# Douglas: Opinion of the Court

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

New York City has a program which permits its public schools to release students during the school day so that they may leave the school buildings and school grounds and go to religious centers for religious instruction or devotional exercises. A student is released on written request of his parents. Those not released stay in the classrooms. The churches make weekly reports to the schools, sending a list of children who have been released from public school but who have not reported for religious instruction.[[1]](#footnote-1)

This “released time” program involves neither religious instruction in public school classrooms nor the expenditure **[p. 309]** of public funds. All costs, including the application blanks, are paid by the religious organizations. The case is therefore unlike *McCollum v. Board of Education,* 333 U. S. 203, which involved a “released time” program from Illinois. In that case, the classrooms were turned over to religious instructors. We accordingly held that the program violated the First Amendment[[2]](#footnote-2) which (by reason of the Fourteenth Amendment)[[3]](#footnote-3) prohibits the states from establishing religion or prohibiting its free exercise.

Appellants, who are taxpayers and residents of New York City and whose children attend its public schools,[[4]](#footnote-4) challenge the present law, contending it is, in essence, not different from the one involved in the *McCollum* case. Their argument, stated elaborately in various ways, reduces itself to this: the weight and influence of the school is put behind a program for religious instruction; public school teachers police it, keeping tab on students who are released; the classroom activities come to a halt while the students who are released for religious instruction are on leave; the school is a crutch on which the churches are leaning for support in their religious training; without the cooperation of the schools, this “released time” program, **[p. 310]** like the one in the *McCollum* case, would be futile and ineffective. The New York Court of Appeals sustained the law against this claim of unconstitutionality. 303 N.Y. 161, 100 N.E.2d 463. The case is here on appeal. 28 U.S.C. § 1257(2).

The briefs and arguments are replete with data bearing on the merits of this type of “released time” program. Views pro and con are expressed, based on practical experience with these programs and with their implications.[[5]](#footnote-5) We do not stop to summarize these materials, nor to burden the opinion with an analysis of them. For they involve considerations not germane to the narrow constitutional issue presented. They largely concern the wisdom of the system, its efficiency from an educational point of view, and the political considerations which have motivated its adoption or rejection in some communities. Those matters are of no concern here, since our problem reduces itself to whether New York, by this system, has either prohibited the “free exercise” of religion or has made a law “respecting an establishment of religion” within the meaning of the First Amendment. **[p. 311]** It takes obtuse reasoning to inject any issue of the “free exercise” of religion into the present case. No one is forced to go to the religious classroom, and no religious exercise or instruction is brought to the classrooms of the public schools. A student need not take religious instruction. He is left to his own desires as to the manner or time of his religious devotions, if any.

There is a suggestion that the system involves the use of coercion to get public school students into religious classrooms. There is no evidence in the record before us that supports that conclusion.[[6]](#footnote-6) The present record indeed tells us that the school authorities are neutral in this regard, and do no more than release students whose parents so request. If, in fact, coercion were used, if it were established that any one or more teachers were using their office to persuade or force students to take the religious instruction, a wholly different case would be presented.[[7]](#footnote-7) Hence, we put aside that claim of coercion **[p. 312]** both as respects the “free exercise” of religion and “an establishment of religion” within the meaning of the First Amendment.

Moreover, apart from that claim of coercion, we do not see how New York by this type of “released time” program has made a law respecting an establishment of religion within the meaning of the First Amendment. There is much talk of the separation of Church and State in the history of the Bill of Rights and in the decisions clustering around the First Amendment. *See Everson v. Board of Education,* 330 U. S. 1; *McCollum v. Board of Education, supra.* There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the “free exercise” of religion and an “establishment” of religion are concerned, the separation must be complete and unequivocal. The First Amendment within the scope of its coverage permits no exception; the prohibition is absolute. The First Amendment, however, does not say that, in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise the state and religion would be aliens to each other -- hostile, suspicious, and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would not be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals **[p. 313]** to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday; “so help me God” in our courtroom oaths -- these and all other references to the Almighty that run through our laws, our public rituals, our ceremonies would be flouting the First Amendment. A fastidious atheist or agnostic could even object to the supplication with which the Court opens each session: “God save the United States and this Honorable Court.”

We would have to press the concept of separation of Church and State to these extremes to condemn the present law on constitutional grounds. The nullification of this law would have wide and profound effects. A Catholic student applies to his teacher for permission to leave the school during hours on a Holy Day of Obligation to attend a mass. A Jewish student asks his teacher for permission to be excused for Yom Kippur. A Protestant wants the afternoon off for a family baptismal ceremony. In each case, the teacher requires parental consent in writing. In each case, the teacher, in order to make sure the student is not a truant, goes further and requires a report from the priest, the rabbi, or the minister. The teacher, in other words, cooperates in a religious program to the extent of making it possible for her students to participate in it. Whether she does it occasionally for a few students, regularly for one, or pursuant to a systematized program designed to further the religious needs of all the students does not alter the character of the act.

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. When the state **[p. 314]** encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe. Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. The government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction. No more than that is undertaken here.

This program may be unwise and improvident from an educational or a community viewpoint. That appeal is made to us on a theory, previously advanced, that each case must be decided on the basis of “our own prepossessions.” *See McCollum v. Board of Education, supra,* p. 333 U. S. 238. Our individual preferences, however, are not the constitutional standard. The constitutional standard is the separation of Church and State. The problem, like many problems in constitutional law, is one of degree. *See McCollum v. Board of Education, supra,* p. 333 U. S. 231. **[p. 315]** In the *McCollum* case, the classrooms were used for religious instruction and the force of the public school was used to promote that instruction. Here, as we have said, the public schools do no more than accommodate their schedules to a program of outside religious instruction. We follow the *McCollum* case.[[8]](#footnote-8) But we cannot expand it to cover the present released time program unless separation of Church and State means that public institutions can make no adjustments of their schedules to accommodate the religious needs of the people. We cannot read into the Bill of Rights such a philosophy of hostility to religion.

