the judgment below.

The reasons for the reversal of the Illinois judgment, as they appear in the respective opinions, may be summarized by the following excerpts. The opinion of the Court, after stating the facts, says:

"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. . . . 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."

Another opinion phrases it thus:

"We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid 'released time' program. We find that the basic Constitutional principle of absolute separation was violated when the State of Illinois, speaking through its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement."

These expressions in the decisions seem to **[p. 240]** leave open for further litigation variations from the Champaign plan. Actually, however, future cases must run the gauntlet not only of the judgment entered, but of the accompanying words of the opinions. I find it difficult to extract from the opinions any conclusion as to what it is in the Champaign plan that is unconstitutional. Is it the use of school buildings for religious instruction; the release of pupils by the schools for religious instruction during school hours; the so-called assistance by teachers in handing out the request cards to pupils, in keeping lists of them for release and records of their attendance; or the action of the principals in arranging an opportunity for the classes and the appearance of the Council's instructors? None of the reversing opinions say whether the purpose of the Champaign plan for religious instruction during school hours is unconstitutional, or whether it is some ingredient used in or omitted from the formula that makes the plan unconstitutional.

From the tenor of the opinions, I conclude that their teachings are that any use of a pupil's school time, whether that use is on or off the school grounds, with the necessary school regulations to facilitate attendance, falls under the ban. I reach this conclusion notwithstanding one sentence of indefinite meaning in the second opinion:

"We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as 'released time,' present situations differing in aspects that may well be constitutionally crucial."

The use of the words "cooperation," "fusion," "complete hands-off," "integrate" and "integrated" to describe the relations between the school and the Council in the plan evidences this. So does the interpretation of the word "aid." The criticized "momentum of the whole school atmosphere," "feeling of separatism" engendered in the nonparticipating **[p. 241]** sects, "obvious pressure . . . to attend," and "divisiveness" lead to the stated conclusion. From the holding and the language of the opinions, I can only deduce that religious instruction of public school children during school hours is prohibited. The history of American education is against such an interpretation of the First Amendment.

The opinions do not say in words that the condemned practice of religious education is a law respecting an establishment of religion contrary to the First Amendment. The practice is accepted as a state law by all. I take it that, when the opinion of the Court says that

"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,"

and concludes

"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,"

the intention of its author is to rule that this practice is a law "respecting an establishment of religion." That was the basis of *Everson v. Board of Education,* 330 U. S. 1. It seems obvious that the action of the School Board in permitting religious education in certain grades of the schools by all faiths did not prohibit the free exercise of religion. Even assuming that certain children who did not elect to take instruction are embarrassed to remain outside of the classes, one can hardly speak of that embarrassment as a prohibition against the free exercise of religion. As no issue of prohibition upon the free exercise of religion is before us, we need only examine the School Board's action to see if it constitutes an establishment of religion.

The facts, as stated in the reversing opinions, are adequately set out if we interpret the abstract words used in the light of the concrete incidents of the record. It is **[p. 242]** correct to say that the parents "consented" to the religious instruction of the children, if we understand "consent" to mean the signing of a card like the one in the margin.[[3]](#footnote-3) It is correct to say that "instructors were subject to the approval and supervision of the superintendent of schools," if it is understood that there were no definitive written rules and that the practice was as is shown in the excerpts from the findings below.[[4]](#footnote-4) The substance of the **[p. 243]** religious education course is determined by the members of the various churches on the council, not by the superintendent.[[5]](#footnote-5) The evidence and findings set out in the two preceding notes convince me that the "approval and supervision" referred to above are not of the teachers and the course of studies, but of the orderly presentation of the courses to those students who may elect the instruction. The teaching largely covered Biblical incidents.[[6]](#footnote-6) The religious teachers and their teachings, in every real sense, **[p. 244]** were financed and regulated by the Council of Religious Education, not the School Board.

