

# The Good, the Bad, and the Ugly of Released Time for Religious Education: Reflections on the Policy's 100<sup>th</sup> Anniversary

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The year 2014 marks the 100-year anniversary of released time for religious education, a practice through which students are “released” from public schools for devotional religious instruction.<sup>2</sup> Though states and school districts are not *required* to release students for devotional religious courses, public schools may legally establish released time programs anywhere in the U.S. so long as they obtain parental permission for student participation, meet off-campus, and are not supported by public funds or school resources. These safeguards against entanglement between church and state have alleviated most concerns about the constitutionality of released-time policies, and thus the programs have evoked little scholarly attention in recent decades. There has been, however, a significant change in the character of released time throughout its 100-year history, which raises salient and under-examined, normative questions regarding the appropriateness of contemporary released-time policies and practices within the context of a pluralist, democratic society. In the following section, I provide theoretical context to ground the arguments presented in this article. Focusing on developments in released-time policy and practice, I then summarize relevant history and First Amendment case law, providing necessary context for the subsequent normative analysis of contemporary released-time programs and policies.

## **Theoretical Context**

Liberal political theory and a conception of democratic education informed primarily by foundational works of John Dewey (1916), John Rawls (1971, 2005), Amy Gutmann (1987), and Jürgen Habermas (1995) form the theoretical frame that grounds my thesis. This theoretical frame provides direction and tools for meaning-making especially helpful when considering decisions regarding curricular matters in public schools within pluralist, democratic societies.

John Rawls’ public principles of reason can aid school policy-makers who must sometimes make difficult decisions in the face of

incommensurate beliefs and values and in consideration of the often-conflicting demands presented by various cultural and religious groups inhabiting the same school communities. John Dewey's conception of education in and for democracy provides a foundation for most contemporary, liberal democratic theories of education. Adding to this foundation, Amy Gutmann offers a robust vision of democratic education consisting of principles of *nonrepression*, *nondiscrimination*, and *deliberativeness*, which together can help diverse democratic societies navigate many problems that arise in negotiations among various stakeholders of public schools. Jürgen Habermas' scholarship on participatory democracy, discourse ethics, and mutuality provides additional guidance for public schools working to develop good citizens of diverse societies. My theoretical frame has been constructed to view contemporary released-time policies to determine whether or in what ways they might support or undermine the democratic conditions and purposes of public schools.

### **Historical and Legal Context**

Tension and negotiation between groups emphasizing either *disestablishment* or *free exercise* of religion characterizes U.S. historical discourse regarding religion and public education. The principle of disestablishment derives from the Establishment Clause of the First Amendment, which limits government actions relating to religion. The principle of free exercise, on the other hand, is expressed in the Free Exercise Clause, which protects individual expression of religious belief from government interference. Throughout the first century and a half of U.S. history, these constitutional protections applied only to actions of the U.S. Congress, leaving the states free to make their own policies regarding the relation between government and religion.

Beginning in the 1940s, however, the U.S. Supreme Court's interpretation of the Establishment Clause changed dramatically when it issued the first of a series of rulings that focused on clarifying the principle of disestablishment. In *Everson v. Board of Education* (1947) the Court incorporated the Establishment Clause through the Fourteenth Amendment, applying the protections of the Bill of Rights to the states. In other words, the Court ruled the principle of disestablishment would apply not only to the actions of Congress but also to those of state and local governing bodies. In the performance of their official duties, agents of the state, including public-school personnel, would now be subject to restrictions of the Establishment Clause. In relation to public education, the disestablishment rulings emphasized the state's responsibility to guard against the threat of majority will, as reflected in public-school policy, to individual and minority rights to freedom of conscience and religion. Specifically, the Court ruled agents of the state were

constitutionally prohibited from using the machinery of the public schools to advance one particular religion over others or show preference to religion over nonreligion.

