The Burger Court Opinion Writing Database

Walz v. Tax Commission of City of New York

397 U.S. 664 (1970)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Fortas~~
Mr. Justice Marshall

No. 135 - Walz v. New York City Tax Commission

From: The Chief Justice

Circulated: 2/13/70

Recirculated: _____

Appellant, owner of real estate in Richmond County, New York, sought an injunction in the New York courts to prevent the New York City Tax Commission from granting property tax exemptions to religious organizations for religious properties used solely for religious worship. The exemption from state taxes is authorized by Article 16, Section 1, of the New York Constitution which provides:

> " . . . Exemption from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real and personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any association organized or conducted exclusively for one or more of such purposes and not operating for profit." 1/

The essence of appellant's contention was that the New York State Tax Commission's grant of an exemption to church property indirectly requires the appellant to make a contribution to a religious body and thereby operates to "establish" a religion in violation of the First and Fourteenth Amendments to the United States Constitution.

1/ Art. 16, § 1, of the New York State Constitution is implemented by § 420, Subdiv. 1, of the New York Real Property Tax Law which states in pertinent part:

> "Real property owned by a corporation or association organized exclusively for the moral and mental improvement of men and women, or for religious, bible tracted,

[cont'd on next page]

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 21, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 135 - Walz v. New York City Tax Comm.

Enclosed is a revised draft with revisions marked. Revisions make no change in my judgment, but were made to reflect emphasis on points raised by others.

W.E.B.

euphemism! He's stolen our opinion -- down to the quotes!

T.

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: The Chief Justice

Circulated: _____

Recirculated: 4/21/70

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

Frederick Walz, Appellant, *v.* Tax Commission of the City of New York. | On Appeal from the Court of Appeals of the State of New York.

[April —, 1970]

Mr. Chief Justice Burger delivered the opinion of the Court.

Appellant, owner of real estate in Richmond County, New York, sought an injunction in the New York courts to prevent the New York City Tax Commission from granting property tax exemptions to religious organizations for religious properties used solely for religious worship. The exemption from state taxes is authorized by Art. 16, § 1, of the New York Constitution, which provides:

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[1] Art. 16, § 1, of the New York State Constitution is implemented by § 420, Subdiv. 1, of the New York Real Property Tax Law which states in pertinent part:

"Real property owned by a corporation or association organized exclusively for the moral and mental improvement of men and women, or for religious, bible tracted, charitable, benevolent, mis-

technical changes throughout
3, 4, 7, 9, 11, 12, 14, 15

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: The Chief Justice

Circulated: _____

Recirculated: 4/28/70

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

Frederick Walz, Appellant,
v.
Tax Commission of the City of New York.
On Appeal from the Court of Appeals of the State of New York.

[April —, 1970]

Mr. Chief Justice Burger delivered the opinion of the Court.

Appellant, owner of real estate in Richmond County, New York, sought an injunction in the New York courts to prevent the New York City Tax Commission from granting property tax exemptions to religious organizations for religious properties used solely for religious worship. The exemption from state taxes is authorized by Art. 16, § 1, of the New York Constitution, which provides:

> "Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit." [1]

[1] Art. 16, § 1, of the New York State Constitution is implemented by § 420, subd. 1, of the New York Real Property Tax Law which states in pertinent part:

"Real property owned by a corporation or association organized exclusively for the moral or mental improvement of men and women, or for religious, bible, tract, charitable, benevolent, missionary,

2, 3, 4, 7, 8, 11, 12, 13, 14

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 135.—October Term, 1969

Recirculated: 5/2/70

Frederick Walz, Appellant, *v.* Tax Commission of the City of New York. } On Appeal from the Court of Appeals of the State of New York.

[May 4, 1970]

Mr. Chief Justice Burger delivered the opinion of the Court.

