File

The Champaign Religious Education Case

Opinion of the Court Approving Released School Time

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OBJECT OF
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RELIGIOUS EDUCATION*

"To promote, support, strengthen and develop systems of religious education for children of elementary and secondary school age as community projects under the joint sponsorship of the religious forces, of the parents and of the educational leaders in the community; to develop standards and curriculum for such systems of religious education; to develop standards for teachers in such systems; and to collect and disseminate information concerning methods of community cooperation used in establishing and operating such systems of religious education."

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IN THE

CIRCUIT COURT OF CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. VASHTI McCOLLUM, Plaintiff,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT NUMBER 71, CHAMPAIGN COUNTY, ILLINOIS, Defendant,

ELMER C. BASH and ALICE J. BASH and WANDA I. BASH, a Minor, by ELMER C. BASH, her father and next friend, Intervenors.

Before the Honorable Frank B. Leonard, Grover W. Watson and Martin E. Morthland, Judges of the Sixth Judicial Circuit of Illinois.

Opinion of the Court

(Delivered January 26, 1946).

By mandamus the relator, Vashti McCollum, a tax payer, and mother of James Terry McCollum, who attended school in the fifth grade at the Dr. Howard School, seeks to prohibit the teaching of religious education in the public schools of the defendant, School District Number 71, in the school houses and buildings in said district during the hours when said public schools are regularly in session. The defendant school district includes all the schools and school buildings in the City of Champaign, Illinois.

At the opening of the trial Elmer C. Bash, a citizen and tax payer residing in said school district, and Alice

J. Bash, his wife, filed an intervening petition alleging that they are the parents of two children, Shirley and Wanda, who attend school in said school district, that they are members of the University Place Christian Church in this community. They allege that they desire the said courses in religious education complained of by the relator to continue, and allege that under the First and Fourteenth Amendments to the Constitution of the United States, and under the Constitution of the State of Illinois, they have the right to direct the education of their children, and pray for the dismissal of the relator's petition.

There was no objection to the filing of this petition but the relator filed a reply thereto praying strict proof, denying that said children are entitled to attend the courses of religious education, and that they have any constitutional rights as alleged in the intervening petition. The intervening petition will not be particularly referred to hereafter because the court is of the opinion the case can be disposed of on the complaint for mandamus and the answer thereto with the evidence heard in regard to the same.

By agreement the case was heard before the three judges of the Sixth Judicial Circuit sitting en banc. Evidence was heard for four days. Many of the allegations of the complaint are admitted by the answer, but there are some disputed questions of fact arising from the pleadings. Therefore, the court will make the following

FINDINGS OF FACT:

The relator, Vashti McCollum, is a resident and tax payer in said school district, where her minor son, James Terry McCollum, has been attending public school.

The testimony fully sustains the allegations in paragraph 2 of the complaint which have been by the defendant neither admitted nor denied, that Mrs. McCollum adheres to a school of thought known as "rationalism", including Atheism, is not a believer in any religious creed or doctrine, accepts no part of any Bible as true where such part is not in accord with proved scientific facts, and her views are as set forth in her father's publication entitled "Rationalism versus Religious Education in the Public Schools," a copy of which, marked Exhibit A, is attached to the petition.

She is compelled by the compulsory school law to send her son, James Terry McCollum, to the public schools of the defendant school district.

The overwhelming weight of the evidence shows, as set forth in the answer, that religious education classes were established and maintained in the public school buildings in the City of Champaign, Illinois, for about five years last past under arrangements made between the defendant school board and a group known as "The Champaign Council of Religious Education", a voluntary association made up of the representatives of the Jewish, Roman Catholic and Protestant faiths in the school district. The religious education council was founded and organized for the purpose of combatting juvenile delinquency in the community, as well as to afford, if legally possible, an opportunity for children to study religious education on released time under circumstances hereinafter detailed. The school authorities made available to this religious education council, and all of the faiths represented thereby the free and equal use of certain rooms in the school buildings while they were not otherwise used for school purposes during the regular school hours between nine a.m. and four p.m.

Paragraph 11 of the petition, denied by the answer, asserts that instructors in religious education usurped and took over the use of the said school property for religious education of pupils, and for a period of thirty minutes during the school day ousted the teaching of the secular education provided by law, and in place thereof substituted religious education.

The court finds the facts to be that instructors in religious education who are not teachers or employees of the defendant school district, but who are selected and paid by the council of religious education, have secured permission to come into the several grade schools and into the junior high school of the defendant district; that between the hours of nine a.m. and four p.m., the regular school hours of the school children, 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. In the grade schools such instruction in religious education was given in the fourth to sixth grades, inclusive, and in the junior high school, which includes what would ordinarily be called the seventh to ninth grades inclusive.

The facts show that in the grade schools the religious education teaching was done by a Miss Mae Chapin, a former Presbyterian missionary to China, and in the Philippines, where she taught mission schools. The other instructor in the grade schools was a Mrs. Jorgensen, a former public school teacher. Both of these religious education teachers are Protestants and teach Protestant classes. By arrangement with the defendant district

they were given thirty minutes in each of the fourth, fifth and sixth grade classes in the grade schools once a week to teach religious education. In the junior high school and in certain grade schools the Catholic classes are held once a week. The record shows that formerly Jewish classes were held under the supervision of the Jewish Church, but that no classes have been held by the Jewish faith during the last couple of years.

In all of the schools the arrangements are about as follows: If a majority of the pupils in the class have signed up with their parents' consent to take religious education at the beginning of the class period the secular teacher leaves the room and takes with her the pupils whose parents have not requested such religious education, to an extra room where the students study under her supervision while religious education students pursue their studies under the religious education teacher. In the case of the relator's son, James Terry McCollum, who attended the fifth grade at the Dr. Howard School last year, in the first semester, only he and a boy named Elwin Miller did not sign up for the religious education courses. They left the room at nine o'clock in the morning and went to a music room to study, under the supervision of their secular teacher, Mrs. Bessie Taylor.