More recently, the Court has interpreted the Free Exercise Clause to require schools to recognize and refrain from violating students' religious freedom. These free exercise rulings have upheld the rights of students to exercise religious freedom through constitutionally protected speech, prayer, and other forms of expression such as organization of and participation in Bible studies, religious clubs, and similar student-initiated religious activities. The Court has also required that student-initiated religious activities not give the impression they operate with the support of school officials. Such requirements were put in place to prevent violations of disestablishment in the name of free exercise. To further distinguish between free exercise and disestablishment, the Court warns, "While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to *anyone*, it has never meant that a majority could use the machinery of the State to practice its beliefs" (*Abington v. Schempp*, 1963). Thus, federal law requires schools to respect students' rights and remain neutral toward the subject of religion (USDOE, 2003).

In summary, the Court both affirmed robust religious liberties for public school students and required school personnel neither to advance nor inhibit religion. It is here at the crossroads of free exercise and disestablishment where one finds contemporary released time for religious education policy. The following overview of the history of released time is meant to explain how this policy is largely reflective of the broad pattern of tension and negotiation just described.

### **The Origins of Released Time**

At the turn of the twentieth century, mass immigration from Southern and Eastern Europe greatly increased the religious diversity of many U.S. cities. Most urban public schools, long dominated by a Protestant ethos, responded to this growing diversity by secularizing curricula. Protestants were generally uncomfortable with these challenges to their historical dominance of public education and looked for new ways to bring religious education to public school students. It was in this environment the idea for released time emerged.

Mainline Protestant leaders, at an inter-denominational church conference in New York City in 1905, discussed what many perceived as an urgent need to improve the moral and religious education of young Americans (Pfeffer, 1975). Dr. George U. Wenner, a teacher in attendance, suggested students might be released from school for one afternoon each week for instruction in religion (Gorham, 1934). To

many fellow conference attendees, this was an attractive proposition. Growing religious pluralism in urban schools could not be ignored, however, and Protestant leaders soon recognized “Protestantism could return to the public schools only if it was accompanied by Catholicism and Judaism, and out of this realization came the released-time program” (Pfeffer, 1975, p. 181).

Mainline Protestant leaders and some public officials, including Dr. William Wirt, Gary, Indiana’s Superintendent of Public Schools, embraced the concept of released time. In 1914 Dr. Wirt established a program through which elementary students were released from public-school supervision to religious leaders for instruction in the Protestant, Catholic, or Jewish religion. Scholars generally recognize the “Gary Plan,” which became a model for released-time programs first across the Midwest and then later across the country, as the first U.S. released-time program (Berrett, 1998).<sup>3</sup>

Following the early success of the Gary Plan, released-time programs grew rapidly from the 1920s to the 1940s. In fact, by just over a decade after the first programs had begun, released time had expanded to 200 communities in 23 states, serving approximately 40,000 students. By the 1930s, programs had expanded to 400 communities in 30 states, enrolling around 250,000 students. By the 1940s, the explosive growth of these programs had reached 2,000 communities in 49 states, enrolling over two million students (Poore, 2006; RTBE, 2014; Shaver, 1956).

Mainline Protestant leaders, who embraced released time primarily as a way to support the religious and moral education of public-school children from Protestant families, launched most early programs. A significant number of Catholics also supported released time as a viable alternative form of moral and religious education for those students whose families did not send them to parochial schools. However, a “strange coalition” of Jewish-American special interest groups, secular organizations such as the American Civil Liberties Union, and most Baptist associations formed in opposition to released time. Interestingly, many Baptist organizations—with Southern Baptists being among the largest of the evangelical Christian denominations—originally opposed released time primarily because they thought it encroached upon parents’ exclusive right to direct their children’s religious education and, thus, violated the separation of church and state (Zucker, 2007).

It was only after a legal challenge in Champaign, Illinois that large numbers of evangelicals began to change their opinions about released time. This shift started and the strange coalition began to unravel when acknowledged atheist Vashti McCollum complained in 1945 the Champaign school district’s released-time policy discriminated against

her son James on the basis of religion. The courts initially dismissed her claim as frivolous, but she appealed her case all the way to the U.S. Supreme Court. Three years into the appeals process, in an 8–1 decision that came to be known as *McCullum v. Board of Education* (1948), the Court ruled the Champaign released time program violated the Establishment Clause. The case had received significant national press, and, leery of being associated with atheists such as McCollum in opposition to the programs, evangelicals gradually changed course and began supporting released time (Setran, 2012).

