Text of Justice Black's Opinion in U. S. Supreme Court's Decision on Bu[illegible]

Arch R. Everson, Appellant, v. Board of Education of the Township of Ewing, et al.	Appeal from the Court of Errors and Appeals of the State of New Jersey.

Here is the complete text of the majority opinion of the United States Supreme Court as delivered by Associate Justice Hugo L. Black in the New Jersey bus case in which the Supreme Court, by a 5-4 decision, upheld the use of public funds to transport parochial school students.

A New Jersey statute authorizes its local school districts to make rules and contracts for the transportation of school children to and from schools.

The appellee, a township board of education, acting pursuant to this statute authorized reimbursement to parents of money expended by them for the bus transportation of their children on regular busses operated by the public transportation system. Part of this money was for the payment of transportation of some children in the community to Catholic parochial schools.

These church schools give their students, in addition to secular education, regular religious instruction conforming to the religious tenets and modes of worship of the Catholic Faith. The superintendent of these schools is a Catholic priest.

The appellant, in his capacity as a district taxpayer, filed suit in a State court challenging the right of the Board to reimburse parents of parochial school students. He contended that the statute and the resolution passed pursuant to it violated both the State and the Federal Constitutions.

That court held that the legislature was without power to authorize such payment under the State constitution. The New Jersey Court of Errors and Appeals reversed, holding that neither the statute nor the resolution passed pursuant to it was in conflict with the State constitution or the provisions of the Federal Constitution in issue. The case is here on appeal under 28 U. S. C. 344(a).

Since there has been no attack on the statute on the grounds that a part of its language excludes children attending private schools operated for profit from enjoying state payment for their transportation, we need not consider this exclusionary language; it has no relevancy to any constitutional question here presented.

Furthermore, if the exclusion clause had been properly challenged, we do not know whether New Jersey's highest court would construe its statutes as precluding payment of the school transportation of any group of pupils, even those of a private school run for profit. Consequently, we put to one side the question as to the validity of the statute against the claim that it does not authorize payment for the transportation generally of school children in New Jersey.

The only contention here is that the State statute and the resolution, in so far as they authorized reimbursement to parents of children attending parochial schools, violate the Federal Constitution in these two respects, which to some extent, overlap.

First. They authorize the State to take by taxation the private property of some and bestow it upon others, to be used for their own private purposes. This, it is alleged, violates the due process clause of the Fourteenth Amendment.

Second. The statute and the resolution forced inhabitants to pay taxes to help support and maintain schools which are dedicated to, and which regularly teach, the Catholic Faith. This is alleged to be a use of State power to support church schools contrary to the prohibition of the First Amendment which the Fourteenth Amendment made applicable to the States.

First. The due process argument that the state law taxes some people to help others carry out their private purposes is framed in two phases. The first phase is that a state cannot tax A to reimburse B for the cost of transporting his children to church schools. **This is said to violate the due process clause because the children are sent to these church schools to satisfy the personal desires of their parents, rather than the public's interest in the general education of all children.** This argument, if valid, would apply equally to prohibit state payment for the transportation of children to any non-public school, whether operated by a church, or any other non-government individual or group. **But, the New Jersey legislature has decided that a public purpose will be served by using tax-raised funds to pay the bus fares of all school children, including those who attend parochial schools. The New Jersey Court of Errors and Appeals has reached the same conclusion.** The fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised the public need.

It is true that this Court has, in rare instances, struck down state statutes on the ground that the purpose for which tax-raised funds were to be expended was not a public one.

But the Court has also pointed out that this far-reaching authority must be exercised with the most extreme caution. Otherwise, a state's power to legislate for the public welfare might be seriously curtailed, a power which is a primary reason for the existence of states. Changing local conditions create new local problems which may lead a state's people and its local authorities to believe that laws authorizing new types of public service are necessary to promote the general well-being of the people.

It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose.

The same thing is no less true of legislation to reimburse needy parents, or all parents, for the payment of the fares of their children so that they can run the risk of traffic and other hazards incident to walking or "hitch-hiking." Subsidies and loans to individuals such as farmers and home owners, and to privately owned transportation systems, as well as many other kinds of businesses, have been commonplace practices in our in our state and national history.

Insofar as the second phase of the due process argument may differ from the first, it is by suggesting that taxation for transportation of children to church schools constitutes support of a religion by the state. But if the law is invalid for this reason, it is because it violates the First Amendment's prohibition against the establishment of religion by law. This is the exact question raised by appellant's second contention, to consideration of which we now turn.

