Tilton v. Richardson (1971)

403 U.S. 672

This case, decided together with Lemon v. Kurtzman, involved the constitutionality of the Higher Education Facilities Act of 1963, which provided federal construction grants for college and university facilities, excluding "any facility used or to be used for sectarian instruction or as a place of religious worship, or . . . primarily in connection with any part of the program of a school or department of divinity." After twenty years the government interest in buildings constructed under the program would cease, and the facilities could then be used for whatever purposes the college desired. Four church-related colleges in Connecticut received construction grants under the act. Appellants in the case maintained that the grants violated the Establishment Clause, since the Connecticut colleges were sectarian institutions. A three-judge federal court upheld the statute, and the case went to the Supreme Court on appeal.

Opinion of the Court: Burger, Harlan, Stewart, Blackmun.

Concurring opinion: White.

Dissenting opinions: Douglas, Black, Marshall; Brennan.

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

… We consider four questions: First, does the Act reflect a secular legislative purpose? Second, is the primary effect of the Act to advance or inhibit religion? Third, does the administration Of the Act foster an excessive government entanglement with religion? Fourth, does the implementation of the Act inhibit the free exercise of religion?....

The stated legislative purpose appears in the preamble where Congress found and declared that "the security and welfare of the United States require that this and future generations of American youth be assured ample opportunity for the fullest development of their intellectual capacities, and that this opportunity will be jeopardized unless the Nation's colleges and universities are encouraged and assisted in their efforts to accommodate rapidly growing numbers of youth who aspire to a higher education." This expresses a legitimate secular objective entirely appropriate for governmental action….

A possibility always exists, of course, that the legitimate objectives of any law or legislative program may be subverted by conscious design or lax enforcement. There is nothing new in this argument. But judicial concern about these possibilities cannot, standing alone, warrant striking down a statute as unconstitutional.

The Act itself was carefully drafted to ensure that the federally subsidized facilities would be devoted to the secular and not the religious function of the recipient institutions. It authorizes grants and loans only for academic facilities that will be used for defined secular purposes and expressly prohibits their use for religious instruction, training, or worship. These restrictions have been enforced in the Act's actual administration, and the record shows that some church-related institutions have been required to disgorge benefits for failure to obey them.

Finally, this record fully supports the findings of the District Court that none of the four church-related institutions in this case has violated the statutory restrictions….

…Appellants' position depends on the validity of the proposition that religion so permeates the secular education provided by church-related colleges and universities that their religious and secular educational functions are in fact inseparable….

This record provides no basis for any such assumption here. Two of the five federally financed buildings involved in this case are libraries. The District Court found that no classes had been conducted in either of these facilities and that no restrictions were imposed by the institutions on the books that they acquired. There is no evidence to the contrary. The third building was a language laboratory at Albertus Magnus College. The evidence showed that this facility was used solely to assist students with their pronunciation in modern foreign languages—a use which would seem peculiarly unrelated and unadaptable to religious indoctrination. Federal grants were also used to build a science building at Fairfield University and a music, drama, and arts building at Annhurst College.

There is no evidence that religion seeps into the use of any of these facilities. Indeed, the parties stipulated in the District Court' the courses at these institutions are taught according to the academic requirements intrinsic to the subject matter and the individual teacher's concept of professional standards.

Although we reject appellants' broad constitutional arguments we do perceive an aspect which the statute's enforcement provisions inadequate to ensure that the impact of the federal aid will not advance religion….Limiting the prohibition for religious use of the structure to 20 years obviously opens the facility to use for any purpose at the end of that period. It cannot be assumed that a substantial structure has no value after that period and is hence the unrestricted use of a valuable property is in effect a contribution of some value to a religious body. . . . If, at the end of 20 years, the building is, for example, converted into a chapel or otherwise used to promote religious interests, the original federal grant will in part have the effect of advancing religion.

To this extent the Act therefore trespasses on the Religion Clauses….

We have found nothing in the statute or its objectives intimating that Congress considered the 20-year provision essential to the statutory program as a whole. In view of the broad and important goals that Congress intended this legislation to serve, there is no basis for assuming that the Act would have failed of passage without this provision; nor will its excision impair either the operation or administration of the Act in any significant respect….

We next turn to the question of whether excessive entanglements characterize the relationship between government and church under the Act….