At the conclusion of the thirty-minute period they returned to their fifth grade class room, and with the remainder of their class studied their regular secular subjects. In those rooms where a majority of the students had not signed up for religious education, the religious education group left the room and went to a music room or other extra class room, and pursued their religious education studies in the same way, while the majority of those classes who did not take religious education remained under the supervision of their reg-

ular secular teacher, preparing their lessons until the return of the group that had been excused to take the religious courses. In the second semester James Terry McCollum was the only child in his room who did not take religious education. He went out to study alone, or attended another fifth grade class, as hereinafter more fully referred to.

What it all amounts to is that the pupils who take religious education use a thirty-minute study period which otherwise would have been devoted to study for recitation in their regular lessons; that on this released time they study religious education; while those who do not take religious education simply have a thirty-minute study period while waiting for the pupils in religious education classes to rejoin them for the regular secular studies. Occasionally the secular teacher remains in the religious education class room but takes no part whatever in the religious education. Most of the time she is with the group who do not take religious education and supervises their study. At all times the secular teacher is supervising the study of those who do not take religious education.

It is undisputed in the pleadings that pupils receiving written permission of their parents to attend the classes in religious education are welcomed into the classes and are received by the instructor, regardless of denomination, affiliation, or lack of affiliation, of the parents of such pupils; that the instructors give their religious instruction in a friendly manner; that the pupils become attracted thereto and desire to participate therein. The evidence does not sustain relator's charge that the interest and attention of such pupils is wrongly diverted from their regular secular and lawful studies in the schools, but on the contrary, the evidence shows

that the courses in religious education are similar to the extracurricular activities, such as music and art, which are taken with the parents' permission in so many of our public schools today.

The relator's son, James Terry McCollum, took the religious education courses for one semester in the fourth grade at the South Side School. There is no proof in the case that his work in his other studies suffered because of this. A large number of young people from the different grade schools who had taken these courses, and quite a number of other young people who had not taken religious education courses all testified in court. Their evidence shows that the religious education courses did not adversely affect their other secular studies.

The petition charges that the children harass and annoy their parents to take religious education; that the ultimate effect of these courses is to establish in the minds of these children a knowledge, interest and belief in a certain God and Bible approved and taught by the instructor. The nature of these beliefs is amplified in the petition. Except that James Terry McCollum did ask and urge his mother to be allowed to take the religious courses there is no evidence of "harassment." There is no doubt that the effect of the courses is to inspire belief in God and interest in the Bible taught.

None of the materials and supplies used in connection with said courses is furnished at public expense. The pupils in said classes in religious education are admitted only on the written request of their parents or guardians, and then only to classes conducted by faiths designated by such parents or guardians. The defendant school district has been willing to grant its permission for the similar, free and equal use of rooms in the school

buildings when not in use for school purposes, to any other faith or group which desires to make use of the school rooms belonging to the defendant, for instruction in the tenets or belief or unbelief of such other faith or group.

The proof shows that all of the Protestant groups were taught by Miss Chapin and Mrs. Jorgensen; that children of some thirty-one sects, including Catholic, Jewish, and Protestant, as well as many children without any particular religious preference, took these courses. Likewise, the Catholic and Jewish Churches conducted classes under the system, although the Jewish faith had no classes the last year or two. About eighty per cent of the children in the grade schools, and about twenty per cent of the children in the junior high school took the courses last year.

On the trial an officer in the local organization of Jehovah's Witnesses testified. Thereafter he asked Mr. Mellon, the superintendent of schools of the defendant district, if they could have classes in the system. 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. 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. As will be referred to shortly, the testimony of the relator, and of her son, James Terry McCollum, stands alone and opposed to all the other evidence in the record, that any child has ever been ridiculed, shunned, embarrassed or ostracized because of his non participation in these courses, or because of his religious beliefs.

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 teachings 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.

In the Protestant classes the evidence all indicates there was no teaching of any doctrines that would be offensive to any of the Protestant groups participating in the council. From what was said in the testimony of representatives of the Quakers, the Christian Science Church, and Jehovah's Witnesses, the beliefs of these churches as expressed by the representatives would seem not to be in any way in conflict with what Miss Chapin and Mrs. Jorgensen testified was taught to all of the Protestant classes. Likewise it is true that the teaching of Protestant, Catholic and Jewish teachers in these courses would all be in conflict with the teachings of Atheists as those beliefs were testified about by the relator and her father, Mr. Cromwell. They would probably be in conflict with that branch of the Unitarian Church represented by Reverend Philip Schug, who testified on the trial that Unitarians, like the Quakers, are allowed each to determine for himself what his belief in God is, but that one group of Unitarians shared views as to the existence of God, and the attitude toward the Biblical stories, very similar to the views entertained by the relator, Mrs. McCollum, and by her father.

There is no dispute in the evidence that the relator's son, James Terry McCollum, did ask his mother for permission to take the religious education courses. He took his fourth grade work in what is known as the "South Side School." For one semester the mother granted her permission, and the boy, James Terry McCollum, did take the religious education courses. He was transferred at the end of that year on his mother's request to another school, known as the "Dr. Howard School." The evidence shows that he asked his mother's permission which she refused, to take the religious edu-

cation courses there. The evidence further shows that at the end of his fifth grade work in the Dr. Howard School, and during the summer of 1945, after the lawsuit in this case was started, the relator sent her son, James Terry McCollum, to what was called a "demonstration school" at the University of Illinois, in which private school and with relator's knowledge, the boy participated in religious exercises at the beginning of school, and which included the recitation of the Lord's Prayer, the reading and explaining of passages in the Bible by the students, including James Terry, and the singing of some hymns. One of the relator's other children attended another private school where similar religious exercises were conducted.