Appellant, owner of real estate in Richmond County, New York, sought an injunction in the New York courts to prevent the New York City Tax Commission from granting property tax exemptions to religious organizations for religious properties used solely for religious worship. The exemption from state taxes is authorized by Art. 16, § 1, of the New York Constitution, which provides:

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"Real property owned by a corporation or association organized exclusively for the moral or mental improvement of men and women, or for religious, bible, tract, charitable, benevolent, missionary,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

March 20, 1970

Dear Chief,

Re: No. 135 - Walz v. New York City Tax Commission

Please note that,

"While fully adhering to the Court's judgment and opinion in Everson v. Board of Education, 330 U. S. 1, MR. JUSTICE BLACK concurs in the Court's judgment and opinion in this case. "

Sincerely,

H. L. B.

The Chief Justice

cc: Members of the Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

Douglas, J.

Circulated:

No. 135.—October Term, 1969

Recirculated:

Frederick Walz, Appellant, *v.* Tax Commission of the City of New York. } On Appeal from the Court of Appeals of the State of New York.

[March —, 1970]

Mr. Justice Douglas, dissenting.

Petitioner is the owner of real property in New York and is a Christian. But he is not a member of any of the religious organizations, "rejecting them as hostile." The New York statute exempts from taxation real property owned by a corporation or association "organized exclusively for . . . religious . . . purposes" and used "exclusively for carrying out" such purpose.[1] Yet nonbelievers who own realty are taxed at the usual rate. The question in the case therefore is whether believers—organized in church groups—can be made exempt from real estate taxes, merely because they are believers, while nonbelievers, whether organized or not, must pay the real estate taxes.

In affirming this judgment we largely overlook the revolution initiated by the adoption of the Fourteenth Amendment. That revolution, of course, involved the imposition of new and far-reaching constitutional restraints on the States. Nationalization of many civil liberties has been the consequence of the Fourteenth Amendment, reversing the historic position that the foundations of those liberties rested largely in state law.

The process of the "selective incorporation" of various provisions of the Bill of Rights into the Fourteenth Amendment, although often provoking lively disagree-

[1] McKinney's Const. Laws 49A, Real Property Tax L. § 420 (1).

4, 10, 11.
1v, 13, 15

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

From: Douglas, J.

Circulated:

Recirculated: 3/24/70

Frederick Walz, Appellant,
v.
Tax Commission of the City of New York.
On Appeal from the Court of Appeals of the State of New York.

[March —, 1970]

Mr. Justice Douglas, dissenting.

Petitioner is the owner of real property in New York and is a Christian. But he is not a member of any of the religious organizations, "rejecting them as hostile." The New York statute exempts from taxation real property owned by a corporation or association "organized exclusively for . . . religious . . . purposes" and used "exclusively for carrying out" such purpose.[1] Yet nonbelievers who own realty are taxed at the usual rate. The question in the case therefore is whether believers—organized in church groups—can be made exempt from real estate taxes, merely because they are believers, while nonbelievers, whether organized or not, must pay the real estate taxes.

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[1] McKinney's Const. Laws 49A, Real Property Tax L. § 420 (1).

1, 2, 16

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

From: Douglas, J.

Circulated: 4/16/70

Frederick Walz, Appellant,
v.
Tax Commission of the City of New York.

On Appeal from the Court of Appeals of the State of New York.

[April —, 1970]

Mr. Justice Douglas, dissenting.

Petitioner is the owner of real property in New York and is a Christian. But he is not a member of any of the religious organizations, "rejecting them as hostile." The New York statute exempts from taxation real property owned by a corporation or association "organized exclusively for . . . religious . . . purposes" and used "exclusively for carrying out" such purpose.[1] Yet nonbelievers who own realty are taxed at the usual rate. The question in the case therefore is whether believers—organized in church groups—can be made exempt from real estate taxes, merely because they are believers, while nonbelievers, whether organized or not, must pay the real estate taxes.

