# White Concurrence

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART join, concurring.

Cases such as this one inevitably call for a delicate balancing of important but conflicting interests. I join the opinion and judgment of the Court because I cannot **[p. 238]** say that the State's interest in requiring two more years of compulsory education in the ninth and tenth grades outweighs the importance of the concededly sincere Amish religious practice to the survival of that sect.

This would be a very different case for me if respondents' claim were that their religion forbade their children from attending any school at any time and from complying in any way with the educational standards set by the State. Since the Amish children are permitted to acquire the basic tools of literacy to survive in modern society by attending grades one through eight, and since the deviation from the State's compulsory education law is relatively slight, I conclude that respondents' claim must prevail, largely because

"religious freedom -- the freedom to believe and to practice strange and, it may be, foreign creeds -- has classically been one of the highest values of our society."

*Braunfeld v. Brown,* 366 U. S. 599, 366 U. S. 612 (1961) (BRENNAN, J., concurring and dissenting).

The importance of the state interest asserted here cannot be denigrated, however:

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment."

*Brown v. Board of Education,* 347 U. S. 483, 347 U. S. 493 (1954). **[p. 239]** As recently as last Term, the Court reemphasized the legitimacy of the State's concern for enforcing minimal educational standards, *Lemon v. Kurtzman,* 403 U. S. 602, 403 U. S. 613 (1971)[[1]](#footnote-1)  *Pierce v. Society of Sisters,* 268 U. S. 510 (1925), lends no support to the contention that parents may replace state educational requirements with their own idiosyncratic views of what knowledge a child needs to be a productive and happy member of society; in *Pierce,* both the parochial and military schools were in compliance with all the educational standards that the State had set, and the Court held simply that, while a State may posit such standards, it may not preempt the educational process by requiring children to attend public schools.[[2]](#footnote-2) In the present case, the State is not concerned with the maintenance of an educational system as an end in itself; it is rather attempting to nurture and develop the human potential of its children, whether Amish or non-Amish: to expand their knowledge, broaden their sensibilities, kindle their imagination, foster a spirit of free inquiry, and increase their human understanding and tolerance. It is possible that most Amish **[p. 240]** children will wish to continue living the rural life of their parents, in which case their training at home will adequately equip them for their future role. Others, however, may wish to become nuclear physicists, ballet dancers, computer programmers, or historians, and for these occupations, formal training will be necessary. There is evidence in the record that many children desert the Amish faith when they come of age.[[3]](#footnote-3) A State has a legitimate interest not only in seeking to develop the latent talents of its children, but also in seeking to prepare them for the lifestyle that they may later choose, or at least to provide them with an option other than the life they have led in the past. In the circumstances of this case, although the question is close, I am unable to say that the State has demonstrated that Amish children who leave school in the eighth grade will be intellectually stultified or unable to acquire new academic skills later. The statutory minimum school attendance age set by the State is, after all, only 16.

Decision in cases such as this and the administration of an exemption for Old Order Amish from the State's compulsory school attendance laws will inevitably involve the kind of close and perhaps repeated scrutiny of religious practices, as is exemplified in today's opinion, which the Court has heretofore been anxious to avoid. But such entanglement does not create a forbidden establishment of religion where it is essential to implement free **[p. 241]** exercise values threatened by an otherwise neutral program instituted to foster some permissible, nonreligious state objective. I join the Court because the sincerity of the Amish religious policy here is uncontested, because the potentially adverse impact of the state requirement is great, and because the State's valid interest in education has already been largely satisfied by the eight years the children have already spent in school.

1. The challenged Amish religious practice here does not pose a substantial threat to public safety, peace, or order; if it did, analysis under the Free Exercise Clause would be substantially different. See Jacobson v. Massachusetts, 197 U. S. 11 (1905); Prince v. Massachusetts, 321 U. S. 158 (1944); Cleveland v. United States, 329 U. S. 14 (1946); Application of President and Directors of Georgetown College, Inc., 118 U.S.App.D.C. 80, 331 F.2d 1000, cert. denied, 377 U.S. 978 (1964). [↑](#footnote-ref-1)
2. "No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."

Pierce v. Society of Sisters, 268 U. S. 510, 268 U. S. 534 (1925). [↑](#footnote-ref-2)
3. Dr. Hostetler testified that, though there was a gradual increase in the total number of Old Order Amish in the United States over the past 50 years, "at the same time, the Amish have also lost members [of] their church," and that the turnover rate was such that "probably two-thirds [of the present Amish] have been assimilated non-Amish people." App. 110. Justice Heffernan, dissenting below opined that "[l]arge numbers of young people voluntarily leave the Amish community each year, and are thereafter forced to make their way in the world." 49 Wis.2d 430, 451, 182 N.W.2d 539, 549 (1971). [↑](#footnote-ref-3)