The New Jersey statute is challenged as a "law respecting the establishment of religion." The First Amendment, as made applicable to the states by the Fourteenth, commands that a state "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

These words of the First Amendment reflected in the minds of early Americans a vivid mental picture of conditions and practices which they fervently wished to stamp out in order to preserve liberty for themselves and for their posterity.

Doubtless their goal has not been entirely reached; but so far has the Nation moved toward it that the expression "law respecting the establishment of religion," probably does so vividly remind present-day Americans of the evils, fears, and political problems that caused that expression to be written into our Bill of Rights.

Whether this New Jersey law is one respecting the "establishment of religion" requires an understanding of the meaning of that language, particularly with respect to the imposition of taxes. Once again, therefore, it is not inappropriate briefly to review the background and environment of the period in which that constitutional language was fashioned and adopted.

A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government favored churches. The centuries immediately before and contemporaneous with the colonization of America had been

HUGO BLACK

filled with turmoil, civil strife, and persecutions, generated in large part by established sects determined to maintain their absolute political and religious supremacy.

With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews.

In efforts to force loyalty to whatever religious group happened to be on top and in league with the government of a particular time and place, men and women had been fined, cast in jail, cruelly tortured, and killed.

Among the offenses for which these punishments had been inflicted were such things as speaking disrespectfully of the views of ministers of government-established churches, non-attendance at those churches, expressions of non-belief in their doctrines, and failure to pay taxes and tithes to support them.

These practices of the old world were transplanted to and began to thrive in the soil of the new America. The very charters granted by the English Crown to the individuals and companies designated to make the laws which would control the destinies of the colonials authorized these individuals and companies to erect religious establishments which all, whether believers or non-believers, would be required to support and attend.

An exercise of this authority was accompanied by a repetition of many of the old world practices and persecutions. Catholics found themselves hounded and proscribed because of their faith; Quakers who followed their conscience went to jail; Baptists were peculiarly obnoxious to certain dominant Protestant sects; men and women of varied faiths who happened to be in a minority in a particular locality were persecuted because they steadfastly persisted in worshipping God only as their own consciences dictated.

And all of these dissenters were compelled to pay tithes and taxes to support government-sponsored churches whose ministers preached inflammatory sermons designed to strengthen and consolidate the established faith by generating a burning hatred against dissenters.

These practices became so commonplace as to shock the freedomloving colonials into a feeling of abhorrence. The imposition of taxes to pay ministers' salaries and to build and maintain churches and church property aroused their indignation. **It was these feelings which found expression in the First Amendment.** No one locality and no one group throughout the Colonies can rightly be given entire credit for having aroused the sentiment that culminated in adoption of the Bill of Rights' provisions embracing religious liberty.

But Virginia, where the established church had achieved a dominant influence in political affairs and where many excess attracted wide public attention, provided a great stimulus and able leadership for the movement.

The people there, as elsewhere, **reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the activities of any religious individual or group.**

The movement toward this end reached its dramatic climax in Virginia in 1785-86 when the Virginia legislative body was about to renew Virginia's tax levy for the support of the established church.

Thomas Jefferson and James Madison led the fight against this tax. Madison wrote his great Memorial and Remonstrance against the law. In it, he eloquently argued that a true religion did not need the support of law; that no person, either believer or non-believer, should be taxed to support a religious institution of any kind; that the best interest of a society required that the minds of men always be wholly free; and that cruel persecutions were the inevitable result of government-established religions.

Madison's Remonstrance received strong support throughout Virginia, and the Assembly postponed consideration of the proposed tax measure until its next session.

When the proposal came up for consideration at that session, it not only died in committee, but the Assembly enacted the famous "Virginia Bill for Religious Liberty" originally written by Thomas Jefferson. The preamble to that Bill stated among other things that:

"Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion who being Lord both of body and mind, yet chose not to propagate it by coercions on either . . .; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern. . . ."

And the statute itself enacted

"That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened, in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief. . . ."

This Court previously recognized that the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute.

Prior to the adoption of the Fourteenth Amendment, the First Amendment did not apply as a restraint against the states. Most of them did soon provide similar constitutional protections for religious liberty. **But some states persisted for about half a century in imposing restraints upon the free exercise of religion and in discriminating against particular religious groups.** In recent years, so far as the provision against the establishment of a religion is concerned, the question has most frequently arisen in connection with proposed state aid to church schools and efforts to carry on religious teachings in the public schools in accordance with the tenets of a particular sect.

Some churches have either sought or accepted state financial support for their schools. Here again the efforts to obtain state aid or acceptance of it have not been limited to any one particular faith. The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom and to separate religions and governments. **Their decisions, however, show the difficulty in drawing the line between tax legislation which provides funds for the welfare of the general public and that which is designed to support institutions which teach religion.**

The meaning and scope of the First Amendment, preventing establishment of religion or prohibiting the free exercise thereof, in the light of its history and the evils it was designed forever to suppress, have been several times elaborated by the decisions of this Court prior to the application of the First Amendment to the states by the Fourteenth.