One matter in issue between the parties is whether the relator's son, James Terry McCollum, was ostracized, ridiculed and humiliated because he did not take the religious education courses in the fifth grade. It is undisputed that during the second semester of his fifth grade work at the Dr. Howard School James Terry McCollum was the only pupil in his room who did not take the religious education courses; that he went to a room called the "music room" the first part of the second semester while the religious education courses were going on. On one occasion he was sent out into the hall and worked at a desk there. He testified that children came by and called him an Atheist, and made fun of him. It is undisputed that his mother did go to see the secular teacher to protest about his being sent out into the hall, although there is a dispute as to whether there was any charge made by the mother that the child's religious beliefs were discussed in that connection. After that the relator's son was sent to another fifth grade class room to study.

On the question of ostracism and embarrassment of the relator's son, James Terry McCollum, the great weight of the evidence is against her contention. Not a single witness corroborated him that he was ever referred to as an Atheist by the students in school. On the contrary, a number of his classmates, and at least one close friend, testified that they had never heard the word "Atheist" until the time of the lawsuit in this case; that nobody had ever made fun of Terry or said anything about his religious opinions. The testimony of these children, and their demeanor on the witness stand was convincing.

The evidence is undisputed that James Terry McCollum had difficulties with the other students in his school, but there is no evidence, except his own, that his want of religion had anything to do with these difficulties. He himself testified that he got into fights with the other children, and even spit in the faces of some of them. The secular teacher, Mrs. Taylor, testified that she consulted with the relator about Terry's problems. He had been in the South Side School for fourth grade work, and was transferred by his mother to the Dr. Howard School for fifth grade work. The secular teacher, Mrs. Taylor, at Dr. Howard School testified that Mrs. McCollum gave a history of failure of Terry to adjust with other children. Many children who did not take the courses in religious education at all testified that they had never had any embarrassment of any kind because thereof. Many of the children who had taken the courses in the different schools all testified that either the taking or the failure to take religious education had made no difference in their friendships.

Without reviewing all the evidence the court believes the great preponderance of the evidence shows that

James Terry McCollum was not subjected to any humiliation, ridicule, ostracism or embarrassment because of his religious opinions, but that his difficulties were due to his own personality problems, entirely disconnected from any question of religion. On the witness stand he was plainly nervous and excitable. His whole demeanor on the witness stand supports the testimony of his teacher, Mrs. Bessie Taylor, that his behavior problems were not connected with the religious controversy as set forth in the petition.

He had evidently had some difficulties in his Boy Scout work because he testified he was not going ahead with the Scout work. Mrs. Taylor admitted that she had told the relator privately that she would suggest that he be permitted to take religious education courses to see if that would help him to adjust with the other students. No one contends that she pressed this suggestion, except that relator's son, Terry, testified that she said to him and to the whole class that they ought to make the class one hundred per cent for religious education. This was denied, not only by the teacher, but by several of the other pupils in the room who were present at the time. The evidence shows clearly that the "one hundred per cent" referred to a campaign to sell war stamps or bonds in the school.

The finding of fact on this issue, therefore, will be against the relator, except in so far as there is any natural embarrassment to a child in being the only one in his room who did not take the religious education courses and who went out of the room to study by himself because of that fact.

On the issue whether the religious education courses occasion an expenditure of public funds or an appropriation of public funds, the evidence shows that no direct

appropriation of any kind, or a direct expenditure of money of any kind, is made by the defendant school district for or on behalf of said religious education classes. 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.

Certain rooms of the school building used by the religious classes are lighted, heated, and furnished. Janitor service therein is furnished while the religious education classes are conducted. No charge is made by the defendant to any person or organization on account thereof. The testimony of the defendant shows that the janitor service, salaries, and so forth, would all be the same, whether the religious education courses were conducted or not. For the most part, the expense of light and heat would be about the same whether the courses were conducted or not. The wear and tear on furniture, due to the religious education classes, so far as the evidence in this case shows, would be negligible.

On a few occasions cards which were the property of the defendant school district were used but were paid for in each instance by the council of religious education. So that it may be said that no public funds have been directly appropriated by the defendant for private use. But to some slight extent the defendant has indirectly appropriated public funds for the use of these classes, by the furnishing of rooms in public school

buildings, light, heat, janitor service, and so forth, as above indicated.

It is believed that the foregoing will dispose of the controverted issues of fact. We come then to the important legal question in the case. Broadly stated, that question is: Did the defendant, Board of Education of School District Number 71, have the power under the law to permit school buildings of the district to be used for teaching religious education in the manner and under the circumstances detailed above, as against the written protest and demand of the relator, a tax payer and parent in said school district?

Somewhat more narrowly stated the question is whether the teaching of religious education in the Champaign public schools in the manner shown by the evidence in this case is repugnant to the Federal and State Constitutions, and in violation of the statutes of Illinois.

The Law.

One contention of the defendant board of education is that the private relator has no standing in court to bring this suit; that affecting the public rights, it can only be brought by the State's Attorney or the Attorney General. This contention raised on preliminary motion was overruled. The court still adheres to that ruling. (38 C. J. 839, 890, and Illinois cases cited; *People* v. *Harris*, 203 Ill. 272.)

Another contention earnestly urged by defendant school board is that the relator who avowedly has no religious beliefs of her own at all is not prosecuting this suit for mandamus in good faith to protect her constitutional rights, because her conduct shows that she has permitted her child, James Terry McCollum, to at-

tend the courses in religious education in the schools, and even during the pendency of this suit has permitted him to attend a private school where the Lord's Prayer was recited, and readings from the Bible were given; that like the student at the University of Illinois in *North* v. *Board of Trustees*, 137 Ill. 296, at 305, no real damage has been or is being done to Mrs. McCollum in the teaching of religious education in the schools in the manner shown by the record in this case. We do not find it necessary to pass upon this contention, but prefer to rest our decision upon the question of the constitutionality and legality of the acts of the school board in permitting religious education to be taught in the schools in the manner shown by the testimony in this record.