The phrase "an establishment of religion" may have been intended by Congress to be aimed only at a state church. When the First Amendment was pending in Congress in substantially its present form,

"Mr. Madison said he apprehended the meaning of the words to be that Congress should not establish a religion and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience.[[7]](#footnote-7) "

Passing years, however, have brought about acceptance of a broader meaning, although never until today, I believe, has this Court widened its interpretation to any such degree as holding that recognition of the interest of our nation in religion, through the granting, to qualified representatives of the principal faiths, of opportunity to present religion as an optional, extracurricular subject during released school time in public school buildings, was equivalent to an establishment of religion. A reading of the general statements of eminent statesmen of former days, referred to in the opinions in this case and in *Everson v. Board of Education, supra,* will show that circumstances such as those in this case were far from the minds of the authors. The words and spirit of those statements may be wholeheartedly accepted without in the least impugning the judgment of the State of Illinois.[[8]](#footnote-8) **[p. 245]** Mr. Jefferson, as one of the founders of the University of Virginia, a school which, from its establishment in 1819, has been wholly governed, managed and controlled by the State of Virginia,[[9]](#footnote-9) was faced with the same problem that is before this Court today: the question of the Constitutional limitation upon religious education in public schools. In his annual report as Rector, to the President and Directors of the Literary Fund, dated October 7, 1822, approved by the Visitors of the University of whom Mr. Madison was one,[[10]](#footnote-10) Mr. Jefferson set forth his views at some length.[[11]](#footnote-11) These suggestions of Mr. Jefferson were **[p. 246]** adopted[[12]](#footnote-12) and ch. II, § 1, of the Regulations of the University of October 4, 1824, provided that

"Should the religious sects of this State, or any of them, according to the invitation held out to them, establish within, or adjacent to, the precincts of the University, schools for instruction in the religion of their sect, the students of the University will be free, and expected to attend religious worship at the establishment of their respective sects, in the morning, and in time to meet their school in the University at its stated hour.[[13]](#footnote-13) " **[p. 247]** Thus, the "wall of separation between church and State" that Mr. Jefferson built at the University which he founded did not exclude religious education from that school. The difference between the generality of his statements on the separation of church and state and the specificity of his conclusions on education are considerable. A rule of law should not be drawn from a figure of speech.

Mr. Madison's *Memorial and Remonstrance against Religious Assessments,*[[14]](#footnote-14) relied upon by the dissenting Justices in *Everson,* is not applicable here.[[15]](#footnote-15) Mr. Madison was one of the principal opponents in the Virginia General Assembly of *A Bill Establishing a Provision for Teachers of the Christian Religion.*The monies raised by the taxing section[[16]](#footnote-16) of that bill were to be appropriated

"by the Vestries, Elders, or Directors of each religious society, . . . to a provision for a Minister or Teacher **[p. 248]** of the Gospel of their denomination, or the providing places of divine worship, and to none other use whatsoever. . . ."

The conclusive legislative struggle over this act took place in the fall of 1785, before the adoption of the Bill of Rights. The *Remonstrance* had been issued before the General Assembly convened, and was instrumental in the final defeat of the act, which died in committee. Throughout the *Remonstrance,* Mr. Madison speaks of the "establishment" sought to be effected by the act. It is clear from its historical setting and its language that the Remonstrance was a protest against an effort by Virginia to support Christian sects by taxation. Issues similar to those raised by the instant case were not discussed. Thus, Mr. Madison's approval of Mr. Jefferson's report as Rector gives, in my opinion, a clearer indication of his views on the constitutionality of religious education in public schools than his general statements on a different subject.