My Brother Harlan says he "would suppose" that the tax exemption extends to "atheistic and agnostic" groups. If it does then the line between believers and nonbelievers has not been drawn. But, with all respect, there is not even a suggestion in the present record that "religious purposes" includes "atheistic purposes" or "agnostic purposes." The two concepts, as normally understood, are at war with the common understanding of "religious" or "religion."

In *Torcaso* v. *Watkins*, 367 U. S. 488, 495, where we held that barring an atheist from public office violated

[1] McKinney's Const. Laws 49A, Real Property Tax L. § 420 (1).

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

P2

11

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 135.—October Term, 1969

Circulated:

Recirculated: 4-22

Frederick Walz, Appellant,
v.
Tax Commission of the City of New York.
} On Appeal from the Court of Appeals of the State of New York.

[April —, 1970]

Mr. Justice Douglas, dissenting.

Petitioner is the owner of real property in New York and is a Christian. But he is not a member of any of the religious organizations, "rejecting them as hostile." The New York statute exempts from taxation real property owned by a corporation or association "organized exclusively for . . . religious . . . purposes" and used "exclusively for carrying out" such purpose.[1] Yet nonbelievers who own realty are taxed at the usual rate. The question in the case therefore is whether believers—organized in church groups—can be made exempt from real estate taxes, merely because they are believers, while nonbelievers, whether organized or not, must pay the real estate taxes.

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[1] McKinney's Const. Laws 49A, Real Property Tax L. § 420 (1).

1,2,8,10

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated:

Recirculated: 4-24

No. 135.—October Term, 1969

Frederick Walz, Appellant, v. Tax Commission of the City of New York. } On Appeal from the Court of Appeals of the State of New York.

[April —, 1970]

Mr. Justice Douglas, dissenting.

Petitioner is the owner of real property in New York and is a Christian. But he is not a member of any of the religious organizations, "rejecting them as hostile." The New York statute exempts from taxation real property owned by a corporation or association "organized exclusively for . . . religious . . . purposes" and used "exclusively for carrying out" such purpose.[1] Yet nonbelievers who own realty are taxed at the usual rate. The question in the case therefore is whether believers—organized in church groups—can be made exempt from real estate taxes, merely because they are believers, while nonbelievers, whether organized or not, must pay the real estate taxes.

My Brother Harlan says he "would suppose" that the tax exemption extends to "groups whose avowed tenets may be antitheological, atheistic and agnostic." If it does, then the line between believers and nonbelievers has not been drawn. But, with all respect, there is not even a suggestion in the present record that "religious purposes" includes "antitheological purposes," "atheistic purposes" or "agnostic purposes." Those other concepts, as normally understood, are at war with the common understanding of "religious" or "religion."

In *Torcaso* v. *Watkins*, 367 U. S. 488, 495, where we held that barring an atheist from public office violated

[1] McKinney's Const. Laws 49A, Real Property Tax L. § 420 (1).

1-4, 6-7, 12, 14-18, 21

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

From: Douglas, J.

Frederick Walz, Appellant,
v.
Tax Commission of the City of New York.

On Appeal from the Court of Appeals of the State of New York.

Circulated:

Recirculated: 5-1

[May —, 1970]

Mr. Justice Douglas, dissenting.

Petitioner is the owner of real property in New York and is a Christian. But he is not a member of any of the religious organizations, "rejecting them as hostile." The New York statute exempts from taxation real property "owned by a corporation or association organized exclusively for . . . religious . . . purposes" and used "exclusively for carrying out" such purpose.[1] Yet nonbelievers who own realty are taxed at the usual rate. The question in the case therefore is whether believers—organized in church groups—can be made exempt from real estate taxes, merely because they are believers, while nonbelievers, whether organized or not, must pay the real estate taxes.