We come then to the discussion of what relator calls her theory of the case. Her contention is that school laws become laws for *establishment of religion* where religious education in the public schools and the public school houses aids, creates and increases interest in the religion and patronage of churches whose religion is being taught. Relator contends the Champaign system of religious education violates the First and Fourteenth Amendments to the Constitution of the United States.

Amendment (I) provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" and we agree with relator's counsel, that the Fourteenth Amendment to the Federal Constitution, Section 1, which provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," extends the operation of the First Amendment to the Federal Constitution to the State of Illinois and its school subdivisions, including defendant. (*West Virginia* v. *Barnette,* 319 U. S. 624, 63 Sup. Ct. 1178, 1185.)

The provisions of the Illinois Constitution relied on are contained in Article II, Section 3, which are as follows:

> "The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; . . . No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship."

and Article VIII, Section 3 of the Illinois Constitution which provides:

> "Neither the general assembly nor any . . . school district . . . shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose."

A careful reading of the Federal and State Constitutional provisions leads us to believe that one covers the same ground as the other; that if anything our own State Constitution is more specifically stringent than the Federal. Two thoughts are expressed in the constitutional provisions: First, that no political entity, including both legislatures and school boards, has power to set up a state church, requiring the citizens to pay taxes for one form of religion as distinct from any other religion or lack of religion; secondly, that no political entity has power to make any law or ordinance, or regulation prohibiting the freedom of the exercise of religion by the people.

What do the Federal constitutional provisions mean: That "Congress shall make no law respecting an establishment of religion", and the kindred provision that: "The free exercise and enjoyment of religious profes-

sion and worship, without discrimination, shall forever be guaranteed"? At the time the colonists came to this continent before the Revolution, and at the time the Federal Constitution was written, the church of the mother country, England, was known as the "established church." It was a church for whose support everybody in England was required to pay taxes, although many of the citizens of England did not believe in the doctrines of that church. Even among the colonists some particular sects had the taxing support of the various States before and after the writing of the Federal Constitution.

It seems plain that the primary object sought to be obtained in the constitutional provisions was that there should be no state church. In this sense there is no question but that the constitutional provisions sought a separation of the powers of church and state, but relator's counsel in their brief give this phrase "the separation of church and state," a far broader meaning. They say that religion cannot be brought into the public schools without abridging the rights of every person in this country to his inalienable rights to worship as he so desires; that the realm of religion is entirely beyond the scope of the state, that the bulwark of religious training is found in the home and in a fully supported church program of child education. In their reply brief relator's counsel say: "The whole scheme provides a business of religious promotion for which money may be collected and salaries paid. . . . It seems to be a mercenary business venture which must eventually clash with the law."

For the construction of the word "establishment" in the Federal Constitution we are referred by relator to *Davis* v. *Beason,* 133 U. S. 333, 342; 10 Sup. Ct. 299, 300.

In that case the court was dealing with the validity of a law of the territory of Idaho which provided that bigamists, polygamists, and believers in plural or celestial marriages were denied the right of franchise. The Supreme Court held that this statute was constitutional.

In reply to the contention that the Mormon religion was protected by the Federal Constitution the court said:

> "The first amendment to the constitution, in declaring that congress shall make no law respecting the establishment of religion or forbidding the free exercise thereof, was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect. The oppressive measures adopted, and the cruelties and punishments inflicted by the governments of Europe for many ages, to compel parties to conform in their religious beliefs and modes of worship, to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons, and enforce an outward conformity to a prescribed standard, led to the adoption of the amendment in question. It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society."

No case has yet reached the United States Supreme Court dealing with the question in this case. The nearest to a discussion of the question in the Federal courts that we have been able to find is in the dissenting opinion of Mr. Justice Frankfurter in *West Virginia* v.

Barnette, 319 U. S. 624, 63 Sup. Ct. 1178, at 1195, where it is said:

> "Consider the controversial issue of compulsory Bible-reading in public schools. The educational policies of the states are in great conflict over this, and the state courts are divided in their decisions on the issue whether the requirement of Bible-reading offends constitutional provisions dealing with religious freedom. The requirement of Bible-reading has been justified by various state courts as an appropriate means of inculcating ethical precepts and familiarizing pupils with the most lasting expression of great English literature. Is this Court to overthrow such variant state educational policies by denying states the right to entertain such convictions in regard to their school systems because of a belief that the King James version is in fact a sectarian text to which parents of the Catholic and Jewish faiths and some Protestant persuasions may rightly object to having their children exposed? On the other hand the religious consciences of some parents may rebel at the absence of any Bible-reading in the schools. See *State of Washington ex rel. Clithero* v. *Showalter,* 284 U. S. 573, 52 Sup. Ct. 15, 76 L. Ed. 498. Or is this Court to enter the old controversy between science and religion by unduly defining the limits within which a state may experiment with its school curricula? The religious consciences of some parents may be offended by subjecting their children to the Biblical account of creation, while another state may offend parents by prohibiting a teaching of biology that contradicts such Biblical account. Compare *Scopes* v. *State,* 154 Tenn. 105, 289 S. W. 363, 53 A.L.R. 821."

We have, however, in the Supreme Court of the United States direct and unmistakable authority for the proposition that the doctrine of separation of church and state does not mean that there is any conflict between *religion* and *state* in this country, or any disfavor of any kind upon religion as such. In *Pierce* v. *Society of*

the Sisters of the Holy Names, 268 U. S. 510; 45 Sup. Ct. 571, at 573, where the court held invalid a statute of Oregon requiring the children of all citizens to attend public schools, the court said:

> "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

Again, in *Rector, etc. Holy Trinity Church* v. *U. S.,* 143 U. S. 457, 12 Sup. Ct. 511, the court was construing a Federal statute prohibiting the importation of any alien into the United States under contract or agreement made previous to the importation of such alien to perform labor or services of any kind in the United States. Holy Trinity Church had hired an English rector to preach in their church. Although he came squarely within the language of the act the Supreme Court, examining the history of the legislation and the attitude toward religion of all public bodies in our country, found that his importation was not illegal. In the unanimous opinion of the court some of the language of Mr. Justice Brewer is as follows:

> "But, beyond all these matters, no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people."