This Court summarized the amendment's accepted reach into the religious field, as I understand its scope, in *Everson v. Board of Education, supra.* The Court's opinion quotes the gist of the Court's reasoning in *Everson.* I agree, as there stated, that none of our governmental entities can "set up a church." I agree that they cannot "aid" all or any religions or prefer one "over another." But "aid" must be understood as a purposeful assistance directly to the church itself or to some religious group or organization doing religious work of such a character that it may fairly be said to be performing ecclesiastical functions. "Prefer" must give an advantage to one "over another." I agree that pupils cannot "be released in part from their legal duty" of school attendance upon condition that they attend religious classes. But, as Illinois has held that it is within the discretion of the School Board to permit absence from school for religious instruction, **[p. 249]** no legal duty of school attendance is violated. 396 Ill. 14, 71 N.E.2d 161. If the sentence in the Court's opinion concerning the pupils' release from legal duty is intended to mean that the Constitution forbids a school to excuse a pupil from secular control during school hours to attend voluntarily a class in religious education, whether in or out of school buildings, I disagree. Of course, no tax can be levied to support organizations intended "to teach or practice religion." I agree, too, that the state cannot influence one toward religion against his will, or punish him for his beliefs. Champaign's religious education course does none of these things.

It seems clear to me that the "aid" referred to by the Court in the *Everson* case could not have been those incidental advantages that religious bodies, with other groups similarly situated, obtain as a by-product of organized society. This explains the well known fact that all churches receive "aid" from government in the form of freedom from taxation. The *Everson* decision itself justified the transportation of children to church schools by New Jersey for safety reasons. It accords with *Cochran v. Louisiana State Board of Education,* 281 U. S. 370, where this Court upheld a free textbook statute of Louisiana against a charge that it aided private schools on the ground that the books were for the education of the children, not to aid religious schools. Likewise, the National School Lunch Act aids all school children attending tax exempt schools.[[17]](#footnote-17) In *Bradfield v. Roberts,* 175 U. S. 291, this Court held proper the payment of money by the Federal Government to build an addition to a hospital, chartered by individuals who were members of a Roman Catholic sisterhood and operated under the auspices of the Roman Catholic Church. This was done over the objection that it aided the establishment **[p. 250]** of religion.[[18]](#footnote-18) While obviously in these instances the respective churches, in a certain sense, were aided, this Court has never held that such "aid" was in violation of the First or Fourteenth Amendment.

Well recognized and long-established practices support the validity of the Illinois statute here in question. That statute, as construed in this case, is comparable to those in many states.[[19]](#footnote-19) All differ to some extent. New York may be taken as a fair example.[[20]](#footnote-20) In many states, the program **[p. 251]** is under the supervision of a religious council composed of delegates who are themselves communicants of various faiths.[[21]](#footnote-21) As is shown by *Bradfield v. Roberts, supra,* the fact that the members of the council have religious affiliations is not significant. In some, instruction **[p. 252]** is given outside of the school buildings; in others, within these buildings. Metropolitan centers like New York usually would have available quarters convenient to schools. Unless smaller cities and rural communities use the school building at times that do not interfere with recitations, they may be compelled to give up religious education. I understand that pupils not taking religious education usually are given other work of a secular nature within the schools.[[22]](#footnote-22) Since all these states use the facilities of the schools to aid the religious education to some extent, their desire to permit religious education to school children is thwarted by this Court's judgment.[[23]](#footnote-23) Under it, as I understand its language, children cannot be released or dismissed from school to attend classes in religion while other children must remain to pursue secular education. Teachers cannot keep the records as to which pupils are to be dismissed and which retained. To do so is said to be an "aid" in establishing religion; the use of public money for religion.

Cases running into the scores have been in the state courts of last resort that involved religion and the schools. Except where the exercises with religious significance partook of the ceremonial practice of sects or groups, their **[p. 253]** constitutionality has been generally upheld.[[24]](#footnote-24) Illinois itself promptly struck down as violative of its own constitution required exercises partaking of a religious ceremony. *People ex rel. Ring v. Board of Education,* 245 Ill. 334, 92 N.E. 251. In that case, compulsory religious exercises -- a reading from the King James Bible, the Lord's Prayer and the singing of hymns -- were forbidden as "worship services." In this case, the Supreme Court of Illinois pointed out that, in the *Ring* case, the activities in the school were ceremonial and compulsory; in this, voluntary and educational. 396 Ill. 14, 221, 71 N.E.2d 161, 164.