Many school leaders incorrectly interpreted the *McCullum* ruling to have banned *all* released-time programs, and participation in the programs began a steady period of decline. The number of programs continued to decrease even though the Court, four years later in another landmark case, *Zorach v. Clauson* (1952), upheld the practice of released time, as long as it took place with parental permission, off public-school grounds, and without state aid (Sorauf, 1959). Thus, the Court made an important distinction between the unconstitutional Champaign program of the *McCullum* case, held on-campus with the support of schools, and the constitutional New York program at the center of the *Zorach* case, held off-campus. Nevertheless, the decline of released time continued as the Court handed down additional rulings removing school-sponsored prayer and Bible reading in the 1960s, pushing Mainline Protestants' attitudes toward church and state in a more separationist direction. These Court rulings had a gradual but opposite effect on evangelicals. As schools became increasingly diverse and secular and Protestant hegemony less prevalent, many Catholics, too, lost interest in released time. Thus, by the early 1980s, released time had become a “diminishing phenomenon”<sup>4</sup> (Kelley, 1980). This decline continued until the 1990s when evangelical activists, seeking creative ways to spread their faith to public-school students, revitalized and reconceptualized the released-time policy.

Despite the Court's rulings on the First Amendment as it relates to the role of religion in public schools, challenges to the legal boundaries of disestablishment in the name of free exercise and accommodation continued. Evangelical Christian activists who saw the public schools as a means of propagating their religious beliefs with the support of the state levied many such challenges. The public schools are particularly attractive to evangelicals because their central religious beliefs compel them aggressively to proselytize others, especially children and young adolescents who are generally more receptive to their message.<sup>5</sup> Thus, evangelical activists have passionately sought to prohibit or undermine the teaching of evolution, reestablish school-sponsored prayer and devotional Bible reading, censor textbooks and library materials, and

generally prevent the teaching of subjects or ideas they perceive as threats to their way of life and vision for society. The recent revitalization and reconceptualization of released time as an “open door” to proselytize public-school students is among the latest in this long line of attempts by evangelical Christian activists to promote their comprehensive worldview through public education (Ericsson, Colby, Payne, & Crawford, 1996).<sup>6</sup>

By the 1990s, there were no longer many U.S. released-time programs in operation. In 1991, however, South Carolina-based School Ministries, Inc., which would become a leading organization behind a nationwide evangelical released time movement, began promoting the concept and by 1996 had established some of the state’s first contemporary released-time programs. This organization played a leading role in the passage of the South Carolina Released Time Credit Act (SCRTCA), which made South Carolina the first state with laws expressly permitting public schools to award credit for participation in released-time classes (Adcox, 2012; Bindewald interview with Breivik, 2013).<sup>7</sup> Supporters of the policy argued that by attaching credits to the released-time course, the state was merely accommodating students’ desire to participate in religious exercises—a desire hampered by South Carolina’s requirements that students earn a minimum of 24 high-school-graduation credits (Bindewald interview with Hartgrove, 2012). Opponents argued “the policy was only masked in the language of accommodation to hide its actual purpose of offering a special bonus to encourage public school students to participate in ‘sectarian, evangelical, and proselytizing’ released time courses” (Amended Complaint, 2012, p. 12). Furthermore some opponents, such as attorney Patrick Elliott of the Freedom from Religion Foundation, believe the policy goes beyond accommodation and effectively sends the message to students, parents, teachers, and other community members that the state sanctions the courses’ aims and values and thus serves as an establishment of religion (Bindewald interview with Elliot, 2013; FFRF, 2009).