The broad meaning given the Amendment by these earlier cases has been accepted by this Court in its decisions concerning an individual's religious freedom rendered since the Fourteenth Amendment is state action abridging religious freedom.

There is every reason to give the same application and broad interpretation to the "establishment of religion" clause. The interrelation of these complementary clauses was well summarized in a statement of the Court of Appeals of South Carolina, quoted with approval by this Court in Watson v. Jones, 13 Wall. 679, 730: "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority."

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, [illegible]

[illegible]

New Jersey cannot consistently with the "establishment of religion clause" of the First Amendment, contribute tax-raised funds to the support of an institution which teaches the tenets and faith of any church.

On the other hand, other language of the amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion. [illegible]

While we do not mean to intimate that a state could not provide transportation only to children attending public schools, we must be careful, in protecting the citizens of New Jersey against state-established churches, to be sure that we do not inadvertently prohibit New Jersey from extending its general state law benefits to all its citizens without regard to their religious belief.

[illegible]

It is undoubtedly true that children are helped to get to church schools. There is even a possibility that some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of their own pockets when transportation to a public school would have been paid for by the State.

The same possibility exists where the state requires a local transit company to provide reduced fares to school children including those attending parochial schools, or where a municipally owned transportation system undertakes to carry all school children free of charge.

Moreover, state-paid policemen, detailed to protect children going to and from church schools from the very real hazards of traffic, would serve much the same purpose and accomplish much the same result as state provisions intended to guarantee free transportation of a kind which the state deems to be best for the school children's welfare.

And parents might refuse to risk their children to the serious danger of traffic accidents going to and from parochial schools, the approaches to which were not protected by policemen.

Similarly, parents might be reluctant to permit their children to attend schools which the state had cut off from such general government services as ordinary police and fire protec- [illegible]

CHURCH-STATE ISSUE IN BUS CASE ANALYZED BY NOTED THEOLOGIAN

The author of the following article [illegible]. He is editor of Theological Studies, a [illegible] editor of the Catholic weekly, America, and professor of dogmatic theology at Woodstock (Md.) College.

By REV. JOHN COURTNEY MURRAY, S.J.
(Written for N.C.W.C. News Service)

In his column in the New York Times, Arthur Krock ventured the opinion that the Supreme Court decision in the Everson case, regarding school bus transportation for pupils of non-profit private schools, will precipitate a line of cases dealing with the same central issue — the restrictions placed by the First Amendment on governmental aid to education.

This is probably true. But it is to be hoped that future cases will solidify in law the basis of the Everson decision, and confirm the sane reasoning of the majority opinion. Justice Black, who wrote the majority opinion, has contributed an important document to the history of American jurisprudence.

It is distinguished by its learning, its firm grasp of the central legal issues, and above all by its vision of the concrete contemporary situation in which the issue of "separation of Church and State" has been raised.

Justice Black's opinion rather quickly disposes of the contention that the New Jersey statute and resolution, inasmuch as they authorize reimbursement of parents for money spent by them for the transportation of their children to non-profit private schools, is a violation of the due process clause of the Fourteenth Amendment.

The Supreme Court clearly upholds the New Jersey legislature in its decision that "a public purpose will be served by using tax-raised funds to pay the bus fares of all school children, including those who attend parochial schools."

Public Purpose Unchallenged

Moreover, the court rejects the contention that, because parents send their children to parochial schools for their own private reasons, therefore the public's interests are not served in these schools. As a matter of fact, even the dissenting Justices do not seriously challenge the public purpose character of the New Jersey statute and resolution.

It is clear, therefore, that the Supreme Court was interested in the Everson case almost solely because in it the issue of the First Amendment was raised. In his dissent, Justice Rutledge states: "This case forces us to determine squarely for the first time what was 'an establishment of religion' in the First Amendment's conception, and by that measure to decide whether New Jersey's action violates its command."

Using the popular language of Jefferson and Madison, Justice Black sums up the whole case in his last paragraph: "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. New Jersey has not breached it here." In this fashion the majority of the Supreme Court disposes of the misleading "entering wedge" argument, of which such capital is made in this sort of case.

The essence of the decision is (1) in its loyal affirmation of the American doctrine of religious freedom and consequent "separation of Church and State" and (2) in its refusal to see this doctrine so interpreted as to "wall off" any group of citizens, on religious grounds, from an equal share in the benefits of public welfare legislative. By reason of this affirmation and this refusal the majority opinion is a new buttressing both of religious liberty and of civil equality.