The practices of the federal government offer many examples of this kind of "aid" by the state to religion. The Congress of the United States has a chaplain for each House who daily invokes divine blessings and guidance for **[p. 254]** the proceedings.[[25]](#footnote-25) The armed forces have commissioned chaplains from early days.[[26]](#footnote-26) They conduct the public services in accordance with the liturgical requirements of their respective faiths, ashore and afloat, employing for the purpose property belonging to the United States and dedicated to the services of religion.[[27]](#footnote-27) Under the Servicemen's Readjustment Act of 1944, eligible veterans may receive training at government expense for the ministry in denominational schools.[[28]](#footnote-28) The schools of the District of Columbia have opening exercises which "include a reading from the Bible without note or comment, and the Lord's prayer."[[29]](#footnote-29)

In the United States Naval Academy and the United States Military Academy, schools wholly supported and completely controlled by the federal government, there are a number of religious activities. Chaplains are attached to both schools. Attendance at church services on Sunday is compulsory at both the Military and Naval Academies.[[30]](#footnote-30) At West Point, the Protestant services are **[p. 255]** held in the Cadet Chapel, the Catholic in the Catholic Chapel, and the Jewish in the Old Cadet Chapel; at Annapolis, only Protestant services are held on the reservation, midshipmen of other religious persuasions attend the churches of the city of Annapolis. These facts indicate that both schools, since their earliest beginnings, have maintained and enforced a pattern of participation in formal worship.

With the general statements in the opinions concerning the constitutional requirement that the nation and the states, by virtue of the First and Fourteenth Amendments,[[31]](#footnote-31) may "make no law respecting an establishment of religion," I am in agreement. But, in the light of the meaning given to those words by the precedents, customs, and practices which I have detailed above, I cannot agree with the Court's conclusion that, when pupils compelled by law to go to school for secular education are released from school so as to attend the religious classes, churches are unconstitutionally aided. Whatever may be the wisdom of the arrangement as to the use of the school buildings made with the Champaign Council of Religious Education, it is clear to me that past practice shows such cooperation between the schools and a nonecclesiastical body is not forbidden by the First Amendment. When actual church services have always been permitted on government property, the mere use of the school buildings by a nonsectarian group for religious education ought not to be condemned as an establishment of religion. For a nonsectarian organization to give the type of instruction here offered cannot be said to violate our rule as to the establishment of religion by the state. The prohibition of enactments respecting the establishment of religion do **[p. 256]** not bar every friendly gesture between church and state. It is not an absolute prohibition against every conceivable situation where the two may work together, any more than the other provisions of the First Amendment -- free speech, free press -- are absolutes.[[32]](#footnote-32) If abuses occur, such as the use of the instruction hour for sectarian purposes, I have no doubt, in view of the *Ring* case, that Illinois will promptly correct them. If they are of a kind that tend to the establishment of a church or interfere with the free exercise of religion, this Court is open for a review of any erroneous decision. This Court cannot be too cautious in upsetting practices embedded in our society by many years of experience. A state is entitled to have great leeway in its legislation when dealing with the important social problems of its population.[[33]](#footnote-33) A definite violation of legislative limits must be established. The Constitution should not be stretched to forbid national customs in the way courts act to reach arrangements to avoid federal taxation.[[34]](#footnote-34) Devotion to the great principle of religious liberty should not lead us into a rigid interpretation of the constitutional guarantee that conflicts with accepted habits of our people. This is an instance where, for me, the history of past practices is determinative of the meaning of a constitutional clause, not a decorous introduction to the study of its text. The judgment should be affirmed.