Contemporary released time is more controversial than traditional programs because (a) the ways in which evangelicals have reconceptualized programs as a means of using public schools to win religious converts and, (b) the fact public schools can award credits to students who participate in programs. These characteristics differentiate contemporary evangelical programs from the earlier non-credit-bearing programs run by Mainline Protestants, Catholics, and Jews established with the primary purpose of providing moral instruction to children *within the religious tradition of their parents*. Some of the earliest Mainline Protestant programs were also committed to evangelism (Cocar, 2011), however this brand of proselytizing was typically geared toward children of Protestant parents and moderated by an equal commitment to the

Social Gospel, a more tolerant view of other religions, and a more reserved attitude toward aggressive missions to convert non-Protestants to Christianity. Among the primary goals of reconceptualized evangelical released-time programs, however, are to recruit “unchurched” public-school students, immerse them in devotional study of the Bible as the literal, inerrant word of God, and lead them to make “a rock-solid, life-long commitment” to Jesus Christ.<sup>8</sup> This more aggressive brand of proselytizing, especially when combined with public-school credits, is quite problematic.

In fact, a contemporary credit-bearing program in 2009 led parents of two public high-school students—one Jewish and one non-religious—to file a lawsuit against their school district in Spartanburg, South Carolina. In what became *Moss v. Spartanburg County School District 7* (4<sup>th</sup> Cir., 2012), plaintiffs argued awarding credit for released time unfairly advantaged evangelical Christians and served as an unconstitutional establishment of religion. The school district maintained its released time policies were based on South Carolina law and were not unconstitutional, and the lower court agreed, stating the district policy merely accommodated students without the primary purpose of advancing religion. The plaintiffs appealed, and in 2012 a three-judge panel upheld the lower court’s ruling. The plaintiffs then appealed to the U.S. Supreme Court, which declined, as it typically does in the absence of conflicting rulings by lower courts, to hear the case. This decision effectively upheld the lower court’s ruling (U.S. Supreme Court, 2012).

### **Normative Analysis (or The Good, the Bad, and the Ugly of Released Time)**

The attachment of public-school credits to overtly proselytizing religious courses situates reconceptualized released time at the crossroads of free exercise and disestablishment. Although the courts have ruled on the particular policy in Spartanburg, South Carolina, other districts and states that implement released time credit policies may encounter similar resistance. If this happens, separate courts plausibly could hand down conflicting rulings, in which case the U.S. Supreme Court would likely deliberate on the constitutionality of such policies. Thus, the legal battle surrounding released-time credits may be far from over.

The legal perspective, as interesting as it may be, is only one angle from which to analyze released time policies and programs. For instance, instead of asking, “Is this particular program constitutional?” one might ask, “Is it wise?” “Is it just?” or “Is it appropriate for public schools in

a pluralist, democratic society?” Addressing such normative questions can provide additional depth to the ongoing public discourse about the proper role of religion in public education. Therefore, in the following normative analysis I expand the scope of the conversation by identifying and explicating what I see as the good, the bad, and the ugly of released time for religious education.

### ***The Good***

At its best, released time represents a reasonable accommodation to religious believers in a pluralist society with secular public schools. A compelling case can be (and often is) made that the increasingly secularized environment of the public schools has contributed to a decline in religiosity among the general public. Whether one views this phenomenon as a generally good or bad outcome certainly depends on one’s worldview, but whether the secularizing process is fair to all citizens, religious and non-religious, is another matter. A liberal democracy should be concerned when its policies contribute to cultural loss, and it seems proper to take reasonable steps to avoid, whenever practical, these effects. Therefore, released time, when conceptualized as a proper accommodation, may provide devout parents with an arrangement through which their children can receive the benefits of both secular and religious education. Furthermore, it may prevent a significant number of devout parents from abandoning public education in favor of fundamentalist private schools or homeschooling.

The secularization of the public schools, along with increasing religious pluralism and decreasing religiosity, contributes to a host of anxieties for many religious conservatives. Many evangelicals, in particular, see these phenomena as a move away from God and evidence of U.S. cultural and moral decay. They envision public schools as a central battlefield in the so-called culture wars, which they fight with the hope of turning the nation back in what they believe to be a more godly direction. Proponents of evangelical released time point to relatively high rates of academic failure, drug and alcohol abuse, teenage pregnancy, vandalism, violence, disruptive classroom behavior, and other significant social problems as evidence of the U.S.’ cultural and moral decline. While I remain unconvinced these problems are worse now than in the past or that rising U.S. secularism (or religious pluralism) causes these ills or is detrimental to the welfare of the nation, I am sympathetic to the suggestion U.S. public schools could do a better job of helping to alleviate such problems. Any program that potentially leads to less behavioral disruptions in the classroom, lower rates of teenage pregnancy and substance abuse, and so on (which evangelicals claim as outcomes of their released-time programs), deserves a serious look. Furthermore, there is some evidence that participation in released-time programs contributes to positive social outcomes without undermining

academic performance. In fact, in a few cases, participation in released time seems to have improved some measures of academic performance.<sup>9</sup>