There are generally significant differences between the religious aspects of church-related institutions of higher learning and parochial elementary and secondary schools. The "affirmative if not dominant policy" of the instruction in pre-college church schools is "to assure future adherents to a particular faith by having control of their total education at an early age." There

is substance to the contention that college students are less impressionable and less susceptible to religious indoctrination. . . . Furthermore, by their very nature, college and postgraduate courses tend to limit the opportunities for sectarian influence by virtue of their own internal disciplines Many church-related colleges and universities are characterized by

high degree of academic freedom and seek to evoke free and critical responses from their students.

The record here would not support a conclusion that any of these four institutions departed from this general pattern.

Since religious indoctrination is not a substantial purpose or activity of these church-related colleges and universities, there is less likelihood than in primary and secondary schools that religion will reduces permeate the area that of government secular education. This reduces the risk that government aid will in fact serve to support religious activities. Correspondingly, the necessity for intensive government surveillance is diminished and the resulting entanglements between government and religion lessened. Such inspection as may be necessary to ascertain that the facilities are devoted to secular education is minimal and indeed hardly more than the inspections that States impose over all private schools within the reach of compulsory education laws.

The entanglement between church and state is also lessened here by the nonideological character of the aid that the Government provides….

Finally, government entanglements with religion are reduced by the circumstance that, unlike the direct and continuing payments under the Pennsylvania program, and all the incidents of regulation and surveillance, the Government aid here is a one-time, single-purpose construction grant. There are no continuing financial relationships or dependencies, no annual audits, and no government analysis of an institution's expenditures on secular as distinguished from religious activities. Inspection as to use is a minimal contact.

No one of these three factors standing alone is necessarily controlling; cumulatively all of them shape a narrow and limited relationship with government which involves fewer and less significant contacts than the two state schemes before us in *Lemon* and [*Early* v.] *DiCenso*. The relationship therefore has less potential for realizing the substantive evils against which the Religion Clauses were intended to protect.

We think that cumulatively these three factors also substantially lessen the potential for divisive religious fragmentation in the political arena. . . . The potential for divisiveness inherent in the essentially local problems of primary and secondary schools is significantly less with respect to a college or university whose student constituency is not local but diverse and widely dispersed.

We conclude that the Act does not violate the Religion Clauses of the First Amendment except that part of 5754 (b)(2) providing a 20-year limitation on the religious use restrictions contained in 5751 (a)(2). We remand to the District Court with directions to enter a judgment consistent with this opinion.

Vacated and remanded.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK and MR. JUSTICE MARSHALL concur, dissenting in part.

The Federal Government is giving religious schools a block grant to build certain facilities. The fact that money is given once at the beginning of a program rather than apportioned annually as in *Lemon* and *DiCenso* is without constitutional significance. The First Amendment bars establishment of a religion. And as I noted today in *Lemon* and *DiCenso*, this bar has been consistently interpreted…as meaning: "No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion." The plurality's distinction is in effect that small violations of the First Amendment over a period of years are unconstitutional

(see *Lemon* and *DiCenso*) while a huge violation occurring only once is *de minimis*. I cannot agree with such sophistry.

What I have said in Lemon and in the DiCenso cases decided today is relevant here. The facilities financed by taxpayers' funds are not to be used for "sectarian" purposes. Religious teaching and secular teaching are so enmeshed in parochial schools that only the strictest supervision and surveillance would insure compliance with the condition. Parochial schools may require religious exercises, even in the classroom. A parochial school operates on one budget. Money not spent for one purpose becomes available for other purposes. Thus the fact that there are no religious observances in federally financed facilities is not controlling because required religious observances will take place in other buildings….

… Surveillance creates an entanglement of government and religion which the First Amendment was designed to avoid. Yet after today's decision there will be a requirement of surveillance which will last for the useful life of the building. . . . The price of the subsidy under the Act is violation of the Free Exercise Clause. Could a course in the History of Methodism be taught in a federally financed building? Would a religiously slanted version of the Reformation or Quebec politics under Duplessis be permissible? How can the Government know what is taught in the federally financed building without a continuous auditing of classroom instruction? Yet both the Free Exercise Clause and academic freedom are violated when the Government agent must be present to determine whether the course content is satisfactory. …

It is almost unbelievable that we have made the radical departure from Madison's Remonstrance memorialized in today's decision.

It should be remembered that in this case we deal with federal grants and the command that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The million-dollar grants sustained today put Madison's miserable "three pence" to shame. But he even thought, as I do, that even a small amount coming out of the pocket of taxpayers and going into the coffers of a church was not in keeping with our constitutional ideal.

I would reverse the judgement below.