1. The trial court found that:

"'The Champaign Council of Religious Education' [is] a voluntary association made up of the representatives of the Jewish, Roman Catholic and Protestant faiths in the school district." [↑](#footnote-ref-1)
2. There is no extra cost to the state, but, as a theoretical accounting problem, it may be correct to charge to the classes their comparable proportion of the state expense for buildings, operation and teachers. In connection with the classes, the teachers need only keep a record of the pupils who attend. Increased custodial requirements are likewise nominal. It is customary to use school buildings for community activities when not needed for school purposes. See Ill.Rev.Stat., ch. 122, § 123. [↑](#footnote-ref-2)
3. "CHAMPAIGN COUNCIL OF RELIGIOUS EDUCATION"

"1945-1946"

"Parent's Request Card"

"Please permit \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in Grade \_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_ School to attend a class in Religious Education one period a week under the Auspices of the Champaign Council of Religious Education."

"(Check which) Date \_\_\_\_\_\_\_\_\_ \_\_\_\_ ( ) Interdenominational"

"( ) Protestant"

"( ) Roman Catholic"

"( ) Jewish"

"Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_"

"(Parent Name)"

"Parent's Church \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_"

"Telephone No. \_\_\_\_\_\_\_\_\_ Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_"

"A fee of 25 cents a semester is charged each pupil to help cover the cost of material used."

"If you wish your child to receive religious instruction, please sign this card and return to the school."

"Mae Chapin, Director"

Mae Chapin, the Director, was not a school employee. [↑](#footnote-ref-3)
4. "The superintendent testified that Jehovah's Witnesses or any other sect would be allowed to teach provided their teachers had proper educational qualifications, so that bad grammar, for instance, would not be taught to the pupils. A similar situation developed with reference to the Missouri Synod of the Lutheran Church. The evidence tends to show that, during the course of the trial, that group indicated it would affiliate with the Council of Religious Education."

"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 court feels from all the facts in the record that an honest attempt has been made and is being made to permit religious instruction to be given by qualified outside teachers of any sect to people of their own faith in the manner above outlined. The evidence shows that no sect or religious group has ever been denied the right to use the schools in this manner." [↑](#footnote-ref-4)
5. A finding reads:

"The curriculum of studies in the Protestant classes is determined by a committee of the Protestant members of the council of religious education after consultation with representatives of all the different faiths included in said council. The Jewish classes, of course, would deny the divinity of Jesus Christ. The teaching in the Catholic classes, of course, explains to Catholic pupils the teaching of the Catholic religion, and are not shared by other students who are Protestants or Jews. The teachings in the Protestant classes would undoubtedly, from the evidence, teach some doctrines that would not be accepted by the other two religions." [↑](#footnote-ref-5)
6. It was found:

"The testimony shows that sectarian differences between the sects are not taught or emphasized in the actual teaching as it is conducted in the schools. The testimony of the religious education teachers, the secular teachers who testified, and the many children, mostly from Protestant families, who either took or did not take religious education courses, is to the effect that religious education classes have fostered tolerance, rather than intolerance."

The Supreme Court of Illinois said: "The religious education courses do not go to the extent of being worship services, and do not include prayers or the singing of hymns." 396 Ill. 14, 21, 71 N.E.2d 161, 164. [↑](#footnote-ref-6)
7. Annals of Congress 730. [↑](#footnote-ref-7)
8. For example, Mr. Jefferson's striking phrase as to the "wall of separation between church and State" appears in a letter acknowledging "The affectionate sentiments of esteem and approbation" included in a testimonial to himself. In its context, it reads as follows:

"Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and State."

