

# The Burger Court Opinion Writing Database

*Committee for Public Education and Religious Liberty v. Regan*

444 U.S. 672 (1980)

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



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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 29, 1979

RE: No. 78-1369 Committee for Public Education and  
Religious Liberty v. Regan

Dear Harry:

I agree with the Per Curiam you have prepared in  
the above.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

No. 78-1369 — Committee for Public Education and Religious Liberty v. Regan

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 5-20-79

Recirculated: \_\_\_\_\_

MR. JUSTICE WHITE, dissenting.

Any case requiring this kind of convoluted analysis, masquerading as an application of "principle" previously announced, is inappropriate for summary disposition and should be set for plenary consideration. The Court could then attempt to announce in a more clean-cut way the extent to which the public should be able to avoid sharing the expense of secular education for the substantial fraction of the young now receiving their training at so-called parochial schools. It is solely because the parents of these children believe that their offspring should be instructed in religion in connection with their schooling that they are taxed to support the public schools and hence the education of their neighbor's children, but are denied any help in providing secular education for their own.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: \_\_\_\_\_

1st DRAFT

Recirculated: 31 MAY 1979

## SUPREME COURT OF THE UNITED STATES

COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY ET AL. v. EDWARD V. REGAN, ETC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 73-1369. Decided June —, 1979

MR. JUSTICE WHITE, dissenting.

Any case requiring this kind of convoluted analysis, masquerading as an application of "principle" previously announced, is inappropriate for summary disposition and should be set for plenary consideration. The Court could then attempt to announce in a more clean-cut way the extent to which the public should be able to avoid sharing the expense of secular education for the substantial fraction of the young now receiving their training at so-called parochial schools. It is solely because the parents of these children believe that their offspring should be instructed in religion in connection with their schooling that they are taxed to support the public schools and hence the education of their neighbor's children, but are denied any help in providing secular education for their own.

In this connection, it should be recalled that the First Amendment commands that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. It was not until 1925 that this Court, in a dictum, suggested that the free speech protections of the Federal Constitution limit state legislatures as well as Congress; and it was still later, also by judicial divination, that the Free Exercise and Establishment Clauses were held applicable to the States. The Establishment Clause, at issue here, was first so applied in 1947, in *Everson v. Board of Education*, 333 U. S. 1. Since then, the States have with some consistency attempted to adjust to the prerriginations of this

*I will  
vote  
to note*

*BRW has a point! But whether or not the Court chooses to "reinvent the wheel" with the First Amendment, this case should be noted. E.G.*

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 30, 1979

Re: No. 78-1369 - Committee for Public Education  
and Religious Liberty v. Regan

Dear Harry:

I agree with your Per Curiam.

Sincerely,

T.M.

Mr. Justice Blackmun

cc: The Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 23 MAY 1979

Recirculated: \_\_\_\_\_

I'll probably  
not join this  
Reversal. my vote  
was to Affirm  
as could Note, possibly

No. 78-1369 - Committee for Public Education and Religious  
Liberty v. Regan

PER CURIAM.

In 1973, this Court declared that Chapter 138, 1970 N.Y.  
Laws, under which the State of New York reimbursed nonpublic  
schools for certain recordkeeping and testing costs, violated  
the Establishment Clause of the First Amendment, made  
applicable to the States by the Fourteenth Amendment. Levitt  
v. Committee for Public Education, 413 U.S. 472 (Levitt I). In  
the case now before the Court, the Committee for Public

This is not a case that should be disposed of  
summarily, especially if it takes 26 pages to do  
so. As pointed out in my preliminary memo, the  
meaning of the Meek dicta upon which H&B heavily relies  
is in some doubt ~~after~~ after Wolman - at least you thought (over)

To: The Chief Justice  
Mr. Justice BREWSTER  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice REHNQUIST  
Mr. Justice Stevens

pp. 4, 5, 6, 9  
**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

from: Mr. Justice Blackmun  
Circulated: \_\_\_\_\_

COMMITTEE FOR PUBLIC EDUCATION AND RELI-

GIOS LIBERTY ET AL. v. EDWARD V. REGAN  
ETC., ET AL.

Recirculated: 28 MAY 1979

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

No. 78-1369. Decided May —, 1979

PER CURIAM.

In 1973, this Court declared that Chapter 138, 1970 N. Y. Laws, under which the State of New York reimbursed non-public schools for certain recordkeeping and testing costs, violated the Establishment Clause of the First Amendment, made applicable to the States by the Fourteenth Amendment. *Levitt v. Committee for Public Education*, 413 U. S. 472 (*Levitt I*). In the case now before the Court, the Committee for Public Education, et al., appeal the judgment of a three-judge United States District Court that the successor statute to Chapter 138, namely, Chapter 507, as amended by Chapter 508 (adding a severability provision), 1974 N. Y. Laws, which attempts to avoid the defects of Chapter 138 while providing reimbursement to nonpublic schools for similar costs, does not offend the Establishment Clause. *Committee for Public Education and Religious Liberty v. Levitt*, 461 F. Supp. 1123 (SDNY 1978) (*Levitt III*).

I

Appellants, the Committee for Public Education and Religious Liberty and several of that organization's individual members, instituted this action in the United States District Court for the Southern District of New York shortly after Chapters 507 and 508 were enacted by the New York Legislature in 1974. Appellees, defendants below, are the State Comptroller and the State Commissioner of Education. One nonsectarian and four sectarian private schools were permitted

Give  
closed  
Harry  
g'vate  
to note  
5/31

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 1, 1979

Re: No. 78-1369 Committee for Public Education and Religious  
Liberty v. Regan

Dear Byron:

My vote at Conference when this case was first discussed was to affirm the judgment of the three judge District Court. As I am sure is apparent to all of us who have followed the various permutations and commutations of this issue at least since I have been on the Court, I would prefer to "note" than to simply dissent from Harry's proposed summary reversal. My vote remains where it is, and if there are sufficient votes to summarily reverse, I join your dissent from that action.

Sincerely,



Mr. Justice White

Copies to the Conference

*I suppose we must*

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 26, 1979

MEMORANDUM TO THE CONFERENCE

Re: 78-1369 - Comm. Pub. Ed. & Religious  
v. Regan

On the assumption that the Court will summarily affirm, I will add the following to the order:

"For the reasons stated in his separate opinion in Wolman v. Walter, 433 U.S. 229, 264, Mr. Justice Stevens would reverse the judgment of the District Court."

Respectfully,



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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 23, 1979

Re: 78-1369 - Committee for Public Education  
and Religious Liberty v. Regan

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference