

1954

## CONSTITUTIONAL LAW-CHURCH AND STATE-DISTRIBUTION OF GIDEON BIBLE IN PUBLIC SCHOOLS

Raymond R. Trombadore S.Ed.  
*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Constitutional Law Commons](#), [Religion Law Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Raymond R. Trombadore S.Ed., *CONSTITUTIONAL LAW-CHURCH AND STATE-DISTRIBUTION OF GIDEON BIBLE IN PUBLIC SCHOOLS*, 52 MICH. L. REV. 1057 (1954).

Available at: <https://repository.law.umich.edu/mlr/vol52/iss7/7>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

## RECENT DECISIONS

CONSTITUTIONAL LAW—CHURCH AND STATE—DISTRIBUTION OF GIDEON BIBLE IN PUBLIC SCHOOLS—The Gideons International, a non-profit religious corporation, applied by letter to the Board of Education of the Borough of Rutherford, New Jersey, for permission to distribute free copies of the Gideon Bible<sup>1</sup> to pupils of the public schools of that community. By resolution passed at a regular meeting of the board, permission was granted for distribution to pupils whose parents requested copies, of the Bible.<sup>2</sup> Prior to distribution, suit for injunction was commenced by parents of Jewish and Catholic pupils<sup>3</sup> to determine the validity of the distribution under the federal<sup>4</sup> and New Jersey<sup>5</sup> constitutions. The trial court found for defendants. On appeal, *held*, reversed. The Gideon Bible is a sectarian book, and the resolution of the Board of Education permitting its distribution in public schools is in violation of the First Amendment of the United States Constitution, as incorporated into the Fourteenth Amendment,<sup>6</sup> and of article I, paragraph 4, of the New Jersey constitution. *Tudor v. Board of Education*, (N.J. 1953) 100 A. (2d) 857.

Nowhere in the law is the inherent danger of a "jurisprudence of conceptions"<sup>7</sup> more graphically portrayed than in the area of church and state relations. Although the non-establishment clause of the First Amendment to the Constitution makes no reference to separation of church and state, the metaphorical "wall of separation" alluded to by Thomas Jefferson in his letter to the Danbury Baptists Association<sup>8</sup> has served as the focal point of judicial interpretation<sup>9</sup> and has been the wellspring of much literature of divergent

<sup>1</sup> The Gideon Bible was characterized by the International in its pleadings as a book containing the New Testament, the Book of Psalms from the Old Testament, and the Book of Proverbs from the Old Testament, all without note or comment, conformable to the King James version of the Bible.

<sup>2</sup> Instructions issued for distribution read: "(a) Only names of pupils whose parents had previously signed for the Bibles should be used in any announcement. (b) Pupils whose parents had signed for Bibles are to report to the home room at the close of the session and no other pupils are to be in the room when the Bibles are distributed. (c) Any announcement of names for the purpose of reporting after school should not include a reference as to the purpose of reporting." Principal case at 859.

<sup>3</sup> After commencement of the action, the child of Catholic parentage transferred from the public school to a Catholic parochial school. The decision is based on the claim that the resolution of the Board of Education constitutes a preference of one religion over the Hebrew faith.

<sup>4</sup> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST., amend. I.

<sup>5</sup> ". . . There shall be no establishment of one religious sect in preference to another. . . ." N.J. Const., art. I, ¶4.

<sup>6</sup> *Everson v. Board of Education*, 330 U.S. 1, 67 S.Ct. 504 (1947).

<sup>7</sup> Pound, "Mechanical Jurisprudence," 8 COL. L. REV. 605 at 610 (1908).

<sup>8</sup> Cited in *Reynolds v. United States*, 98 U.S. 145 at 164 (1878).

<sup>9</sup> "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach." *Everson v. Board of Education*, 330 U.S. 1 at 18, 67 S.Ct. 504 (1947). See also *Reynolds v. United States*, note 8 supra; *McCullum v. Board of Education*, 333 U.S. 203, 68 S.Ct. 461 (1948); *Zorach v. Clauson*, 343 U.S. 306, 72 S.Ct. 679 (1952).

views.<sup>10</sup> The categorical endorsement of this concept by the majority of the Supreme Court in the *Everson* and *McCullum* cases,<sup>11</sup> if extended to its dryly logical extreme in the strict application of the no-aid principle, would lead to anomalous conflict with the broad construction afforded the complementary<sup>12</sup> free exercise clause by which the right of the people to practice<sup>13</sup> and propagate<sup>14</sup> religious beliefs is safeguarded. Thus, in allowing to religious groups the tax exemptions allowable for charitable institutions,<sup>15</sup> government may be observing the prohibition against hostility to religion,<sup>16</sup> but at the same time it may encroach on the no-aid policy. Further evidence of the need for a restricted application of the "wall of separation" concept, as suggested by the majority decision in the *Zorach* case,<sup>17</sup> can be found in areas where cooperation between church and state has been universally accepted. The federal government authorizes a chaplain for each house of Congress,<sup>18</sup> as do the United States Military and Naval Academies;<sup>19</sup> since 1816 chaplains have been commissioned in the armed forces;<sup>20</sup> and under the Serviceman's Readjustment Act of 1944,<sup>21</sup> eligible veterans may elect to receive training for the ministry in denominational schools at public expense. A like cooperation between church and state has been approved by the state courts which have held that state legislative sessions can be opened and closed by prayers,<sup>22</sup> that free textbooks<sup>23</sup> and bus transportation<sup>24</sup> may be provided to all students, including

<sup>10</sup> See O'NEIL, *RELIGION AND EDUCATION UNDER THE CONSTITUTION* (1949); PARSONS, *THE FIRST FREEDOM* (1948); PFEFFER, *CHURCH, STATE, AND FREEDOM* (1953); STOKES, *CHURCH AND STATE IN THE UNITED STATES* (1950).