8 The Writings of Thomas Jefferson (Washington ed., 1861) 113. [↑](#footnote-ref-8)
9. Acts of the Assembly of 1818-19 (1819) 15; Phillips v. The Rector and Visitors of the University of Virginia, 97 Va. 472, 474 75, 34 S.E. 66, 67. [↑](#footnote-ref-9)
10. 19 The Writings of Thomas Jefferson (Memorial edition, 1904) 408, 409. [↑](#footnote-ref-10)
11. Id., pp. 414-417:

"It was not, however, to be understood that instruction in religious opinion and duties was meant to be precluded by the public authorities, as indifferent to the interests of society. On the contrary, the relations which exist between man and his Maker, and the duties resulting from those relations, are the most interesting and important to every human being, and the most incumbent on his study and investigation. The want of instruction in the various creeds of religious faith existing among our citizens presents, therefore, a chasm in a general institution of the useful sciences. . . . A remedy, however, has been suggested of promising aspect which, while it excludes the public authorities from the domain of religious freedom, will give to the sectarian schools of divinity the full benefit the public provisions made for instruction in the other branches of science. . . . It has therefore been in contemplation, and suggested by some pious individuals, who perceive the advantages of associating other studies with those of religion, to establish their religious schools on the confines of the University so as to give to their students ready and convenient access and attendance on the scientific lectures of the University and to maintain, by that means, those destined for the religious professions on as high a standing of science, and of personal weight and respectability, as may be obtained by others from the benefits of the University. Such establishments would offer the further and greater advantage of enabling the students of the University to attend religious exercises with the professor of their particular sect, either in the rooms of the building still to be erected, and destined to that purpose under impartial regulations, as proposed in the same report of the commissioners, or in the lecturing room of such professor. . . . Such an arrangement as would complete the circle of the useful sciences embraced by this institution, and would fill the chasm now existing, on principles which would leave inviolate the constitutional freedom of religion, the most inalienable and sacred of all human rights, over which the people and authorities of this state, individually and publicly, have ever manifested the most watchful jealousy; and could this jealousy be now alarmed, in the opinion of the legislature, by what is here suggested, the idea will be relinquished on any surmise of disapprobation which they might think proper to express."

Mr. Jefferson commented upon the report on November 2, 1822, in a letter to Dr. Thomas Cooper, as follows:

"And by bringing the sects together, and mixing them with the mass of other students, we shall soften their asperities, liberalize and neutralize their prejudices, and make the general religion a religion of peace, reason, and morality."

12 Ford, The Works of Thomas Jefferson, (Fed. ed., 1905), 272. [↑](#footnote-ref-11)
12. 3 Randall, Life of Thomas Jefferson (1858) 471. [↑](#footnote-ref-12)
13. 19 The Writings of Thomas Jefferson (Memorial edition, 1904) 449. [↑](#footnote-ref-13)
14. The texts of the Memorial and Remonstrance and the bill against which it was aimed, to-wit, A Bill Establishing a Provision for Teachers of the Christian Religion, are set forth in Everson v. Board of Education, 330 U. S. 1, 330 U. S. 28, 63-74. [↑](#footnote-ref-14)
15. See generally the dissent of MR. JUSTICE RUTLEDGE, 330 U. S. 330 U.S. 1, 330 U. S. 28. [↑](#footnote-ref-15)
16. 330 U.S. at 330 U. S. 72-73:

"Be it therefore enacted by the General Assembly, That for the support of Christian teachers, percentum on the amount, or in the pound on the sum payable for tax on the property within this Commonwealth, is hereby assessed, and shall be paid by every person chargeable with the said tax at the time the same shall become due, and the Sheriffs of the several Counties shall have power to levy and collect the same in the same manner and under the like restrictions and limitations, as are or may be prescribed by the laws for raising the Revenues of this State."

