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Church–State Interaction

AGOSTINI V. FELTON
117 S. CT. 1997 (1997)

GENERAL RULE OF LAW: Under certain circumstances, public school teachers may provide remedial education to parochial students on parochial school grounds without violating the establishment clause of the First Amendment.

PROCEDURE SUMMARY:

Plaintiffs: The New York City Board of Education (headed by its Chancellor, Betty Louise Felton) and parents of disadvantaged parochial school students (P)

Defendants: Rachel Agostini (D) and five other federal taxpayers (D)

U.S. District Court Decision: Denied plaintiffs' request for relief from injunction issued in *Aguilar v. Felton*

U.S. Court of Appeals Decision: Affirmed denial of relief

FACTS: The New York City Board of Education (the Board) (P), a local educational agency (LEA) under Title I of the federal Elementary and Secondary Education Act of 1965 (the Act), 20 U.S.C., §§ 6301 et seq., was required to provide "full educational opportunity" to every school-age child, regardless of his or her economic background, under the terms of the Act. Title I channeled federal funds, through the states, to LEAs, which in turn used the funds to provide remedial education, guidance, and job counseling to eligible children. The intended goal was to assist these children in meeting state student performance standards.

LEAs were not prohibited from providing services to children enrolled in private schools within its jurisdiction; however, the provision of services under such circumstances was subject to several restrictions. Services were required to be provided on a per-pupil, rather than schoolwide, basis. Additionally, the services were required to be "secular, neutral and nonideological in nature, and to be provided through public employees or others who were independent of private schools/religious institutions." Finally, each LEA was required to retain complete control over funds as well as title to all educational materials.

Within the jurisdiction of the Board (P), 10% of the total number of students eligible for services under the Act attended private schools; 90% of those private schools were secular in nature. Originally, the Board arranged to bus Title I–eligible students to public schools for afterschool remedial education. When that program failed for logistical reasons, the Board then moved the afterschool instruction directly onto private school campuses. The remedial instructors were all public employees, as contemplated by the Act, and were specifically admonished not to introduce any religious matter into their teaching or become involved in any way with the religious activities of the private schools.

AGUILAR V. FELTON: In 1978, six federal taxpayers sued the Board in federal district court, asserting that the Board's Title I program violated the establishment clause of the First Amendment. They sought an injunction prohibiting the Board from pursuing its remedial education plan (placing public employees in private religious schools).

The district court permitted the parents of several Title I–eligible parochial students to join the Board as defendants in the lawsuit and thereafter denied the plaintiffs' request for an injunction. The federal Second Circuit Court of Appeals overturned the district court's decision.

The U.S. Supreme Court, in *Aguilar v. Felton* (1985), affirmed the federal appellate (circuit) court, holding that the Board's Title I program necessitated an "excessive entanglement of church and state in the administration of [Title I] benefits."[1] The Court then remanded the case to the district court, which promptly enjoined the Board from using public funds for any program that authorized public school teachers and counselors to provide services on the premises of sectarian schools.

In response to the injunction, the Board modified its program so that it could continue to serve Title I–eligible private school students. It once again provided instruction at public schools (as it had originally but unsuccessfully) as well as at leased sites and in vans it converted into classrooms in the vicinity of the sectarian schools. Computer-aided instruction was offered on private school premises because this program did not require public employees to be physically present at the sites.

Between the 1986–87 and 1993–94 school years, the Board spent approximately $93 million complying with the Act, as modified under the injunction issued in *Aguilar v. Felton*. These funds were deducted from the entire grant of money available under Title I of the Act, before any of it was passed on to Title I–eligible students throughout the United States. The *Aguilar* costs thus reduced the amount of funds provided to all LEAs for remedial education. In plain terms, 20,000 disadvantaged children from New York City and 183,000 disadvantaged children nationwide experienced a decline in Title I services.

AGOSTINI V. FELTON: In late 1995, the Board and a new group of parents of disadvantaged parochial school students (P) filed a motion in federal district court seeking relief from the Supreme Court's *Aguilar* decision, claiming that the Court's decisional law had changed to the point that what once had been determined to be illegal was now legal. Both the district court and the Second Circuit Court of Appeals, while recognizing that establishment clause decisional law had indeed changed over the years, nevertheless upheld the denial of the motion for relief.

ISSUE: Is the *Aguilar* decision, which held that permitting public school teachers to provide remedial education to disadvantaged parochial school students on the grounds of their private schools has the improper effect of advancing a religion with public funds, still valid law?

HOLDING AND DECISION: No. The *Aguilar* decision is no longer valid law. Permitting public school teachers to provide remedial education to disadvantaged parochial school students in the case's context is no longer seen to have the improper effect of advancing a religion.

Implicit in the decision to overturn *Aguilar* are the following points:

1. The general principles used to evaluate whether government aid violates the establishment clause have *not* changed since *Aguilar* was decided. The Court continues to ask whether the government acted with the purpose of advancing or inhibiting religion, just as it continues to explore whether government aid has the "effect" of advancing or inhibiting religion.

2. However, what *has* changed is the Court's understanding of the criteria used in assessing whether government aid to religion has an impermissible effect of advancing religion. Cases decided by the Court after *Aguilar* have modified its approach to assessing establishment cases in three significant respects:
   a. First, the presumption (developed in *Ball* and *Meek)* that placement of public employees on parochial school grounds "inevitably results in the impermissible effect of state-sponsored indoctrination [of a religion]" is abandoned. Put another way, no longer will it be presumed that any public employee who works on the premises of a religious school inculcates religion in his or her work. Here, the Court cites the *Zobrest v. Catalina Foothills School District* case for its holding "expressly disavowing the notion that 'the establishment clause [laid] down [an] absolute bar to the placing of a public employee in a sectarian school.'" In *Zobrest,* the Court refused to presume that a publicly employed interpreter for the deaf would be pressured by pervasively parochial surroundings to inculcate religion by adding to or subtracting from the lectures being translated. Instead, it decided that in the absence of evidence to the contrary, the interpreter would dutifully discharge his or her duties as a full-time public employee by accurately translating what was said.
   b. Second, no longer will it be presumed (as it was in *Ball)* that all government aid that directly aids the educational function of religious schools is invalid. Specifically relying on its 1986 holding in *Witters v. Washington Dept. of Servs. for Blind,* in which the establishment clause was found not to bar a state from issuing a vocational tuition grant to a blind person who wished to use her grant to attend a Christian college, where the tuition grants in question were "made available generally without regard to the sectarian-nonsectarian or public-nonpublic nature of the institution benefited," the Supreme Court reasoned that the Title I funding that "benefited" the parochial schools in *Agostini* must be viewed in the same light: The funding was an incidental benefit to parochial schools that came about only because disadvantaged students happened to attend parochial schools within the Board's jurisdiction, just as funding indirectly benefiting the Christian college at issue in *Witters* came about merely because a recipient of the funding wished to attend that particular college.[2] In each case, the indirect funding benefit to parochial institutions came about through the "genuinely independent" and private choices of individuals. (Remember, none of the Title I funds at issue in *Agostini* were disbursed directly to parochial schools.)
   c. Aside from looking at the criteria by which an aid program identifies its beneficiaries in order to determine whether the state is responsible for subsidizing religion, it is also necessary to look

at whether the criteria by which a program identifies its beneficiaries creates a financial incentive to undertake religious indoctrination. Such an incentive cannot be present if aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion and is made available to religious and secular beneficiaries on a nondiscriminatory basis. Applying such reasoning to the NYC Board's Title I program, it is apparent that remedial services to disadvantaged students are allocated on the basis of criteria that neither favor nor disfavor religion. All children who meet the program's eligibility requirements may avail themselves of services, no matter where they go to school or what their religious beliefs may be.

3. Finally, *Aguilar's* conclusion that the NYC Title I program resulted in an excessive entanglement between church and state is no longer valid law. The *Aguilar* court had specifically noted that the NYC program (1) required pervasive monitoring by public employees to insure no governmental inculcation of religion, (2) required administrative cooperation between the Board and parochial schools, and (3) potentially increased the risk of political divisiveness. Under the current understanding of the establishment clause, the last two considerations do not, by themselves, create an "excessive" entanglement anymore, given that they are present wherever Title I services may be offered, in both parochial and nonparochial school settings. The assumption underlying the first consideration has been undermined; after *Zobrest,* the Court will no longer presume that public employees will inculcate religion simply because they happen to be in a sectarian environment.

COMMENT: The Court summarized its majority decision with the following: "We therefore hold that a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the establishment clause when such instruction is given on the premises of sectarian schools by government employees pursuant to a program containing safeguards such as those present here." This decision has already been applauded by those commentators who decried the fact that the *Aguilar* injunction had essentially forced the Board to spend upwards of $100 million to rent vans for use as classrooms—merely to avoid the appearance of public teachers setting foot in religious schools. Others who believe in the strict separation of church and state have yet to weigh in, but it is likely that a few, at least, will see this decision as eroding the principle underlying the establishment clause (prohibiting the government from establishing a religion) while giving only a minor nod to those favoring the free exercise clause (guaranteeing the free exercise of religion to all).

School administrators will see the decision as beneficial, but it remains to be seen—and given the somewhat confusing nature of this opinion, certainly cannot be predicted—whether this decision signals a continuing relaxation of strict establishment clause criteria.

Discussion Questions

1. How could LEA's administrators logistically and accurately maintain that by employing public employees, services would remain secular, neutral, and nonideological at private/religious school settings?
2. LEA's public employees work at religious schools in order to carry out the directives of the program. Could this violate an employee's religious rights or beliefs? If an employee were a Muslim

and he or she had to provide services at a Catholic school, would that conflict with the public employee's religious beliefs, and could that employee request to be placed at a different school?

3. Apart from the legal analysis, was there a logistical, practical, and/or financial concern that influenced the change in the Court's position?

BOARD OF EDUCATION OF CENTRAL SCHOOL DISTRICT NO. 1 V. ALLEN 392 U.S. 236, 88 S. CT. 1923 (1968)

GENERAL RULE OF LAW: A state may permit school authorities to lend textbooks for use in parochial schools.

PROCEDURE SUMMARY:

Plaintiff: New York Central School District No.1 Board of Education (P)

Defendant: Allen, New York Commissioner of Education (D)

U.S. District Court Decision: Held for Board of Education (P), finding state law unconstitutional

U.S. Court of Appeals Decision: Reversed, finding state law constitutional

U.S. Supreme Court Decision: Affirmed, upholding court of appeals decision

FACTS: New York enacted a law requiring local school authorities to loan textbooks to students attending private parochial schools. The express purpose of the law was the "furtherance of the educational opportunities available to the young." The New York Board of Education of Central School District No. 1 (P) brought an action against Allen (D), the New York Commissioner of Education. The Board (P) sought a declaration that the law violated the First Amendment's establishment clause separation of church and state. The U.S. District Court held the law tended to establish religion, in violation of the First Amendment. The court of appeals reversed, holding the law was neutral with respect to religion, as it benefited public and private school students equally. The U.S. Supreme Court granted the Board's (P) petition for review.

ISSUE: May a state permit school authorities to lend textbooks for use in parochial schools?

HOLDING AND DECISION: (White, J.) Yes. A state may permit school authorities to lend textbooks for use in parochial schools. A law will withstand establishment clause attack if it has a secular purpose and tends neither to advance nor hinder religion. The law in question meets this test. The law applies equally to religious and nonreligious school students. The recipient of the public benefits

here are the students, not churches or schools. Considering the extent to which sectarian schools provide secular education, this Court is not prepared to say that the processes of secular and religious training are so intertwined that benefiting the former at a religious school necessarily advances religion. Affirmed.

DISSENT: (Black, J.) The law here allows tax dollars to be used to advance religious purposes, in clear violation of the First Amendment.

COMMENT: In this case, the Court relied on *Everson v. Board of Education* (1947), which held that New Jersey could use tax revenues to pay bus fares to parochial schools as part of a program that also paid fares for students "attending public and other schools."[3] In his dissent, Justice Douglas warned of the possibility that in the future, parochial school authorities might select books that further sectarian/religious teachings. The law providing for the state-subsidized loan of secular textbooks to both public and private school students was held to be constitutional. The rationale was that the books were loaned as part of a general program for furthering the secular education of all students. The books were not, in fact, used to teach religion; therefore, the program did not establish a religion. Furthermore, the state aid went to parents and students rather than to the religious schools directly, another indication that it did not establish a religion.

Discussion Questions

1. What did the Court mean when it said that it "is not prepared to say that the processes of secular and religious training are so intertwined that benefiting the former at a religious school necessarily advances religion"?
2. Why is it important that the state aid went to students and parents?
3. What is meant by the concept of "child benefit" regarding constitutionality of state aid to religious schools?

BOARD OF EDUCATION OF KIRYAS JOEL VILLAGE SCHOOL DISTRICT V. LOUIS GRUMET ET AL. 512 U.S. 687 114 S. CT. 2481 (1994)

GENERAL RULE OF LAW: The establishment clause prohibits states and the federal government from passing laws that advance or hinder religion. The *Lemon* three-prong test remains the method of determining whether or not there has been an excessive entanglement of government and religion.

PROCEDURE SUMMARY:

Plaintiffs: Louis Grumet, et al. (including the Board of Education of Monroe-Woodbury Central School District and the Attorney General of New York) (P)

Defendant: Board of Education of Kiryas Joel Village School District (D)

State Supreme Court for Albany County Decision: Granted summary judgment for plaintiffs, finding that the statute at issue failed to meet each of the three prongs of the *Lemon* test

State Appellate Division Decision: Affirmed on the ground that the New York state law (Chapter 748) had the primary effect of advancing religion, in violation of both constitutions

U.S. Supreme Court Decision: Affirmed

FACTS: The Village of Kiryas Joel in Orange County, New York, is a religious enclave of the Satmar Hasidim, practitioners of a strict form of Judaism. The village was part of the Monroe-Woodbury Central School District until 1989, when a special state statute created a separate school district adhering to village lines, in order to serve this distinctive population.

The Satmar Hasidic sect is named for the town near the Hungarian and Romanian border where it was formed by Grand Rebbe Joel Teitelbaum. After World War II, the grand rebbe and most of his surviving followers moved to the Williamsburg section of Brooklyn, New York. In the mid-1970s, the Satmars purchased an undeveloped subdivision in the town of Monroe and formed the community that became the village of Kiryas Joel. The proposed boundaries of Kiryas Joel were drawn to include, and were restricted to, the 320 acres owned and inhabited entirely by Satmars. The village, incorporated in 1977, had a population of about 8,500.

The residents of Kiryas Joel are vigorously religious people who make few concessions to the modern world and who go to great lengths to avoid assimilation. They interpret the Torah strictly; segregate the sexes outside the home; speak Yiddish as their primary language; eschew television, radio, and English-language publications; and dress in distinctive ways that include head coverings and special garments for boys and modest dresses for girls. Children are educated in private religious schools. Most boys attend the United Talmudic Academy, where they receive a thorough grounding in the Torah and limited exposure to secular subjects. Most girls attend Bais Rochel, an affiliated school with a curriculum designed to prepare girls for their roles as wives and mothers.

These schools do not offer any distinctive services to handicapped children, who are entitled under state and federal law to special education services even when enrolled in private schools. Starting in 1984, the Monroe-Woodbury Central School District provided special services for the handicapped children of Kiryas Joel at an annex to Bais Rochel; one year later, however, the district ended this arrangement in response to *Aguilar v. Felton* (1985) and *School Dist. of Grand Rapids v. Ball* (1985).[4] Children from Kiryas Joel who needed special education (including the deaf, the mentally retarded, and others suffering from a range of physical, mental, or emotional disorders) had to attend public schools outside the village. Families of these children found this arrangement highly unsatisfactory.

By 1991, only one child from Kiryas Joel was attending Monroe-Woodbury's public schools. The village's other handicapped children either received privately funded special services or no services whatsoever. It was then that the New York legislature passed the statute at issue in this litigation, which

created within the boundaries of the Village of Kiryas Joel a separate school district that was to "have and enjoy all the powers and duties of a union-free school district." Governor Mario Cuomo recognized that the residents of the new school district were all members of the same religious sect, yet stated that the statute was a good faith effort to solve the unique problem associated with providing special education services to handicapped children in the village.

Lewis Grumet, the Monroe-Woodbury Central School District, and state's Attorney General filed suit in state court to challenge the state law as violating the First Amendment. The U.S. Supreme Court eventually held that the legislative action violated the Establishment Clause of the U.S. Constitution.

ISSUE: May a state create a separate school district permitting handicapped children in a religious community to receive state and federal financial assistance in their own schools rather than in their community's public schools?

HOLDING AND DECISION: (Souter, J.) No. The New York statute violates the establishment clause of the First Amendment, binding on the states through the Fourteenth Amendment. A state may not delegate its civic authority to a group chosen according to religious criteria. Authority over public schools belongs to the state and may not be delegated to a local school district created by the state in order to grant political control to a religious group. Because this unusual act is tantamount to an allocation of political power on a religious criterion and neither presupposes nor requires governmental impartiality toward religion, it violates the prohibition against the government's establishment of religion.

The statute also fails the test of neutrality. It delegates power to an electorate defined by common religious beliefs and practices, a form of religious favoritism. For this reason, it crosses the line from a permissible accommodation of a religion to an impermissible establishment of a religion.

COMMENT: It is undisputed that those who negotiated the village boundaries under New York's general village incorporation statute drew them so as to exclude all but Satmars. Further, the New York legislature was well aware that the village remained exclusively Satmar in 1989, when it adopted Chapter 748, creating the special district. Interestingly, early in the development of public education in New York, the state rejected highly localized school districts in New York City when they were promoted as a way to allow separate schooling for Roman Catholic children.

This ruling does not foreclose providing special education services. There are several alternatives for providing bilingual and bicultural special education to Satmar children. Such services can be offered to village children through the Monroe-Woodbury Central School District. Since the Satmars do not claim that separatism is religiously mandated, their children may receive bilingual and bicultural instruction at a public school already run by the Monroe-Woodbury district, or Monroe-Woodbury can provide a separate program of bilingual and bicultural education at a neutral site near one of the village's parochial schools. The Court made it clear that local officials would not run afoul of the establishment clause so long as the handicapped program was administered in accordance with neutral principles that did not accord special treatment to Satmars.

Justices Scalia, Rehnquist, and Thomas dissented. In a scathing dissent, Scalia pointed out that groups of citizens who happen to share the same religious views are already invested with political power, that *Kiryas Joel* is a special case requiring special measures, and that it is improper to restrict the New York state legislature's ability and desire to accommodate a special situation. Scalia also indicated that

Lemon's three-prong test should be ignored (clearly, the *Lemon* test is under serious attack). He relied instead on *Larkin v. Grendel's Den Inc.* (1982) (upholding a Massachusetts statute that grants religious bodies veto power over applications for liquor licenses).[5]

Discussion Questions

1. Why did the state create a separate school district for this small group of highly religious Hasidic Jews?
2. How equitable is it to create a school district for students with special needs who attend a private or nonpublic school? Does creating a separate school district address the issue?
3. Should handicapped students at a private or nonpublic school receive public funds? Should the IDEIA funds follow the student?

COUNTY OF ALLEGHENY V. ACLU, GREATER PITTSBURGH CHAPTER 492 U.S. 573, 109 S. CT. 3086 (1989)

GENERAL RULE OF LAW: A state practice is permissible when it involves religion but does not primarily advance or inhibit religion.

PROCEDURE SUMMARY:

Plaintiff: American Civil Liberties Union (ACLU) (P)

Defendant: County of Allegheny (County) (D)

U.S. District Court Decision: Held for County (D), finding displays constitutional

U.S. Court of Appeals Decision: Reversed, holding practices violated the establishment clause

U.S. Supreme Court Decision: Reversed as to the constitutionality of the crèche; affirmed as to the menorah

FACTS: The County (D) set up two displays in or around public property. The first, a crèche depicting the Christian nativity scene with a banner reading "Glory to God in the Highest" in Latin, was placed on the main staircase in the County (D) courthouse. The second was an 18-foot-tall menorah placed outside County (D) buildings and next to a 45-foot-tall Christmas tree. The ACLU (D) filed suit to enjoin permanently both displays. It contended that the displays violated the establishment clause. The district court denied the injunction, finding the displays constitutional. The court of appeals reversed, holding that the displays were impermissible governmental endorsements of Christianity and Judaism. The U.S. Supreme Court granted review.

ISSUE: Is a state practice permissible when it involves religion but does not primarily advance or inhibit religion?

HOLDING AND DECISION: (Blackmun, J.) Yes. Under the establishment clause, a state practice that touches upon religion must not in its principal or primary effect advance or inhibit religion. This clause, at the very least, prohibits the government from appearing to take a side on a religious question or belief. The words contained in the banner atop the crèche display clearly endorsed a patently Christian message. Here, the reasonable observer would believe that the County (D) was endorsing a particular message because the display was in the most notable part of the courthouse and not near any other display or symbols. Additionally, nothing in the display itself detracted from the particular message. Though government may recognize Christmas as a cultural phenomenon, it may not observe it as a Christian holy day, as the crèche display at issue does. On the other hand, the menorah display was permissible. Displaying it outside public buildings alongside the Christmas tree did not endorse either Christianity or Judaism; rather, it simply recognized cultural diversity and a season that has attained secular status. Reversed and affirmed.

COMMENT: The first nativity scene case before the Court was *Lynch v. Donnelly* (1984).[6] There, the Court found the display permissible. In distinguishing *Allegheny* from *Lynch,* the Court placed particular weight on the fact that the display in *Allegheny*, unlike in *Lynch*, was in the most beautiful and prominent location in the courthouse and was not near other displays. Thus, it appears that so long as a religious display is but a part of a larger display celebrating the cultural diversity of a secular holiday season, it will be found constitutional.

Discussion Questions

1. Would members of a science club be permitted to erect a display of a Christmas tree, gifts, and decorative Christmas lights in a public school building? Why or why not?
2. Would members of a Fellowship of Christian Athletes group be permitted to erect the same display, along with a sign that read "Donated by the Fellowship of Christian Athletes?"
3. What effect does the *Allegheny* case have on a school band's performance of traditional religious songs at a Christmas concert?
4. Why does the Court allow one type of religious display when another religious display is held to be unconstitutional?

EPPERSON V. STATE OF ARKANSAS
393 U.S. 97, 89 S. CT. 266 (1968)

GENERAL RULE OF LAW: States may not forbid the teaching in public schools of theories, such as Darwinian evolution, which conflict with certain religions.

PROCEDURE SUMMARY:

Plaintiff: Epperson (P), a high school teacher

Defendants: State of Arkansas (D); Little Rock, Arkansas School District (D)

State Trial Court Decision: Held for Epperson (P), finding state law unconstitutional

State Supreme Court Decision: Reversed

U.S. Supreme Court Decision: Reversed (trial court decision reinstated)

FACTS: In 1928, Arkansas enacted an "anti-evolution" law that prohibited teaching Darwin's theory of evolution in its public schools and universities. Teachers who taught evolution could be convicted of a misdemeanor. There was no record of a prosecution in Arkansas under the statute. Despite the law, a high school in Little Rock, Arkansas, upon the advice of the biology faculty, adopted a textbook that described Darwin's theory. Susan Epperson (P) was then hired to teach biology. She wanted to use the textbook but was worried about being fired for using it, so she brought a constitutional challenge to the Arkansas "monkey law." The trial court held that the law interfered with the First Amendment right to freedom of speech, which included the freedoms to learn and to teach. The Arkansas Supreme Court, however, reversed and ruled that the law was constitutional without deciding whether the word "teaching," as used in the law, meant only explaining the theory of evolution as opposed to actually arguing that evolution was the only valid theory of human creation.

ISSUE: May states forbid the teaching in public schools of theories, such as Darwinian evolution, that conflict with certain religions?

HOLDING AND DECISION: (Fortas, J.) No. States may not forbid the teaching in public schools of theories, such as Darwinian evolution, that conflict with certain religions. The First Amendment protects freedom of speech and inquiry and prohibits states from promoting specific religions. Thus, states may not require that teaching and learning be tailored to the principles of any particular religious sect or dogma. Arkansas's "monkey law" exists solely because the theory of evolution contradicts the ideas of creation as set forth in the Bible's book of Genesis. But Arkansas cannot demand that Genesis be the exclusive source of doctrine as to the origin of humans; to do so violates the First Amendment. To limit science instruction to only an anti-evolution theory "hinders the quest for knowledge, restrict[s] the freedom to learn, and restrain[s] the freedom to teach." Therefore, Arkansas's anti-evolution statute is unconstitutional. Reversed.

COMMENT: The U.S. Supreme Court based its decision here on the First Amendment's prohibition of the state establishment of religion. Technically, the First Amendment alone does not directly apply to actions taken by the states, so the court also had to use the Fourteenth Amendment's due process clause to apply the First Amendment to the states. Here, the establishment clause was offended because the Arkansas anti-evolution statute was not neutral toward religion. Rather, it aided religions (such as Christianity) that accept the Bible as a guide to church doctrine and that believe that Genesis provides the only acceptable explanation for human creation.

Discussion Questions

1. The First Amendment makes two statements about religion. What are these guiding principles?
2. What would the court say if a teacher only taught Darwin's theory of evolution and refused to teach any other theories?
3. Why is this case important to the teaching of evolution in today's schools?

ILLINOIS EX REL. MCCOLLUM V. BOARD OF ED., S.D. 71, CHAMPAIGN COUNTY, ILL. 333 U.S. 203, 68 S. CT. 461 (1948)

GENERAL RULE OF LAW: A school may not permit the teaching of religious doctrine on public school premises during school hours.

PROCEDURE SUMMARY:

Plaintiff: McCollum (P), a taxpayer, resident, and parent of a public school student

Defendant: Board of Education of School District No. 71, Champaign County, Illinois (D)

State Trial Court Decision: Held in favor of Board of Education (D), upholding the state program

State Supreme Court Decision: Affirmed

U.S. Supreme Court Decision: Reversed

FACTS: The Board of Education of School District No. 71, Champaign County, Illinois (D), instituted a program whereby representatives of certain religious groups would be permitted to provide religious instruction, during school hours, on public school campuses. Attendance by students was voluntary. McCollum (P), an Illinois resident and parent of a public school student, brought an action in state court, seeking a declaration that this practice was a violation of the First Amendment's separation of church and state. The state trial court upheld the practice, and the state Supreme Court affirmed. The U.S. Supreme Court granted review.

ISSUE: May a school permit the teaching of religious doctrine on public school premises during school hours?

HOLDING AND DECISION: (Black, J.) No. A school may not permit the teaching of religious doctrine on public school premises during school hours. The First Amendment rests on the premises that both religion and government work best when left free from the other within their respective spheres. The program at issue here is, beyond all question, an example of the utilization of established and tax-supported public schools to aid religious groups in the spreading of their faith. This falls squarely within the First Amendment's prohibition of the state's using its resources to establish religion. Reversed.

COMMENT: The state's action offered sectarian groups "an invaluable aid in that it helped to provide pupils with their religious classes through use of the state's compulsory public school machinery," thus aiding one or more religions or preferring one over another. Thus, a program that permitted religious instruction during school time and excused public school students from their secular course work in order to attend the religious classes was declared unconstitutional, based on the First Amendment prohibition against state establishment of religion. The court found that allowing public school classrooms to be used for religious instruction as well as providing state support of religious class attendance (because of the state compulsory attendance law) was unconstitutional because it violated the establishment clause.

Discussion Questions

1. Why was the use of public school classrooms such a major concern?
2. What is meant by those who felt that if this statute had been supported it would give the "indicia" of state support to a religious group?
3. What might be a logical next step for those who want to provide religious instruction during school time?

LEE V. WEISMAN 112 S. CT. 2649 (1992)

GENERAL RULE OF LAW: The state may not invite clergy to perform invocation and benediction services at public secondary school graduation ceremonies.

PROCEDURE SUMMARY:

Plaintiff: Weisman (P), father of a public secondary school graduate

Defendant: Lee (D), a secondary school principal

U.S. District Court Decision: Held for Weisman (P), that the practice violated the establishment clause and should be permanently enjoined

U.S. Court of Appeals Decision: Affirmed

U.S. Supreme Court Decision: Affirmed

FACTS: The City of Providence permitted school principals to invite members of the clergy to perform invocations and benedictions at public school graduation ceremonies. Lee (D), a principal, invited a rabbi to perform such services at the graduation of Weisman's (P) daughter. Lee (D) provided the rabbi with a National Conference of Christians and Jews pamphlet of guidelines for composing public prayers. Lee (D) also advised the rabbi that the prayer must be nonsectarian. Weisman (P) brought

suit to permanently enjoin the practice, contending it violated the establishment clause. The district court held for Weisman (P) and issued a permanent injunction. The court of appeals affirmed. The U.S. Supreme Court granted review.

ISSUE: May the state invite clergy to perform invocation and benediction services at public secondary school graduation ceremonies?

HOLDING AND DECISION: (Kennedy, J.) No. Inviting clergy to perform invocation and benediction services at public secondary school graduation ceremonies violates the establishment clause. Lee's (D) decision that the service be performed and his choice of the religious participant are both attributable to the state and amount to a state decree that prayer occur. Lee's (D) choice of a rabbi clearly creates the potential for divisiveness in a school setting where students are pressured or coerced into being present and no real alternative to participation in the graduation ceremony exists. The state, through Lee's (D) distribution of the pamphlet to the rabbi, also directed and controlled the content of the prayer. This attempt to make the prayer nonsectarian failed. It is well established that the state may not provide for official prayers that purport not to prefer one religion over another. Such action essentially amounts to the creation of a state religion, which the establishment clause clearly forbids. Affirmed.

COMMENT: The Court places great reliance on the fact that the ceremony takes place in a school setting. It sees the danger of coercion and pressure upon children and adolescents as much greater than such danger with respect to adults. Thus, the Court is less willing to tolerate any state activity that creates such a danger in the school setting. Further compounding the problem for the Court is that in the graduation setting, the student is forced to either acquiesce or protest the activity because the option of not attending the ceremony is not a real, viable alternative. The absence of applying the tripartite *Lemon* provisions while applying a psychological coercion test is an example of the pressure being applied to the still-constitutional *Lemon* provisions.

Discussion Questions

1. Should principals of public middle and high schools be permitted to invite clergy to offer invocation and benediction prayers as part of the school's formal graduation ceremonies?
2. How does the practice of including invocations and benedictions, even so-called nonsectarian ones, in a public school graduation create an identification of government power with religious practices, endorse religion, and/or violate the establishment clause?
3. In what ways does First Amendment protection of speech differ from the protection afforded worship and conscience in religious matters?
4. How does the school district's supervision and control of a middle and/or high school graduation ceremony place public pressure, as well as peer pressure, on attending students to stand as a group or, at least, maintain respectful silence during the invocation and benediction?

LEMON V. KURTZMAN; EARLY V. DICENSO
403 U.S. 602, 91 S. CT. 2105 (1971)

GENERAL RULE OF LAW: A state may not enact a system of assistance to parochial schools.

PROCEDURE SUMMARY:

Plaintiffs: Various individual taxpayers/citizens of Rhode Island and Pennsylvania

Defendants: Various state officials responsible for executing the educational assistance laws

U.S. District Court Decision: Action dismissed in Pennsylvania; motion to dismiss denied in Rhode Island

U.S. Court of Appeals Decision: Certiorari taken directly to Supreme Court; no court of appeals decision

U.S. Supreme Court Decision: Finding both programs unconstitutional, the court held for the plaintiffs

FACTS: Rhode Island enacted an educational assistance program aimed at aiding private education, including parochial schools. The law provided for supplemental teacher salaries. Pennsylvania enacted a statute with a similar goal. It consisted mainly of aiding schools in the purchase of supplies and textbooks in secular subjects. In the case of both states, the vast majority of schools subject to the programs were religious, with church-affiliated personnel often providing instruction. Several citizens of each state brought actions in U.S. district courts in their respective states, seeking a declaration that the programs violated the First Amendment's separation of church and state. The district court in Pennsylvania dismissed the action filed there; the court in Rhode Island held the law of that state unconstitutional. The U.S. Supreme Court granted a direct petition for certiorari.

ISSUE: May a state enact a system of assistance to parochial schools?

HOLDING AND DECISION: (Burger, C. J.) No. A state may not enact a system of assistance to parochial schools. The First Amendment not only prohibits the passing of a law establishing religion, but it also prohibits the passing of a law even respecting such establishment. Therefore, to not violate the First Amendment, a law must (1) have a secular purpose, (2) neither advance nor inhibit religion, and (3) not excessively entangle church and state. Respecting the Rhode Island law, it cannot be disputed that parochial schools constitute an integral part of the church's sweeping mission. A state cannot assume that a church-affiliated teacher will not indoctrinate pupils in his or her religious beliefs, even if the subject matter is secular. To supplement such a teacher's salary constitutes an unacceptable entanglement. As to the Pennsylvania law, the requirement that books and supplies be used for secular subjects necessarily implies surveillance and control. Such surveillance and control is precisely the kind of entanglement the First Amendment prohibits. In view of this, the programs must be held to violate the First Amendment. The Rhode Island ruling is affirmed; the Pennsylvania ruling is reversed.

COMMENT: The separation of church and state aspect of the First Amendment has always been one of the more problematic areas of constitutional law. On the one hand, a state cannot establish religion; on the other hand, it cannot abridge the right to worship. These two mandates are often at odds, and the Court has often had difficulty reconciling them. This particular case is one of the more important ones dealing with church and state. Prior to this case, there was very little interaction permitted between the government and parochial schools. The three-part test has been the standard for establishment clause decisions since 1971. The excessive entanglement test (*Lemon* test) states that laws must (1) be secular in purpose, (2) neither further nor impede religion, and (3) not result in a high degree of involvement between government and religious institutions. Though Pennsylvania and Rhode Island were found to be in violation of the establishment clause, the *Lemon* test opened the door to other types of government assistance to parochial schools. The *Lemon* test specifically describes how a law must be written in order to be constitutional. Therefore, any new programs of assistance could be written in a way that would comply with the *Lemon* test.

Discussion Questions

1. In *Lemon,* Pennsylvania and Rhode Island were found to be in violation of the establishment clause of the U.S. Constitution. What does the establishment clause say about government and religion?
2. Describe the three-part test established in *Lemon*.
3. How does the excessive entanglement test described in *Lemon* open the door for other types of government financial aid to parochial schools?

MITCHELL V. HELMS 530 U.S. 793 (2000)

GENERAL RULE OF LAW: A federal aid program does not violate the establishment clause if it determines eligibility for aid neutrally, allocates aid based on the private choices of the parents of schoolchildren, provides aid that has a permissible content, and does not define its recipients by reference to religion.

PROCEDURE SUMMARY:

Plaintiffs: Intervenors Guy and Jan Mitchell, along with parents of parochial school students (P)

Defendants: Mary Helms, mother of a public school student, along with other parents of public school students (D)

U.S. District Court Decision: 1990, Held for Helms, et al. (D); 1997, reversed and held for Mitchell, et al. (P)

U.S. Court of Appeals Decision: Reversed and held for Helms, et al. (D)

FACTS: Under Chapter 2 of the Education Consolidation and Improvement Act of 1981, federal funds are distributed to state (SEA) and local (LEA) educational agencies that, in turn, lend educational materials and equipment to both public and (nonprofit) private elementary and secondary schools. Chapter 2

provides that certain restrictions must be placed on the aid made available to private schools. Most important, the services, materials, and equipment provided to private schools must be "secular, neutral, and nonideological." The amount of Chapter 2 aid to be distributed to each private school is determined by the number of children enrolled in the school and must generally be equal to the amount distributed to the children in the public schools. Chapter 2 also requires that the aid supplement, and not supplant, the funds that are made available through nonfederal sources. Further, the private schools may not acquire control of the government funds or title to the borrowed items.

To acquire the materials and equipment, a private school submits an application to the LEA detailing the items the school needs and how these items will be used. If approved, the LEA purchases the requested items from that particular school's allocated funds and then lends them to the schoo1. Of the 46 private schools that received Chapter 2 aid in Jefferson Parish, Louisiana, 34 were religiously affiliated. The funds were used primarily for nonrecurring expenses, such as library books, computers, computer software, laboratory equipment, and cassette recordings.

Mary Helms, a parent of public school students in Jefferson Parish, filed suit in 1985 in the United States District Court for the Eastern District of Louisiana, alleging that Chapter 2, as applied in Jefferson Parish, violated the First Amendment's establishment clause. In 1990, the district court granted summary judgment in favor of Helms. Relying on the second part of the three-part test in *Lemon* v. *Kurtzman* (1971), the district court held that Chapter 2 violated the establishment clause because the program had the primary effect of advancing religion. The court found this effect was created because the materials and equipment loaned to the Catholic schools constituted direct aid and because the Catholic schools were "pervasively sectarian." Two years later, after the judge who made this ruling retired, a different judge reviewed the case and, based on intervening case law, reversed the decision. Then, in 1998, on appeal to the United States Court of Appeals for the Fifth Circuit, the district court's holding was reversed again. The United States Supreme Court granted certiorari.

ISSUE: Can government funds be used to provide educational and instructional materials to religious schools without violating the establishment clause of the First Amendment?

HOLDING AND DECISION: (Thomas, J.) Yes, federal aid programs that distribute funds to state and local educational agencies that, in turn, purchase educational and instructional materials and then lend these materials to local public and private schools may do so without violating the establishment clause. The establishment clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion." The Court acknowledged that for over 50 years, it has struggled to apply these words to situations in which the government aids religious schools. The Court relied on the standards set out in *Lemon* and *Agostini v. Felton* to guide it through this latest evaluation of government aid to private schools. According to the Court's holding in *Lemon,* to be constitutionally valid, a statute must first have a secular purpose; second, its primary effect must not advance nor inhibit religion; and third, it must not create an excessive entanglement between government and religion. However, without overturning *Lemon,* the Court adjusted this standard in *Agostini,* a case the Court decided while the appeal for this case was pending in the Fifth Circuit. This modification resulted in an evaluation of only the first two prongs. Further, in *Agostini,* the Court assigned three revised criteria for determining the effect of a statute: whether the aid (1) resulted in governmental indoctrination, (2) defamed its recipients by reference to religion, or (3) created an excessive entanglement.

Because neither the respondents nor the Fifth Circuit questioned the district court's holding that Chapter 2 has a secular purpose, the Court needed only to address the effect prong. Further, since neither the respondents nor the Fifth Circuit challenged the district court's holding that Chapter 2, as applied by Jefferson Parish, did not cause excessive entanglement between government and religion, that criterion under the effect prong was not evaluated. Based on the facts of this particular case, the Court needed to focus only on the first two criteria: whether Chapter 2 aid resulted in religious indoctrination by the government and whether it defined its recipients by reference to religion.

The first inquiry is whether government aid to religious schools results in governmental indoctrination of religion. Here, the Court focused on neutrality as the guiding principle in distinguishing between indoctrination that is attributable to the state and indoctrination that is not. To safeguard against governmental indoctrination, the aid must be distributed to a broad range of groups without regard to their religion. Additionally, neutrality is assured when the government aid that is distributed to religious institutions "does so only as a result of the genuinely independent and private choices of individuals . . . as opposed to the unmediated will of government." For instance, in *Zobrest* v. *Catalina Foothills School District* (1993), the government program being challenged was one that distributed benefits neutrally to any child qualifying as "special needs" under the statute, without regard to the sectarian or nonsectarian nature of the school the child attended.[7] Because the statute assured them that the government aid would be provided no matter where the child went to school, the parents had the freedom to choose their child's school. Therefore, if the government aid followed the child to a sectarian school, it was because the parents chose to send their child there and not because of any government action.

The second inquiry was whether the recipients of the government aid were defined by reference to religion. Here, the Court focused on whether or not the criteria for allocating aid "create a financial incentive to undertake religious indoctrination." Relying on the neutrality principle and the private choices of individuals, the Court made clear that such an incentive is not present if the aid is allocated on a neutral basis, using secular criteria that neither favors nor disfavors religion, and is made available to all schools, whether secular or religious. The Court added that just because an aid program reduces the cost of securing a religious education does not mean that the program creates an incentive for the parents to choose such an education for their children.

The Court rejected the respondents' argument that aid to religious schools must not be divertible to religious use. The Court found that as long as the government aid is suitable for use in the public schools, it would be suitable in private schools. Furthermore, the issue is not about divertibility of aid, it is whether the aid itself has an impermissible content. Regardless, as the Court points out, Chapter 2 satisfies the criteria because it explicitly bars any aid that is not "secular, neutral, or nonideological."

Applying the relevant *Agostini* criteria to the facts of the case, the Court found that Chapter 2 does not result in governmental indoctrination because it determines aid based on neutral, secular criteria and on the private choices of parents of schoolchildren, and it does not provide aid with an impermissible content. Nor does Chapter 2 define its recipients by reference to religion. Aid under Chapter 2 is based on the per capita number of students in each school. Allocations to students in private schools must be equal to the expenditures made to children enrolled in the public schools. Therefore, no improper incentive is created. Chapter 2 makes a broad spectrum of schools eligible for its aid without regard to religion. Thus, Chapter 2 is neutral with regard to religion. Additionally, it is the students and their parents who, through their choice of schools, determine who receives Chapter 2 aid. Finally, Chapter 2 satisfies the first prong

in *Agostini* because it provides to religious schools aid that has a permissible content. The statute specifically requires that Chapter 2 aid be "secular, neutral, and nonideological." In conclusion, the Court found that Chapter 2 was not a law respecting an establishment of religion. Therefore, Jefferson Parish need not exclude religious schools from its Chapter 2 program.

DISSENT: (Souter, J.) The Dissent, too, criticizes the plurality's reliance on neutrality as a sole test of constitutionality and claims this reliance will all but eliminate any inquiry into a statute's effect. The Dissent believes that the substantive principle behind the scrutiny of government aid to religious institutions is that there is no public aid to religion or the support of religious missions of any institution. Chapter 2, as applied in Jefferson Parish, violated the establishment clause because the aid involved was divertible to religious indoctrination, and substantial evidence of actual diversion existed. Any use of public funds to promote religious doctrines violates the establishment clause.

COMMENTS: Establishment clause jurisprudence is an area in which the Court has been particularly active in recent years, as it continues to struggle to apply the words "Congress shall make no law respecting an establishment of religion" to situations in which government gives aid to religious schools. However, this case provides no bright line rule to apply to future situations. In fact, the case revealed how badly divided the Supreme Court is when it comes to government funding of religious institutions. In future school aid establishment clause challenges, no doubt there will be great debate over whether diversion and divertibility are proper issues in an establishment clause inquiry. Additionally, a majority of the Court—the concurring justices together with the dissenting justices—agreed that neutrality is not the sole determinant in analyzing whether federal aid may be distributed to religious institutions. Undoubtedly, however, the neutrality principle will take on increasing importance in any establishment clause challenges in the future, although not likely as the sole criteria in any analysis.

Discussion Questions

1. Imagine that the *Lemon* and *Agostini* tests do not exist. Create a test that courts can use to determine when public money can be diverted to private schools (religious or nonreligious).
2. How does this case give a clue to the changing attitude of the Court toward the *Lemon* tests?
3. Do you think that the *Lemon* provisions are going to be overturned or altered in the near future?

MUELLER V. ALLEN 463 U.S. 388, 103 S. CT. 3062 (1983)

GENERAL RULE OF LAW: A state may provide aid to parochial schools if provision promotes a secular legislative purpose, does not principally or primarily advance or inhibit religion, and does not foster excessive government entanglement with religion.

PROCEDURE SUMMARY:

Plaintiff: Mueller, a Minnesota taxpayer (P)

Defendant: Allen, Commissioner of the Minnesota Department of Revenue (D)

U.S. District Court Decision: Granted Allen's (D) motion for summary judgment, holding statute constitutional both facially and as applied

U.S. Court of Appeals Decision: Affirmed

U.S. Supreme Court Decision: Affirmed

FACTS: Minnesota enacted a statute that provided to parents a tax deduction for tuition, textbook, and transportation expenses incurred to send their children to elementary and secondary school. Some parents took the deduction for expenses incurred to send their children to parochial schools. Mueller (P) filed suit, alleging the statute violated the establishment clause by providing financial assistance to parochial institutions. The district court granted Allen's (D) motion for summary judgment and upheld the statute. The court of appeals affirmed. The U.S. Supreme Court granted review.

ISSUE: To be valid, must state aid provided to parochial schools promote a secular legislative purpose, not principally or primarily advance or inhibit religion, and not foster excessive government entanglement with religion?

HOLDING AND DECISION: (Rehnquist, J.) Yes. State aid provided to parochial schools must serve a secular legislative purpose and not principally or primarily advance, inhibit, or foster excessive government entanglement with religion. The state here clearly has a secular purpose. An educated populace is essential to a community. Assisting citizens in defraying the cost of educating that populace serves this purpose. The statute's primary effect is not the advancement of sectarian aims. The deduction is available to all parents, whether their children attend public, private, or sectarian schools, unlike the case of *Committee for Public Ed. v. Nyquist* (1973), where the tax relief was limited to parents of nonpublic schoolchildren, upon which Mueller (P) relies.[8] Thus, any effect from the statute is the result of the choices of private individuals and not of the state or parochial schools. Further, any unequal effect of the statute is balanced by the benefit of a reduced burden on the public school system gained by all. Finally, the state's determining which books are or are not secular does not result in excessive entanglement of church and state. Affirmed.

COMMENT: The holding in *Mueller* is narrow. The decision nevertheless shows a greater tolerance by the Court than in years past for programs that assist parents of parochial school students. It seems that as long as the benefits are at least theoretically available to parents of public school children, a tax relief program will be upheld, even though the primary beneficiaries are the parents of parochial school students. This theoretical possibility clearly distinguishes the *Mueller* opinion from *Nyquist,* in which a program benefiting only parents of nonpublic schoolchildren was struck down. The excessive entanglement test has three tenets to help decide whether a particular government action can withstand the establishment clause challenge. The three tenets of the establishment clause are (1) the action must have a nonreligious or secular purpose; (2) viewed in its totality, the action must not further or impede religious practice; and (3) the action must not result in a high degree of involvement between government and

religion. U. S. Supreme Court Justice Rehnquist affirmed in this case. He stated that an educated populace is essential to a community. Assisting citizens to defray the cost of educating their children serves the entire populace, as long as the tax deduction is available to all parents whether their children attend public or private school.

Discussion Questions

1. Should state aid provided to parochial schools promote a secular legislative purpose?
2. Should parents who choose to send their children to parochial schools be entitled to receive tax relief benefits?
3. Should a state enact a system for the primary purpose of providing assistance to parochial schoolchildren?

RESNICK V. EAST BRUNSWICK TOWNSHIP BOARD OF EDUCATION 77 N.J. 88, 389 A.2D 944 (1978)

GENERAL RULE OF LAW: A religious group's temporary use of public school facilities at a rental rate reflecting the costs incurred by the school for such use does not violate the establishment clause.

PROCEDURE SUMMARY:

Plaintiff: Resnick, a high school student (P)

Defendant: East Brunswick Township Board of Education (Board) (D)

State Superior Court Decision: Held for Resnick (P)

State Court of Appeal Decision: Affirmed

State Supreme Court Decision: Reversed

FACTS: The Board (D) allowed a number of local groups, including various religious groups, to use its school facilities during nonschool hours. These groups were charged a rental fee that approximated a portion of the cost of janitorial services for maintenance of the facilities. Resnick (P) filed suit to enjoin use of the facilities by the religious groups, alleging the use of the facilities by religious groups violated the establishment clause of both federal and state constitutions. The superior court agreed, holding such use unconstitutional. The state court of appeal affirmed. The Board (D) appealed.

ISSUE: Does a religious group's temporary use of public school facilities at a rental rate reflecting the costs incurred by the school violate the establishment clause?

HOLDING AND DECISION: (Pashman, J.) No. A religious group's temporary use of public school facilities at a rental rate reflecting the costs incurred by the school does not violate the establishment clause. The

processing by government employees of the applications submitted by religious groups does not amount to the kind of excessive entanglement of church and state prohibited by the establishment clause. Furthermore, when, as here, the establishment clause and the free exercise clause of the Constitution confront one another, the free exercise clause must take priority. The First Amendment requires strict neutrality with respect to religion. The policy at issue does not violate that neutrality. Reversed.

COMMENT: The rationale for the decision is that if one noncurriculum-related group or activity is allowed use of the facilities, it would violate the neutrality requirement not to allow another noncurriculum-related group or activity simply because it has religious affiliations. This rationale is affirmed by recent federal legislation enacted to guarantee equal access to student religious groups. For example, if co-curricular groups such as the "Key Club" are allowed to use the school facility before and after school hours, then a student religious group (e.g., a prayer group) would be entitled to equal access.