The decision traces the reliance upon God, from the commission of Christopher Columbus, through the charters to the Colonies; refers to the language of the Declaration of Independence; specifically calls attention to the Constitution of Illinois of 1870: "We, the people of

the State of Illinois, grateful to Almighty God for the civil, political, and religious liberty," etc.; the requirements of oaths in our courts and the repeated reference to the Deity, in the Constitution and laws of the United States, and the States.

Mr. Justice Brewer again, at page 516, says:

> "There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning. They affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons. They are organic utterances. They speak the voice of the entire people."

For a very full and complete history of the influence of Christianity and religion upon our national life we call attention to *Wilkerson* v. *Rome,* 152 Ga. 762, 110 S. E. 895, 20 A.L.R. 1334, which case (p. 1346, 20 A.L.R.) refers to the analysis and criticism of the *Ring* case (hereinafter referred to) by Professor Schofield of Northwestern University in his work on constitutional law. (Constitutional Law, p. 459 to 509.)

The case relied upon by relator under the Federal constitutional provision is *West Virginia* v. *Barnette,* 319 U. S. 624, 63 Sup. Ct. 1178, where the court overruling a prior ruling in the Gobitis case, held unconstitutional the requirement of the board of education of West Virginia that all pupils attending a public school shall be required to salute the Flag of our country. Children of members of Jehovah's Witnesses refused to salute the Flag, and were expelled from the schools. These children were threatened with reformatory confinement as criminally inclined juveniles. The parents were prosecuted for failure to send their children to school after expulsion. Members of Jehovah's Witnesses, including the children, refused to salute the

Flag because to them the Flag was an idol of worship, and the worship of any idol, under their religious beliefs, was a violation of the Law of God.

The essential part of the First Amendment to the Federal Constitution involved was that neither Congress nor the State could pass any law prohibiting the free exercise of religion. The case was not concerned at all with the question of whether the State or Nation was establishing religion. The following language (63 Sup. Ct. 1181) in the majority opinion is important in the consideration of the case at bar:

> "The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. But the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so. Nor is there any question in this case that their behavior is peaceable and orderly. The sole conflict is between authority and rights of the individual. The State asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child."

It may therefore be said that so far as Federal constitutional provisions are concerned, and conceding that they are binding upon the State of Illinois, and on the defendant school board, there is nothing in any expression of the Federal Supreme Court that remotely indicates there is any constitutional objection to the Champaign system of religious education.

We come now to a consideration of the Constitution of Illinois and of the cases in our own Supreme Court dealing with those provisions. The relator rests her

entire case for all practical purposes on the case of *People ex rel. Ring* v. *Board of Education,* 245 Ill. 334. Before taking up that case it will be well to take up the whole series of cases in the Supreme Court of Illinois, including the Ring case, to determine the legality of the defendant board's acts in the case at bar. May we again state that the Illinois Constitution insures "The free exercise and enjoyment of religious profession and worship, without discrimination"; and it provides, "No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship"? Further, it provides that no school board "shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose."

One of the earliest cases under these provisions of the Constitution arose in 1879, being *Nichols* v. *School Directors*, 93 Ill. 61. Mr. Justice Sheldon who wrote the opinion was a member of the constitutional convention in 1870. It was a suit for injunction by a citizen and a tax payer within a school district to restrain the school directors from allowing the school house of the district to be used for the purpose of a religious meeting house.

The plaintiff in that case, like the relator in the case at bar, stated that he was opposed to the use of a school house for these purposes, that they were contrary to the law of the land. Certainly it would seem that the use of a school house to hold religious meetings by the directors would come perilously close to the prohibition of Article VIII, Section 3, which forbids any school district from ever making any appropriation or paying from any public fund whatever anything in aid of any church or sectarian purpose. However, the demurrer to

the bill was sustained in the trial court. This was affirmed in the Supreme Court. Some of the language in that case answers the contention of the relator in this case, that the furnishing of lights and janitor service, the wear and tear on furniture, and so forth, is an illegal appropriation of school property for religious purposes. The court said:

> "In what manner, from the holding of religious meetings in the school house, complainant is going to be compelled to aid in furnishing a house of worship and for holding religious meetings, as he complains in his bill, he does not show. We can only imagine that possibly, at some future time, he might as a tax-payer be made to contribute to the expense of repairs rendered necessary from wear and use of the building in the holding of religious meetings. A single holding of a religious meeting in the school house might, in that way, cause damage in some degree to the building, upon the idea that continual dropping wears away stone, but the injury would be inappreciable. As respects any individual pecuniary expense which might be in this way involved, we think that consideration may be properly disposed of under the maxim *de minimis,* etc.
>
> "The thing contemplated by the constitutional provision first above named was a prohibition upon the legislature to pass any law by which a person should be compelled without his consent to contribute to the support of any ministry or place of worship.
>
> "Such a matter as the subject of complaint here, we do not regard as within its purview.
>
> "Religion and religious worship are not so placed under the ban of the constitution that they may not be allowed to become the recipient of any incidental benefit whatsoever from the public bodies or authorities of the State. That instrument itself contains a provision authorizing the legislature to exempt property used for religious purposes from taxation; and thereby, the same as is complained

> of here, there might be indirectly imposed upon the tax-payer the burden of increased taxation, and in that manner the indirect supporting of places of worship. In the respect of the possibility of enhanced taxation therefrom, this provision of the constitution itself is even more obnoxious to objection than this permission given by the school directors to hold religious meetings in the school house. There is no pretence that it is in any way in interference with the occupation of the building for school purposes."