"And be it enacted, That for every sum so paid, the Sheriff or Collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid, keeping a distinct account thereof in his books. . . ." [↑](#footnote-ref-16)
17. 60 Stat. 230, ch. 281, §§ 4, 11(d)(3). [↑](#footnote-ref-17)
18. See Selective Draft Law Cases, 245 U. S. 366, 245 U. S. 390; Quick Bear v. Leupp, 210 U. S. 50. [↑](#footnote-ref-18)
19. Ed.Code of Cal. (Deering, 1944) § 8286; 6 Ind.Stat.Ann. (Burns, 1933) 1945 Supp. § 28-505a; 1 Code of Iowa ch. 299, § 299.2 (1946); Ky.Rev.Stat. (1946) § 158.220; 1 Rev.Stat. of Maine (1944) ch. 37, § 131; 2 Ann.Laws of Mass. (1945) ch. 76, § 1; Minn.Stat. (1945) § 132.05; N.Y. Education Law § 3210(1); 8 Ore.Comp.Laws Ann. (1940) § 111-3014; 24 Pa.Stat.Ann. (Purdon, 1930) 1947 Supp. § 1563; 1 Code of S.D. (1939) § 15.3202; 1 Code of W.Va. (1943) § 1847. [↑](#footnote-ref-19)
20. Education Law § 3210(1) provides that:

"a. A minor required by the provisions of part one of this article to attend upon instruction shall attend regularly as prescribed where he resides or is employed, for the entire time the appropriate public schools or classes are in session and shall be subordinate and orderly while so attending."

"b. Absence for religious observance and education shall be permitted under rules that the commissioner shall establish."

Acting under the authority of the New York law, the State Commissioner of Education issued, on July 4, 1940, these regulations:

"1 Absence of a pupil from school during school hours for religious observance and education to be had outside the school building and grounds will be excused upon the request in writing signed by the parent or guardian of the pupil."

"2 The courses in religious observance and education must be maintained and operated by or under the control of a duly constituted religious body or of duly constituted religious bodies."

"3 Pupils must be registered for the courses and a copy of the registration filed with the local public school authorities."

"4 Reports of attendance of pupils upon such courses shall be filed with the principal or teacher at the end of each week."

"5 Such absence shall be for not more than one hour each week at the close of a session at a time to be fixed by the local school authorities."

"6 In the event that more than one school for religious observance and education is maintained in any district, the hour for absence for each particular public school in such district shall be the same for all such religious schools."

On November 13, 1940, rules to govern the released time program of the New York City schools were adopted by the Board of Education of the City of New York. Under these rules, the practice of the religious education program is this: classes in religious education are to be held outside of school buildings; establishment of the program rests in the initiative of the church and home; enrollment is voluntary, and accomplished by this technique: the church distributes cards to the parents, and these are filled out and presented to the school; records of enrollment and arrangements for release are handled by school authorities; discipline is the responsibility of the church, and children who do not attend are kept at school and given other work. See Rules of the Board of Education of the City of New York adopted Nov. 13, 1940; Public Education Association, Released Time for Religious Education in New York City's Schools (1943); id. (1945).

Constitutional approval by the New York Court of Appeals of these practices was given before the passage of Education Law § 3210(1). People ex rel. Lewis v. Graves,245 N.Y.195, 156 N.E. 663. [↑](#footnote-ref-20)
21. The New York City program is supervised by The Greater New York Coordinating Committee on Released Time, a group of laymen drawn from Jews, Protestants and Roman Catholics. This Committee is an example of a broad national effort to bring about religious education of children through cooperative action of schools and groups of members of various religious denominations. The methods vary in different states and cities, but are basically like the work of the New York City Committee. See Brief Sketches of Weekday Church Schools, Department of Weekday Religious Education, International Council of Religious Education, Chicago, Illinois (1944). [↑](#footnote-ref-21)
22. See note 20 supra. [↑](#footnote-ref-22)
23. The use of school buildings is not unusual. See Davis, Weekday Classes in Religious Education, U.S. Office of Education (Bulletin 1941, No. 3) 27; National Education Association, The State and Sectarian Education, Research Bulletin (Feb.1946) 36. The International Council of Religious Education advises that church buildings be used if possible. Shaver, Remember the Weekday, International Council of Religious Education (1946).