<sup>11</sup> *Everson v. Board of Education*, note 9 *supra*; *McCullum v. Board of Education*, note 9 *supra*.

<sup>12</sup> *Everson v. Board of Education*, note 9 *supra*, at 15.

<sup>13</sup> *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178 (1943) (children cannot be compelled to salute the flag contrary to their religious beliefs). But cf. *Reynolds v. United States*, 98 U.S. 145 (1878); *Davis v. Beason*, 133 U.S. 333, 10 S.Ct. 299 (1890). In these cases the Mormons' religious belief in polygamous marriage was not given protection.

<sup>14</sup> *Fowler v. Rhode Island*, 345 U.S. 67, 73 S.Ct. 526 (1953); *Niemotko v. Maryland*, 340 U.S. 268, 71 S.Ct. 325 (1951) (municipal officials may not arbitrarily withhold permits for religious meetings).

<sup>15</sup> Tax exemption for religious organizations is discussed in Paulsen, "Preferment of Religious Institutions in Tax and Labor Legislation," 14 *LAW AND CONTEMP. PROB.* 144 (1949).

<sup>16</sup> *Murdock v. Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870 (1943) (distributor of religious pamphlets exempt from local license tax).

<sup>17</sup> "The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State." *Zorach v. Clauson*, note 9 *supra*, at 312.

<sup>18</sup> SENATE MANUAL 6, n. 2 (1953); RULES OF THE HOUSE OF REPRESENTATIVES, rule VII (1953).

<sup>19</sup> U.S. CORPS OF CADETS REG. 47 (1947); U.S. NAVAL ACADEMY REG., art. 4301(b).

<sup>20</sup> 3 Stat. L. 297 (1816), 10 U.S.C. (1946) §235.

<sup>21</sup> 58 Stat. L. 289 (1944), 38 U.S.C. (1946) §693.

<sup>22</sup> *Church v. Bullock*, 104 Tex. 1, 109 S.W. 115 (1908).

<sup>23</sup> *Chance v. Mississippi State Textbook Board*, 190 Miss. 453, 200 S. 706 (1941); *Borden v. Louisiana State Board of Education*, 168 La. 1005, 123 S. 655 (1929). *Contra*, *Smith v. Donahue*, 202 App. Div. 656, 195 N.Y.S. 715 (1922). Cf. *Cochran v. Board of Education*, 281 U.S. 370, 50 S.Ct. 335 (1930).

<sup>24</sup> *Everson v. Board of Education*, 133 N.J.L. 350, 44 A. (2d) 333 (1945), *affd.* 330 U.S. 1, 67 S.Ct. 504 (1947).

those attending parochial schools, and that Bible reading may be permitted in the public schools.<sup>25</sup> These instances of cooperation suggest that the principle of separation of church and state is not an independent principle, but rather one that must complement the more basic principle of religious liberty.<sup>26</sup> To the extent that the decision of the principal case is not premised on a rigid application of the separation doctrine, the New Jersey court seems to have adopted the more rational principle of interpreting the First Amendment as not susceptible of absolute measures. The holding of the court is predicated on the premise that the Gideon Bible is a sectarian book,<sup>27</sup> and that distribution thereof in the public schools in compliance with the resolution of the school board would constitute a prohibited preference of one religion over another.<sup>28</sup> It would seem, however, that unless the resolution permitting such distribution were to the exclusion of other groups, no substantial preference is involved. Nor does it seem that distribution, without comment on the part of teachers, constitutes religious instruction to the prejudice of one or more religions. In determining the encroachment of any program on the no-aid principle, the amount and effect of actual aid to religion should be balanced against the restraint upon free exercise which would result if the program were invalidated. Thus, by indicating whether a greater danger to religious freedom exists in state interference or in state aid, the more rational interpretation of the First Amendment is promoted.

*Raymond R. Trombadore, S.Ed.*

<sup>25</sup> *People v. Stanley*, 81 Colo. 276, 255 P. 610 (1927); *Kaplan v. Independent School District of Virginia*, 171 Minn. 142, 214 N.W. 18 (1927); *Doremus v. Board of Education*, 5 N.J. 435, 75 A. (2d) 880 (1950), app. dismissed 342 U.S. 429, 72 S.Ct. 394 (1952). *Contra*: *People ex rel. Ring v. Board of Education*, 245 Ill. 334, 92 N.E. 251 (1910); *Herold v. Parish*, 136 La. 1034, 68 S. 116 (1915); *State ex rel. Weiss v. District Board*, 76 Wis. 177, 44 N.W. 967 (1890).

<sup>26</sup> See Katz, "Freedom of Religion and State Neutrality," 20 *UNIV. CHI. L. REV.* 426 (1953).

<sup>27</sup> Compare *Evans v. Selma Union High School Board*, 193 Cal. 54, 222 P. 801 (1924).

<sup>28</sup> Compare *Miller v. Cooper*, 56 N.M. 355, 244 P. (2d) 520 (1952) (use of public school as a medium for the dissemination of religious pamphlets published by the Presbyterian Church held a violation of the principle of separation of church and state).