*Affirmed.*

1. The New York City released time program is embodied in the following provisions:

(a) N.Y. Education Law, § 3210, subdiv. 1(b), which provides that “Absence for religious observance and education shall be permitted under rules that the commissioner shall establish.”

(b) Regulations of the Commissioner of Education of the State of New York, Art. 17, § 154 (1 N.Y. Official Code Comp. 683), which provide for absence during school hours for religious observance and education outside the school grounds [par. 1], where conducted by or under the control of a duly constituted religious body [par. 2]. Students must obtain written requests from their parents or guardians to be excused for such training [par. 1], and must register for the training and have a copy of their registration filed with the public school authorities [par. 3]. Weekly reports of their attendance at such religious schools must be filed with their principal or teacher [par. 4]. Only one hour a week is to be allowed for such training, at the end of a class session [par. 5], and where more than one religious school is conducted, the hour of release shall be the same for all religious schools [par. 6].

(c) Regulations of the Board of Education of the City of New York, which provide similar rules supplementing the State Commissioner's regulations, with the following significant amplifications: no announcement of any kind will be made in the public schools relative to the program [rule 1]. The religious organizations and parents will assume full responsibility for attendance at the religious schools and will explain any failures to attend on the weekly attendance reports [rule 3]. Students who are released will be dismissed from school in the usual way [rule 5]. There shall be no comment by any principal or teacher on attendance or nonattendance of any pupil upon religious instruction [rule 6]. [↑](#footnote-ref-1)
2. The First Amendment reads in relevant part, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” [↑](#footnote-ref-2)
3. See Stromberg v. California, 283 U. S. 359; Cantwell v. Connecticut, 310 U. S. 296; Murdock v. Pennsylvania, 319 U. S. 105. [↑](#footnote-ref-3)
4. No problem of this Court's jurisdiction is posed in this case, since, unlike the appellants in Doremus v. Board of Education, 342 U. S. 429, appellants here are parents of children currently attending schools subject to the released time program. [↑](#footnote-ref-4)
5. See, e.g., Beckes, Weekday Religious Education (National Conference of Christians and Jews, Human Relations Pamphlet No. 6); Butts, American Tradition in Religion and Education, pp 188, 199; Moehlman, The Wall of Separation between Church and State, pp. 123, 155 ff.; Moehlman, The Church as Educator, pp. 103 ff.; Moral and Spiritual Values in the Public Schools (Educational Policies Commission, 1951); Newman, The Sectarian Invasion of Our Public Schools; Public School Time for Religious Education, 12 Jewish Education 130 (January, 1941); Religious Instruction On School Time, 7 Frontiers of Democracy 72 (1940); Released Time for Religious Education in New York City's Schools (Public Education Association, June 30, 1943); Released Time for Religious Education in New York City's Schools (Public Education Association, June 30, 1945); Released Time for Religious Education in New York City Schools (Public Education Association, 1949); 2 Stokes, Church and State in the United States, pp. 523-548; The Status Of Religious Education In The Public Schools (National Education Association). [↑](#footnote-ref-5)
6. Nor is there any indication that the public schools enforce attendance at religious schools by punishing absentees from the released time programs for truancy. [↑](#footnote-ref-6)
7. Appellants contend that they should have been allowed to prove that the system is, in fact, administered in a coercive manner. The New York Court of Appeals declined to grant a trial on this issue, noting, inter alia, that appellants had not properly raised their claim in the manner required by state practice. 303 N.Y. 161, 174, 100 N.E.2d 463, 469. This independent state ground for decision precludes appellants from raising the issue of maladministration in this proceeding.See Louisville & Nashville R. Co. v. Woodford, 234 U. S. 46, 234 U. S. 51; Atlantic Coast Line R. Co. v. Mims, 242 U. S. 532, 242 U. S. 535; American Surety Co. v. Baldwin, 287 U. S. 156, 287 U. S. 169.

The only allegation in the complaint that bears on the issue is that the operation of the program

“has resulted and inevitably results in the exercise of pressure and coercion upon parents and children to secure attendance by the children for religious instruction.”

But this charge does not even implicate the school authorities. The New York Court of Appeals was therefore generous in labeling it a “conclusory” allegation. 303 N.Y. at 174, 100 N.E.2d at 469. Since the allegation did not implicate the school authorities in the use of coercion, there is no basis for holding that the New York Court of Appeals under the guise of local practice defeated a federal right in the manner condemned by Brown v. Western R. of Alabama, 338 U. S. 294, and related cases. [↑](#footnote-ref-7)
8. Three of us -- THE CHIEF JUSTICE, MR. JUSTICE DOUGLAS and MR. JUSTICE BURTON -- who join this opinion agreed that the “released time” program involved in the McCollum case was unconstitutional. It was our view at the time that the present type of “released time” program was not prejudged by the McCollum case, a conclusion emphasized by the reservation of the question in the separate opinion by MR. JUSTICE FRANKFURTER in which MR. JUSTICE BURTON joined. See 333 U.S. at 333 U. S. 225, where it was said,

“Of course, 'released time,' as a generalized conception, undefined by differentiating particularities, is not an issue for Constitutional adjudication. Local programs differ from each other in many and crucial respects. . . . It is only when challenge is made to the share that the public schools have in the execution of a particular 'released time' program that close judicial scrutiny is demanded of the exact relation between the religious instruction and the public educational system in the specific situation before the Court.” [↑](#footnote-ref-8)