"Today, approximately two thousand communities in all but two states provide religious education in cooperation with the public schools for more than a million and a half of pupils."

Shaver, The Movement for Weekday Religious Education, Religious Education (Jan.-Feb.1946), p. 7. [↑](#footnote-ref-23)
24. Many uses of religious material in the public schools in a manner that has some religious significance have been sanctioned by state courts. These practices have been permitted: reading selections from the King James Bible without comment; reading the Bible and repeating the Lord's Prayer; teaching the Ten Commandments; saying prayers, and using textbooks based upon the Bible and emphasizing its fundamental teachings. When conducted in a sectarian manner, reading from the Bible and singing hymns in the school's morning exercise have been prohibited, as has using the Bible as a textbook. There is a conflict of authority on the question of the constitutionality of wearing religious garb while teaching in the public schools. It has been held to be constitutional for school authorities to prohibit the reading of the Bible in the public schools. There is a conflict of authority on the constitutionality of the use of public school buildings for religious services held outside of school hours. The constitutionality, under state constitutions, of furnishing free textbooks and free transportation to parochial school children is in conflict. See Nichols v. Henry,301 Ky. 434, 191 S.W.2d 930; Findley v. City of Conneaut, 12 Ohio Supp. 161. The earlier cases are collected in 5 A.L.R. 866 and 141 A.L.R. 1144. [↑](#footnote-ref-24)
25. Rules of the House of Representatives (1943) Rule VII; Senate Manual (1947) 6, fn. 2. [↑](#footnote-ref-25)
26. 3 Stat. 297 (1816). [↑](#footnote-ref-26)
27. Army Reg., No. 60-5 (1944); U.S. Navy Reg. (1920), ch. 1, § 2 and ch. 34, §§ 1-2. [↑](#footnote-ref-27)
28. 58 Stat. 289. [↑](#footnote-ref-28)
29. Board of Education Rules, ch. VI, § 4. [↑](#footnote-ref-29)
30. Reg. for the U.S. Corps of Cadets (1947) 47:

"Attendance at chapel is part of a cadet's training; no cadet will be exempted. Each cadet will receive religious training in one of the three principal faiths: Catholic, Protestant, or Jewish."

U.S. Naval Academy Reg., Art. 4301(b):

"Midshipmen shall attend church services on Sundays at the Naval Academy Chapel or at one of the regularly established churches in the city of Annapolis."

Morning prayers are also required at Annapolis. U.S. Naval Academy Reg., Art. 4301(a): "Daily, except on Sundays, a Chaplain will conduct prayers in the mess hall, immediately before breakfast." Protestant and Catholic Chaplains take their turn in leading these prayers. [↑](#footnote-ref-30)
31. The principles of the First Amendment were absorbed by the Fourteenth Amendment. Pennecamp v. Florida, 328 U. S. 331, 328 U. S. 335. [↑](#footnote-ref-31)
32. See Whitney v. California, 274 U. S. 357, 274 U. S. 371; Reynolds v. United States, 98 U. S. 145, 98 U. S. 166; Cantwell v. Connecticut, 310 U. S. 296, 310 U. S. 303; Cox v. New Hampshire, 312 U. S. 569, 312 U. S. 574, 312 U. S. 576; Chaplinsky v. New Hampshire,315 U. S. 568, 315 U. S. 571; Prince v. Massachusetts, 321 U. S. 158. [↑](#footnote-ref-32)
33. Cf. Bob-Lo Excursion Co. v. Michigan, 333 U. S. 28. [↑](#footnote-ref-33)
34. Higgins v. Smith, 308 U. S. 473; Helvering v. Clifford, 309 U. S. 331; Comm'r v. Tower, 327 U. S. 280; Lusthaus v. Comm'r, 327 U. S. 293. [↑](#footnote-ref-34)