Instruction in morality or ethics ought to be included as a significant component of a comprehensive education, but it is difficult for public schools to provide substantive moral education in a culturally diverse society. While most U.S. citizens would likely welcome increased efforts by public schools to instill in students a common civic morality, it would be difficult to provide meaningful moral education in U.S. public schools because of the resistance such efforts would provoke from religious fundamentalists and others concerned about cultural loss for illiberal minority groups. To generate a broad consensus of support among citizens of a culturally pluralist society, the moral or ethical principles would need to be inclusive and somewhat generic. Fundamentalists would likely resist such efforts because exposing students to a “watered-down” or compromised morality might undermine parental efforts to indoctrinate their children into a more authoritarian, comprehensive, fundamentalist Christian worldview.

A “meaningful” or substantive moral education would require a normative foundation or some form of justification for the privileging of some values, virtues, or behaviors over others. Constitutional law requires curricular decisions be justified by secular rather than religious criteria which, when applied to moral education, would be problematic for fundamentalists who would likely find objectionable anything other than appeals to divine revelation as justification for a code of morality. Furthermore, using secular reasoning (i.e., something akin to Rawls’ public principles of reason) as the foundation for a normative moral education would invoke opposition from other groups worried about cultural loss.

All this is not to say public schools should give up efforts to promote a secular, civic morality just because some may find it unattractive or superficial. Rather, released time may provide opportunities for like-minded parents to provide their children, in addition to the civic education provided in the public schools, with a more substantive, culturally specific moral education within the regular school day. This arrangement could offer a counter-balance to the secularizing force of the public schools, prevent some devout parents from abandoning public education, and offer additional support for more substantive moral education and other positive social outcomes. At a minimum, for the reasons I have cited, released time deserves more scholarly attention.

### **The Bad**

Despite the potential for released time to provide religious believers with a reasonable accommodation and support legitimate social aims, it

also has potential to undermine some important efforts of public schools. As I mentioned earlier, the Court has made its position clear that released time programs are constitutional. Thus, when I say released-time programs are potentially problematic, I am making a normative, moral argument rather than a legal one. Specifically, I make the present argument around a set of assumptions about the proper purposes of public schooling, including the belief schools should help students develop both individually and socially into autonomous, rational, critical thinkers and tolerant, engaged, and informed citizens. Based on this understanding of public education, released time is potentially problematic for several interrelated reasons.

Released time provides an “open door,” to borrow a phrase from the evangelical literature (Ericsson et al., 1996), to what some see as an un-harvested, public-school mission field. The significant cause for concern is that this arrangement aids fundamentalists in their recruiting efforts and potentially leads to greater numbers of young people being indoctrinated into dogmatic and intolerant belief systems. Fundamentalist pedagogical approaches, for instance, have strong potential to undermine key aims of public education, including a school’s efforts to help students develop the habits of sound reasoning needed to navigate an increasingly complex world. Furthermore, these programs may undermine public schools’ efforts to promote tolerance—for example, a normative case study of evangelical released-time programs in South Carolina shows these programs sometimes denigrate other religions and encourage students to view classmates with other beliefs either as evildoers or targets for religious conversion (Bindewald, 2014). It is extremely difficult for individuals with such dogmatic beliefs to reason with one another across differences—a foundational requirement for a functioning, pluralist democracy.

Most modern religions eschew indoctrination, dogmatism, and intolerance, and released time would serve as an appropriate accommodation for these groups. However, constitutional law forbids discrimination on the basis of religion, so it would be unlawful to allow some religious groups but not others to participate in released time. Public schools may, however, adopt secular criteria to serve as guidelines for all participating programs. It is possible these criteria could include requirements participating programs not denigrate other religions or religious believers. These requirements would need to be designed so as not to target particular religions but rather to protect students and prevent the programs from undermining civic aims of public education.