Justice Black, and the concurring Justices, give a thorough study of the history and background of the First Amendment, its meaning, and its central place in the American democratic system. Moreover, they quite carefully state the content of the "establishment of religion" clause, in itself and in its relation to the following clause that forbids Congress to make any law prohibiting the free exercise of religion.

These clauses are "complementary"; taken together, they define the meaning of American religious freedom, and show it to be realistically designed to protect American society and American citizens from two political evils — religious interference in temporal institutions and governmental interference with religious rights.

Justice Black's opinion, therefore, shows full awareness of the American tradition. But its equally signal merit is its awareness of the difficulty of applying the provisions of the First Amendment to the present American educational situation. In 1947 the First Amendment means everything it meant in 1789; but the America of 1947 [illegible].

The exigencies of the public welfare have grown vastly more complicated and the scope of governmental services has proportionately widened. Today there must indeed be the same strong will to be faithful to the language and spirit of the First Amendment and its design "to protect religious freedom and to separate religions and governments."

Fact Honestly Faced

Today, however, there is a great and genuine difficulty in drawing the line between tax legislation which provides funds for the welfare of the general public and that which is designed to support institutions which teach religion." Here is a social and legal fact well grasped and honestly faced.

And the Supreme Court has refused to allow this line so to be drawn as to bring the First Amendment into conflict with itself. It would, the Court in effect says, be brought into conflict with itself if the State of New Jersey (or any other State, or the Federal government itself) were to "hamper its citizens in the free exercise of their own religion" by statutes so framed as to "exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, non-believers, Presbyterians, or the members of any other faith, because of their faith or lack of it, from receiving the benefits of public welfare legislation." Here the Supreme Court makes a sound legal decision on the basis of a firm realism and in a high spirit of equity.

When New Jersey undertook a general program of certain services to education, it was constitutionally warranted in making the program general, and in not excluding anyone from its benefits, for religious reasons. The First Amendment, says the Court, "requires the State to be a neutral in its relations with groups of religious believers and non-believers; it does not require the State to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them."

This is good legal realism which cuts through all the unrealistic legalism shown in the dissenting opinions, and settles a difficult problem on a sound, clear and uncontrovertible basis.

Baptists Deplore Verdict Of Supreme Court on Ban

Washington — (RNS) — The Baptist Joint Conference Committee on Public Relations, representing the three major Baptist Conventions in this country, issued a statement here deploring the majority Supreme Court opinion upholding a New Jersey school board in providing funds for the bus fare of parochial school pupils.

The statement, passed unanimously by the committee here, follows:

"The five-to-four decision of the Supreme Court which upheld a New Jersey school board providing funds for the bus fare of Catholic pupils attending parochial schools is viewed with great seriousness by the Joint Conference Committee on Public Relations of the Baptists of the United States.

"We feel that the majority opinion must be acknowledged as turning back the hands of the clock as far as religious liberty and the separation of church and state are concerned in these United States.

"We deplore this opinion and are convinced that it will divide the people of the nation at a time when unity is greatly needed. In view of the religious heritage of America, which Associate Justice Black so eloquently reviewed, the decision is all the more to be deplored.

"As Baptists of the United States we are resolved that the struggle for religious liberty, in terms of the separation of church and state must be continued. Having lost a battle, we have not lost the war.

Anti-Catholic School Bill Killed by Own Co-Sponsor

Spokane, Wash. — (NC) — Legislation which would have obliged parents to obtain permission from local public school superintendents before sending their children to parochial schools has been killed by unanimous consent of the Washington State Senate in Olympia at the request of one of its cosponsors, Senator Thomas H. Bienz of Dishman, who asserted he had not even read the bill.

"It died without a tear being shed for it," The Spokane Review, secular daily, reported. The paper also disclosed that the other sponsor, Senator Leslie V. Morgan of Yakima, also admitted that he had not read the bill, but got Senator Bienz to join him and introduced it at the request of Joe Chandler, a lobbyist for the Washington Education Association, which is listed as an affiliate organization of the National Education Association.

Senator Bienz in a letter to Bishop Charles D. White of Spokane, explained that he believed the bill was the same as one he had introduced in 1945 calling for more stringent compulsory school attendance regulations and was not aware of its discriminatory feature until the storm of protest broke after its introduction.

"Prompt and decisive action," the Senator wrote to the Bishop, "by the Senate was taken at my request to assure Your Excellency and all persons who opposed the legislation that there would be no further danger of this bill [illegible] the State Legislature.

On Guard

By Rev. [illegible]

[illegible]