In *Millard* v. *Board of Education,* 121 Ill. 297, it was held that where a school board rented the basement of a Catholic church for school purposes and taught school there from nine o'clock in the morning, on, that no tax payer could complain that just before school started; and after school ended, pupils who voluntarily desired to do so, participated in Mass, the saying of the Angelus, and other Roman Catholic services. The bill for injunction was dismissed. The lack of compulsion in participation in religious services was manifest. The court said (p. 302):

> "Nor is it claimed that complainant's children are required, against his will or desire, to attend, any religious or sectarian instruction in the school. Under such circumstances, we see no ground for relief, under this part of the bill."

In the case of *North* v. *Trustees,* 137 Ill. 296, mandamus was sought by a student at the University of Illinois. The rules of the University required a student to attend chapel where the Lord's Prayer was recited, and the Scriptures were read. The rules of the University also provided that the student could be excused by stating that such exercises offended his conscientious scruples, but the student refused to sign such an excuse, resting his case on the alleged illegality of these chapel

exercises. He was expelled from school in 1885. Five years later he brought suit in mandamus to compel the University to re-admit him. He did not state why he wanted to be re-admitted. Mandamus was denied. After speaking briefly of the religious exercises in chapel the court said:

> "Parents placing their children in colleges and universities often desire that they shall be brought under such influences. Shall a court say such a requirement is, in and of itself, a violation of said constitutional provision, merely because some one or more students attending the university may object to obeying it? More specially, should this be done when, as is here shown by the answer, the rules expressly provide that for good cause students may be excused from obedience to such regulation? We have said in construing this section of the constitution: 'Religion and religious worship are not so far placed under the ban of the constitution that they may not be allowed to become the recipients of any incidental benefit whatever from the public bodies or authorities of the State.' (*Nichols* v. *School Directors*, 93 Ill. 64.)"

In order of time we now come to *People ex rel. Ring* v. *Board of Education*, 245 Ill. 334. It is generally conceded that this case has gone further than any other case in the United States to ban the Bible from the public schools. Therefore, the facts and the exact question decided in that case become important. The case arose on demurrer to a petition for mandamus, where the allegations of the petition were taken as true, and where no evidence was heard in the trial court.

The petition averred that the relators, as Vashti McCollum here, were residents and tax payers of the school district. The relators in that case, however, were members of the Roman Catholic Church. Quite a number of Catholic families were involved in the suit. The peti-

tion averred that the teachers employed by the schools read to the pupils, including the children of the Catholic relators, during school hours, portions of the King James version of the Bible; that sacred hymns were sung in concert by the pupils; that the Lord's Prayer was recited in concert by the students in those school rooms; that the children of the relators were required to rise in their seats, fold their hands and bow their heads while the Bible was read and the Lord's Prayer was recited; that under the teachings of the Catholic Church the Lord's Prayer recited in school was different from that taught as the Lord's Prayer in the Catholic Church; that the King James version of the Bible was unacceptable to the Catholic relators and their children. It was averred that by reason of these things the relators' constitutional rights under the State and National Constitutions were violated, and prayed mandamus to stop the religious exercises.

The trial court sustained the demurrer to the petition. On writ of error the ruling of the trial court was reversed by a divided Supreme Court. Mr. Justice Dunn wrote the majority opinion. There was a vigorous dissent by Justices Hand and Cartwright. In the majority opinion it was held that the exercises, including the reading of the Bible, the singing of the hymns, and the recital of the Lord's Prayer constituted acts of worship, that they violated that part of Article II, Section 3, of the Constitution of Illinois providing: "The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed. . . . No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship."

After deciding this the court went further, and said that these exercises not only constituted a violation of the guarantee of freedom of worship but the exercises also violated the provision of the Constitution which prohibits the payment from any public fund of anything in aid of any sectarian purposes. At page 340 the court said:

> "The public schools are supported by taxation, and if sectarian instruction should be permitted in them, the money used in their support would be used in aid of a sectarian purpose. The prohibition of such use of public funds is therefore a prohibition of the giving of sectarian instruction in the public schools."

The court then held that the reading of the Bible in the schools was sectarian instruction because the Catholics and Protestants use different versions of the Bible, because different sects of the Protestant churches, and of the Catholics and Jews place different interpretations upon the same Scripture. Finally (p. 351), in discussing whether such instruction violated the constitutional prohibition of payment from public funds in aid of sectarian purposes the majority opinion, in discussing the Kentucky and Kansas decisions which upheld such instruction, used the following language which relator particularly relies upon in the case at bar:

> "The Kentucky and Kansas decisions seem to consider the fact that the children of the complainants were not compelled to join in the exercises as affecting the question in some way. That suggestion seems to us to concede the position of the plaintiffs in error. The exclusion of a pupil from this part of the school exercises in which the rest of the school joins, separates him from his fellows, puts him in a class by himself, deprives him of his equality with the other pupils, subjects him to a religious stigma and places him at a disadvantage in the school,

> which the law never contemplated. All this is because of his religious belief. If the instruction or exercise is such that certain of the pupils must be excused from it because it is hostile to their or their parents' religious belief, then such instruction or exercise is sectarian and forbidden by the constitution."

The above language was not necessary to the decision of that case. The Catholic children under the allegations of the petition which were admitted by the demurrer were required to attend the school and to stand with bowed heads while the Lord's Prayer was recited and the King James version of the Scriptures was read. Moreover, it may be said in the case at bar that the conclusion reached by the majority opinion that the exclusion of a pupil from religious exercises in which the rest of the school attends, subjects him to religious stigma, and so forth, is a matter that is covered by the actual testimony in the case at bar. As we have found above, and as a reading of the record in this case convinces us, James Terry McCollum was not subject to religious stigma and placed at a disadvantage in the school because of his non religious beliefs.

Justice Cartwright, who joined in the dissenting opinion, is recognized as one of the ablest judges who ever sat in the Supreme Court of Illinois. He with Justice Hand called attention to the fact in the dissenting opinion that the great weight of authority everywhere was contrary to this case, that the decision itself in spirit was entirely opposed to the other cases in the Supreme Court of Illinois which we have referred to above, before that time.