### ***The Ugly***

Granting public-school credits for released-time courses exacerbates these problems. The idea that released-time credit policies merely serve

to accommodate religion is mistaken. Proper accommodation does not require a state to remove potential obstacles to the religious missions of private organizations or grant them permission to use the machinery of the public schools to advance such aims. Much more than a mere accommodation, the attachment of public-school credits to released-time courses aids religious organizations because it gives students, their parents, and the broader community the impression that the aims, values, and beliefs promoted through released-time courses bear the state's seal of approval. In other words, public-school credits symbolize democratically accountable entities such as state-appointed curriculum committees, school boards, and other public-school policymakers have approved a course after determining it meets widely supported standards.

It is this earned public confidence that gives public-school credits their power and significance. Community members should be able to trust that when a course carries public-school credit, it has been examined thoroughly, meets the same standards, and is subject to the same oversight and accountability generally applicable to all other publicly accredited courses. It is an eerie coincidence that, in the era of micromanagement and hyper-standardization of public education, private organizations would request (and, even more incredulously, some school districts would grant) the state's seal of approval for courses with few of the associated accountability measures. When released-time organizations convince public-school systems to award credit for largely unregulated religious courses, they co-opt this power and reap unearned and inappropriate benefits for their programs.

### **Conclusion**

Public schools should help prepare young people to become autonomous, critical thinkers and productively engaged citizens. They should be places where students learn to tolerate and respect others and engage in open-minded inquiry and dialogue. To the extent that released-time programs undermine these messages, they jeopardize the important civic mission of public education. Granting credits for released time inappropriately aids organizations whose courses may leave students more intolerant of difference and less capable of realizing the intellectual and civic aims of public education in pluralist, democratic societies.

Public schools are legally permitted, but not required, to offer released time as a religious accommodation to students. They are rightly prohibited from allowing some groups but not others to participate, but they may protect students' interests and wellbeing by establishing secular criteria all programs must satisfy. If a school wishes to adopt a released-time policy as an accommodation to its students, it has a responsibility to

ensure courses do not encourage intolerance or undermine the school's civic mission. Thus, released-time policies that provide access to devotional religious courses but do not award public-school credits or permit participating organizations to denigrate other religions may be appropriate accommodations for families who wish their children to receive both secular and religious education during the regular school day.

### Endnotes

- <sup>1</sup> Special thanks to reviewers and editors for their excellent feedback on the original manuscript.
- <sup>2</sup> 1914 is the year most commonly cited as the beginning of released time for religious education in the U.S., although Mormon (Latter-Day Saints) high school "seminaries" had been established prior in Utah .
- <sup>3</sup> As referenced in an earlier footnote, Salt Lake City, Utah public schools had previously established Latter-Day Saints' high school seminaries for Mormon students in 1912, which now operate under released time policies.
- <sup>4</sup> On the basis of observations made over a 22-year period as Director of Religious and Civil Liberty for the National Council of Churches, Kelley claims released-time programs were a diminishing phenomenon and no longer a topic of discussion among national church leaders.
- <sup>5</sup> For a thorough explanation of this approach to child evangelism, see popular evangelical author Luis Bush's (2009) *The 4/14 Window: Raising Up a New Generation to Transform the World* (Flushing, NY: Compassion International).
- <sup>6</sup> See Bindewald (2015) for a more detailed account of the religious right's historical efforts to influence public-school policy and curriculum.
- <sup>7</sup> School districts in other states such as Utah and Georgia also grant high-school credits for released time participation, though these states have not passed laws specifically granting the districts such authority.
- <sup>8</sup> These sentiments are expressed throughout the literature produced by two of the largest regional released-time programs in the state, Christian Learning Centers of Greenville (CLCG) and Spartanburg County Bible Education in School Time (SCBEST).
- <sup>9</sup> See "Secular Benefits of Contemporary Released Time Programs" section in Bindewald's (2014) *Public School Credits for Devotional Courses in Religion*.

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