My Brother Harlan says he "would suppose" that the tax exemption extends to "groups whose avowed tenets may be antitheological, atheistic and agnostic." *Ante,* at —. If it does, then the line between believers and nonbelievers has not been drawn. But, with all respect, there is not even a suggestion in the present record that the statute covers property used exclusively by organizations for "antitheological purposes," "atheistic purposes" or "agnostic purposes."

In *Torcaso* v. *Watkins,* 367 U. S. 488, 495, where we held that a State could not bar an atheist from public office in light of the freedom of belief and religion guar-

[1] N. Y. Real Prop. Tax Law § 420 (1) (Supp. 1969–1970).

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

Frederick Walz, Appellant, v. Tax Commission of the City of New York. | On Appeal from the Court of Appeals of the State of New York.

[April —, 1970]

Mr. Justice Harlan, concurring in the result.

I think it fair to say that it is far easier to agree on the purpose that underlies the First Amendment's Free Exercise and Establishment Clauses than to obtain agreement on the standards that should govern their application. What is at stake as a matter of policy is preventing that kind and degree of government involvement in religious life that, as history teaches us, is apt to lead to strife and frequently strain a political system to the breaking point.

I

A formula frequently articulated and applied in our cases for achieving this goal is "neutrality" or "voluntarism." *E. g.*, see *Abington School Dist.* v. *Schempp*, 374 U. S. 203, 305 (1963) (concurring opinion of Mr. Justice Goldberg); *Engel* v. *Vitale*, 370 U. S. 421 (1962). These related concepts are short-form for saying that the Government must neither favor religion over nonreligion, nor sponsor a particular sect, nor try to encourage participation in or abnegation of religion. As the Court held in *Torcaso* v. *Watkins*, 367 U. S. 488, 495, the State cannot "constitutionally pass laws or impose requirements which aid all religions as against nonbelievers, and neither can [it] aid those

P. 1, 2, 3, 4

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

Circulated:

Recirculated: APR 16 1970

Frederick Walz, Appellant, v. Tax Commission of the City of New York. | On Appeal from the Court of Appeals of the State of New York.

[April —, 1970]

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P 1, 2, 3, 4, 5, 6, 7

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

Circulated:

Recirculated: APR 25 1970

No. 135.—October Term, 1969

Frederick Walz, Appellant, v. Tax Commission of the City of New York. } On Appeal from the Court of Appeals of the State of New York.

[April —, 1970]

Opinion of Mr. Justice Harlan.

While I entirely subscribe to the result reached today and find myself in basic agreement with what The Chief Justice has written, I deem it appropriate, in view of the radiations of the issues involved, to state those considerations that are, for me, controlling in this and lead me to conclude that New York's constitutional provision, as implemented by its real property law, does not offend the Establishment Clause. Preliminarily, I think it relevant to face up to the fact that it is far easier to agree on the purpose that underlies the First Amendment's Establishment and Free Exercise Clauses than to obtain agreement on the standards that should govern their application. What is at stake as a matter of policy is preventing that kind and degree of government involvement in religious life that, as history teaches us, is apt to lead to strife and frequently strain a political system to the breaking point.

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 2, 6, 7

To: The Chief Justice
Mr. Justice
Mr. Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice

From: Harlan, J.

Circulated:

Recirculated: APR 9 1970

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

Frederick Walz, Appellant, v. Tax Commission of the City of New York. } On Appeal from the Court of Appeals of the State of New York.

[April —, 1970]

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3-5-70

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

Frederick Walz, Appellant,
v.
Tax Commission of the City of New York.

On Appeal from the Court of Appeals of the State of New York.

[March —, 1970]

Mr. Justice Brennan, concurring.

I concur for reasons expressed in my opinion in *Abington Township* v. *Schempp*, 374 U. S. 202, 230 (1963). I adhere to the view there stated that to give concrete meaning to the Establishment Clause,

> "the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers. It is a line which the Court has consistently sought to mark in its decisions expounding the religious guarantees of the First Amendment. What the Framers meant to foreclose, and what our decisions under the Establishment Clause have forbidden, are those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends, where secular means would suffice. When the secular and religious institutions become involved in such manner, there inhere in the relationship precisely those dangers—as much to church as to state—which the Framers feared would subvert religious liberty and the strength of a system of secular government. On the other hand, there may be myriad forms of in-

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

Frederick Walz, Appellant,
v.
Tax Commission of the City of New York.