Before discussing the *Ring* case further we take up the cases that have arisen in the Supreme Court since the *Ring* case, dealing with the same constitutional

provisions. Just three years later, in the case of *Reichwald* v. *Catholic Bishop,* 258 Ill. 44, a tax payer in Cook County filed a bill in equity to restrain the board of commissioners of Cook County from permitting the Catholic Bishop and archbishop to erect a Catholic chapel to be used for religious worship and funeral services on the Cook County poor farm which was owned by the county.

The bill showed that the Catholic Bishop had offered to erect this chapel and to maintain it at his own expense, to provide Catholic services and Catholic burial for those of the poor who used the poor farm, and the title to the buildings was to be in Cook County. It is interesting to note that Mr. Justice Dunn, who wrote the majority opinion in the *Ring* case, wrote the opinion in this case. It was held that the county had full power to permit the use of the building for religious worship and funeral services on property of the county, as long as Cook County was not obligated financially to pay toward such religious worship or services.

At page 48 of the opinion is the following language which we feel is applicable to the Champaign plan of religious education:

> "No one can be obliged to attend or to contribute, but no one has a right to insist that the services shall not be held. The man of no religion has a right to act in accordance with his lack of religion but no right to insist that others shall have no religion."

Then the case of *Nichols* v. *School Directors,* 93 Ill. 61, is again quoted with approval, as justifying the decision in the *Reichwald* case.

In *Dunn* v. *The Chicago Industrial School,* 280 Ill. 613, a tax payer in Cook County filed a bill to enjoin the payment of county funds to the Chicago Industrial

School for Girls, for the care of delinquent girls sent there by the juvenile court of Cook County. This school was maintained by the Roman Catholic Church. At this school religious training was given, and religious services were held, for those girls who were there committed. If a narrow view were taken of the constitutional prohibition it would seem that these acts were certainly in violation of Article VIII, Section 3, of the Illinois Constitution, prohibiting the appropriation of money in aid of a sectarian purpose, but Justice Cartwright in delivering the unanimous decision of the court held that where the expense of maintaining the wards of the state who espoused the Catholic belief, in this Industrial School, was less than the cost of maintaining juvenile delinquents at the state institutions, there was no appropriation of money in aid of sectarian purposes. In construing the provisions of the Illinois Constitution involved in this case he said, at page 616:

> "The people not only did not declare hostility to religion but regarded its teachings and practices as a public benefit which might be equal to the payment of taxes, and by section 3 of article 9 of the constitution provided that property used exclusively for religious purposes may be exempted from the burden of taxation, and the General Assembly, by virtue of that provision, has declared such exemption. In harmony with the provision for the free exercise and enjoyment of religious freedom and worship, the General Assembly in the Juvenile Court act provided by section 17, that 'the court in committing children shall place them as far as practicable in the care and custody of some individual holding the same religious belief as the parents of said child, or with some association which is controlled by persons of like religious faith of the parents of said child.'
>
> "Not only have the people, by the constitution and by their representatives in the General Assembly, recognized and provided for the enjoyment

> of religious liberty, but the court has not adopted any rule antagonistic thereto. In *Nichols* v. *School Directors,* 93 Ill. 61, the Court said: 'Religion and religious worship are not so placed under the ban of the constitution that they may not be allowed to become the recipients of any incidental benefit whatsoever from the public bodies or authorities of the State.' "

In the later case of *St. Hedwig's Industrial School for Girls* v. *Cook County,* 289 Ill. 432, a very similar case, St. Hedwig's and the Polish Manual Training School for Boys, which were run and maintained by religious organizations, sued Cook County for unpaid tuition and care of dependent children committed to these schools by the juvenile court of Chicago. The court unanimously held that these payments were not in violation of Section 3, Article VIII of the Constitution, citing the *Dunn* case in 280 Illinois, as well as other cases.

We now come back to the *Ring* case. Were the *Ring* case presented to us as a matter of first impression we would have arrived at the same conclusion as did our Supreme Court, for under the compulsion exerted by the public school teachers in that case on the Catholic pupils, we would agree that their constitutional rights were violated. However, as authority for a decision on the facts in the case at bar, it is peculiar that the *Ring* case is not mentioned in any of the later decisions by the Supreme Court of Illinois construing religious freedom clauses of our Constitution. Then too, the language in the later opinions would tend to narrow and circumscribe what was said in the *Ring* case. The authority of the *Ring* case is weakened by the fact that it goes farther than any other case in the United States in its language. The actual holding of the case is opposed to the great weight of authority in the United States. We

shall not attempt to discuss the facts or holdings in cases from other jurisdictions because we are bound by the decisions of our own Supreme Court, but the decisions in the United States generally, and the trend of authority since the time of the *Ring* case may be found under the following annotations: 5 A.L.R. 866, 20 A.L.R. 1351, 31 A.L.R. 1125, 57 A.L.R. 195, 141 A.L.R. 1145.

The relator particularly relies upon *State* v. *Weedman,* 55 S. Dak. 343, 226 N. W. 348, 349, 354, and *State* v. *Frazier,* 102 Wash. 309, 173 Pac. 35. In the *Weedman* case the facts were almost exactly like those in the *Ring* case. Fifteen Catholic children were expelled because they would not attend opening exercises required by the school, where the Lord's Prayer was said, and the Bible read. Mandamus to compel the children to be readmitted to the school was allowed.

In *State* v. *Frazier* there was a state law purporting to provide that the school should furnish written outlines on the Bible and give examination and school credits in Bible reading. This was held to be violative of the constitutional provision that no public money or property should be appropriated for or applied to any religious exercises or instruction. We pause to point out there was an element of actual compulsion on the school children to participate in religious exercises abhorent to children and their parents in the *Ring* case and in every other case where religious instruction in the schools has been condemned. That compulsion does not exist in the case at bar.