On Appeal from the Court of Appeals of the State of New York.

[March —, 1970]

Mr. Justice Brennan, concurring.

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> "the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers. It is a line which the Court has consistently sought to mark in its decisions expounding the religious guarantees of the First Amendment. What the Framers meant to foreclose, and what our decisions under the Establishment Clause have forbidden, are those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends, where secular means would suffice. When the secular and religious institutions become involved in such manner, there inhere in the relationship precisely those dangers—as much to church as to state—which the Framers feared would subvert religious liberty and the strength of a system of secular government. On the other hand, there may be myriad forms of in-

Circulated
4-23-70

SUPREME COURT OF THE UNITED STATES

No. 135.—OCTOBER TERM, 1969

Frederick Walz, Appellant, *v.* Tax Commission of the City of New York. } On Appeal from the Court of Appeals of the State of New York.

[April —, 1970]

MR. JUSTICE BRENNAN, concurring.

I concur for reasons expressed in my opinion in *Abington Township* v. *Schempp*, 374 U. S. 203, 230 (1963). I adhere to the view there stated that to give concrete meaning to the Establishment Clause,

> "the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers. It is a line which the Court has consistently sought to mark in its decisions expounding the religious guarantees of the First Amendment. What the Framers meant to foreclose, and what our decisions under the Establishment Clause have forbidden, are those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends, where secular means would suffice. When the secular and religious institutions become involved in such manner, there inhere in the relationship precisely those dangers—as much to church as to state—which the Framers feared would subvert religious liberty and the strength of a system of secular government. On the other hand, there may be myriad forms of in-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 21, 1970

135 - Walz v. Tax Commission

Dear Chief,

I am glad to join the opinion you have written for the Court in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

February 17, 1970

Re: No. 135 - Walz v. Tax Commission of the City of New York

Dear Chief:

Please join me.

Sincerely,

B.R.W.

The Chief Justice

cc: The Conference

April 22, 1970

Re: No. 135 - Walz v. Tax Commission of the City of New York

Dear Chief:

You have not scared me off.

Sincerely,

B.R.W.

The Chief Justice

cc: The Conference

NO DATE CIRCULATED?

SUPREME COURT OF THE UNITED STATES

No. 135.—October Term, 1969

Frederick Walz, Appellant, *v.* Tax Commission of the City of New York.	On Appeal From the Court of Appeals of the State of New York.

[April —, 1970]

Mr. Justice Marshall, concurring in the result.

I join the opinion of my Brother Harlan, except for his suggestion that different standards might govern the States and the Federal Government under the Establishment Clause, and add these few words.

I agree that New York has delineated a broad class of nonprofit associations "devoted to cultural and moral improvement" into which churches appropriately fall, and that property tax exemption for all such organizations properly meets the requirement of neutrality in that it does not inherently prefer religion over irreligion. Of course New York might administer its statute in such a way as to raise problems of discrimination, but this case presents to us only a claim that the statute on its face violates the First Amendment. There is no reason to suppose that the New York authorities and courts cannot see to it that all organizations, religious or not, falling within the broad neutral category established receive exemptions. See *Washington Ethical Society* v. *District of Columbia,* 101 U. S. App. D. C. 371, 249 F. 2d 127 (1957); *Fellowship of Humanity* v. *County of Alameda,* 153 Cal. 2d 673, 315 P. 2d 394 (1957).

It is of course true that state involvement with religion cannot be justified *solely* because of the State's interest in the moral and cultural improvement which religion provides. *Abington School District* v. *Schempp,*