Counsel for relator rely upon the dictum in the *Ring* case, that compulsion is exercised because James Terry is not excused from school but is required to do his other school work, while his schoolmates were taking the courses in religious education. The fact remains, how-

ever, that James Terry McCollum was not required to take the religious education courses and he was sent away from the room where the exercises were going on, so there could be no claim that any actual compulsion was used against him.

We have in the case at bar evidence as to what the effect of these religious education courses has been in the school system itself. James Terry's case was the extreme case in the second semester of the fifth grade, when he was the only one in his room who did not take the religious education courses. The overall picture is that 20 out of 100 in the grade schools did not take the courses and 80 per cent in the junior high school have not taken the courses.

There was a full and representative group of students from the grade schools and from junior high school, whose testimony could not help but impress favorably the trial judges, as to the beneficial results of religious education, and the freedom from intolerance and the other evils that are mentioned in the *Ring* case, and in those courts who frown upon Bible reading, and so forth, in the schools.

There is another reason why it seems to us that the case at bar is entirely distinguishable from the *Ring* case. As pointed out in the annotations in 5 A.L.R. 866, and the other volumes, the question of what is legal or illegal in the schools as constituting sectarianism divides itself into a number of different categories, which are listed as follows:

(1) Mere reading of the Bible;

(2) Reading Bible and saying Lord's Prayer;

(3) Teaching Ten Commandments;

(4) Reading Bible and singing hymns;

(5) Saying prayers;

(6) Use of Bible as textbook;

(7) Use of textbook founded on Bible.

In the *Ring* case there was a combination of prayer, Bible reading, and the singing of hymns. In the cases from other states which we have examined there is almost always a similar combination, plus the fact that an earnest sincere minority of religious people, usually Catholics or Jews, were compelled to join in religious services that were abhorent to them. In the case at bar no prayers were offered in any of the religious classes, and no hymns were sung. The Bible was used as a text book and outlines and other reading material founded on the Bible were taught.

We state again for emphasis that so far as the Bible was read or taught in the schools, there seems to have been a sincere effort to present by Protestant teachers to pupils of some thirty-one different Protestant sects, the broad, moral truths of the Bible, excluding from the teaching as far as possible, controversial matter that divides the sects. Practically nothing was asked of Father Higgins or of Rabbi Golden as to the content of the teaching of the Catholic and Jewish students, but at least there is nothing to indicate that the teaching of the Catholic and Jewish students inculcated any antagonism toward Protestants or others.

In this situation the language from two of the cases relied upon by the relator it seems to us is particularly in point as sustaining the legality of what is referred to as the Champaign system of religious education. In the case of *Village of South Holland* v. *Stein,* 373 Ill. 472; and *City of Blue Island* v. *Kozul,* 379 Ill. 511, where discriminatory treatment of Jehovah's Witnesses was

condemned as unconstitutional, and where the able counsel representing the relator in this case appeared in those cases, the court said, quoting from *City of Blue Island* v. *Kozul,* 379 Ill. 511, at 521:

> "The fact that when so applied the ordinance is unconstitutional does not determine that it would be invalid for that reason when applied to other and different facts."

So in the case at bar we feel that the illegal conduct condemned in the *Ring* case does not determine that the conduct of the classes as shown by the record in this case violates the constitutional provisions, State or Federal under the other and different facts in the case at bar.

From the earliest times it has been held that school boards and school directors are vested with wide discretion in their conduct of the schools, subject, however, to constitutional and statutory limitations on their powers. (*Board of School Inspectors* v. *Grove,* 20 Ill. 526; *The Trustees of Schools* v. *People ex rel. Van Allen,* 87 Ill. 303; *People ex rel.* v. *City of Chicago,* 278 Ill. 318; *Segar* v. *Board of Education,* 317 Ill. 418.)

The recent case of *People ex rel. Lewis* v. *Graves,* 245 N. Y. 195, 156 N. E. 663, affirming 215 N. Y. Supp. 632, and 219 App. Div. 233, 219 N. Y. Supp. 189, holds that the school authorities under very similar constitutional provisions as ours, may release students during school time to attend religious education classes in their own churches. This of course does not meet the relator's objection to the use of the school buildings themselves, but no case has been cited to us where the purely voluntary participation in religious education classes, no part of the expense of which is borne by the tax payers, has been condemned.

Again applying the language of the Supreme Court of

the United States in *West Virginia* v. *Barnette,* 319 U. S. 624, 63 Sup. Ct. 1178, at 1181, the freedom asserted by the relator and by James Terry McCollum, to have religious education in these voluntary classes excluded from the schools of Champaign does bring the relator and her son into collision with the rights asserted by the intervenors who are representative of eighty per cent of the children attending the grade schools, and a substantial per cent of those attending junior high school.

Only one witness with children in the local schools, besides the relator, namely, Mr. Adams, expressed any dissatisfaction with this program. We freely concede that if James Terry McCollum stood alone and were compelled to participate in religious exercises to which he had conscientious objection it would make no difference if there were a million people on the other side, but in our view of the matter there has been no such compulsion visited upon him.

The evidence on the trial indicated there are approximately 1,850 school systems in 46 states of this country that have some form of religious education in the school system. We have not been favored with the details—and they are perhaps not important—in other states. We suppose that this includes systems where the children, as in New York, are released from the school buildings to go to their church buildings for religious instruction, and therefore do not present the same problem that we have in the case at bar.

Believing as we do that no constitutional or statutory rights of the relator and her son, James Terry McCollum, have been violated by the Champaign system of religious education as it is conducted, according to the

testimony in this record, the petition for mandamus will be denied.

The docket orders in this case, therefore, will be:

Evidence and arguments having been heard, briefs having been considered, findings of fact and of law as set forth in written opinion on file; and finding that petition of relator for mandamus should be denied; judgment in favor of defendant in bar of the action and petition of the relator, and writ of mandamus denied and judgment for costs against the relator.

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GROVER W. WATSON,
FRANK B. LEONARD,
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