Discussion Questions

1. Is it now a common practice to allow religious groups to use school facilities? What about a church service in a school room?
2. Is the rental fee the major factor for the ruling allowing a church group to use a school facility?
3. Are there any circumstances in which the principal can donate the use of the facilities to a religious group without challenging the excessive entanglement of church and state as stated in the establishment clause?

ROSENBERGER ET AL. V. RECTOR AND VISITORS OF UNIVERSITY OF VIRGINIA ET AL. 515 U.S. 819, 115 S. CT. 2510 (1995)

GENERAL RULE OF LAW: A public entity may not discriminate based on the viewpoints of private persons whose speech it otherwise subsidizes.

PROCEDURE SUMMARY:

Plaintiff: Ronald Rosenberger, an undergraduate (P)

Defendants: Rector (D) and visitors of University of Virginia (D), et al.

U.S. District Court Decision: Granted summary judgment for the university

U.S. Court of Appeals Decision: Held that the university's denial of third-party payment constituted viewpoint discrimination, in violation of the free speech clause of the First Amendment, yet concluded that the discrimination was justified in order to comply with the establishment clause of the same amendment

FACTS: The University of Virginia (D), a state instrumentality, had a practice of authorizing payments from its student activities fund (SAF) to outside contractors to cover the printing costs of a variety of publications issued by university student groups (designated as contracted independent organizations or CIOs). Student activity funds (SAF) were derived from mandatory student fees and were intended to support a broad range of extracurricular student activities related to the university's educational purpose.

CIOs were required to include in their dealings with third parties and in all written materials a disclaimer stating that they were independent of the university and that the university was not responsible for them. The university withheld authorization for payments to a printer on behalf of the plaintiffs, a CIO known as Wide Awake Productions (WAP), solely because WAP's student newspaper, *Wide Awake: A Christian Perspective at the University of Virginia,* "primarily promoted or manifested a particular belief in or about a deity, or an ultimate reality" in contravention of the university's SAF guidelines.

The SAF guidelines recognize 11 categories of student groups that may seek payment of SAF funds to third-party contractors insofar as the specified groups bear some relation to the educational purpose of the university. One of these categories comprises student news, information, opinion, entertainment, communications, and media groups. The guidelines also specify, however, that the costs of certain activities of CIOs that are otherwise eligible for funding will not be reimbursed by the SAF. Student activities that are excluded from SAF support include "religious activities." A religious activity is defined as any activity that primarily promotes or manifests a particular belief in or about a deity or an ultimate reality.

WAP was formed by petitioner Ronald Rosenberger and other undergraduates in 1990 in order "to publish a magazine of philosophical and religious expression . . . [t]o provide a unifying focus for Christians of multicultural backgrounds." WAP acquired CIO status soon after it was organized. This was (and is) important because if WAP had been a religious organization, as defined by SAF guidelines, it would not have been accorded CIO status.

As defined by the guidelines, a religious organization is an organization whose purpose is to practice a devotion to an acknowledged ultimate reality or deity. The university has never contended that WAP is a religious organization.

ISSUE: Does a university's refusal to authorize payment of the printing costs of a student group's publication solely on the basis of religious editorial viewpoint violate the group's rights to freedom of speech and press?

HOLDING AND DECISION: Yes. The guideline invoked to deny SAF support, both in its terms and as applied to these plaintiffs/petitioners, constitutes a denial of their right of free speech. It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.[9] The university's SAF guidelines violate the principles governing speech in limited public forums. In determining whether a state is acting within its power to preserve the limits it has set for such a forum so that the exclusion of a class of speech is legitimate, the Supreme Court has observed a distinction between content discrimination (i.e., discrimination against speech because of its substantive content or subject matter) that may be permissible if it preserves the limited forum's purposes, and viewpoint discrimination (i.e., discrimination based on the speaker's specific motivating ideology, opinion, or perspective) that is presumed impermissible when directed against speech otherwise within the forum's limitations. The most recent and most apposite case in this area is *Lamb's Chapel v. Center Moriches Union Free School Dist.* (1993),

in which the Supreme Court held that permitting school property to be used for the presentation of all views on an issue except those dealing with it from a religious standpoint constitutes prohibited viewpoint discrimination.[10] Here, as in that case, the state's actions are properly interpreted as unconstitutional viewpoint discrimination rather than permissible line-drawing based on content. By the very terms of the SAF prohibition, the university does not exclude religion as a subject matter, but selects for disfavored treatment those student journalistic efforts with religious editorial viewpoints.

The denial of SAF support to the petitioners is not excused by the necessity of complying with the establishment clause. The governmental program at issue is neutral toward religion. Such neutrality is a significant factor in upholding programs in the face of establishment clause attacks, and the guarantee of neutrality is not offended where, as here, the government follows neutral criteria and evenhanded policies to extend benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.[11]

Furthermore, there was no suggestion that the university created the SAF program to advance religion or aid a religious cause. The SAF's purpose was to open a forum for speech and to support various student enterprises (including the publication of newspapers), in recognition of the diversity and creativity within the student population. The SAF guidelines had a separate classification for, and did not make third-party payments on behalf of, religious organizations. WAP did not seek a subsidy because of its Christian editorial viewpoint; rather, it sought funding under SAF guidelines as a student communications group. Neutrality was also apparent in the fact that the university took pains to disassociate itself from the private speech involved in this case. The program's neutrality distinguished the student fees here from a tax levied for the direct support of a church or group of churches, which would violate the establishment clause.

COMMENT: The university's attempt to escape the consequences of *Lamb's Chapel,* by urging that this case involved the provision of funds rather than access to facilities, was not supportable. Although the university may regulate the content of expression when it is itself the speaker, or when it enlists private entities to convey its own message, the university may not discriminate based on the viewpoint of private persons whose speech it subsidizes.[12] Its argument that the scarcity of public money could justify otherwise impermissible viewpoint discrimination among private speakers was simply wrong.

Vital First Amendment speech principles are at stake. The guideline at issue has a vast potential reach, as seen in its use of the term "promotes." Such term includes any writing advocating a philosophic position that rests upon a belief (or nonbelief) in a deity or ultimate reality. The term "manifests," which is also used, brings within the prohibition any writing resting upon a premise presupposing the existence (or nonexistence) of a deity or ultimate reality. It is not difficult to see that few renowned thinkers' writings would be accepted under these limitations, save perhaps for those whose writings disclaimed all connection to their ultimate philosophy.

Further, there is no potential conflict with the establishment clause because no direct monetary payments are made to sectarian institutions. No SAF funds flow into WAP's coffers. Further, a public institution does not run afoul of the establishment clause when it grants access to its facilities on a *religion-neutral* basis and to a wide spectrum of student groups, even if some of those groups might use the facilities for devotional exercises.[13] There is no difference between using funds to operate a facility to which students have access and paying a third-party contractor to operate the facility on its behalf.

Here, the university provides printing services to a broad spectrum of student newspapers. Imagine if the university attempted to avoid a constitutional violation by scrutinizing the content of all student speech to ensure that it contained no religious message. Such censorship would be far more inconsistent with the establishment clause's dictates than providing secular printing services on a religion-blind basis.

The university's denial of WAP's request for third-party payments in the present case is based upon viewpoint discrimination, not unlike the discrimination perpetrated by the school district authorities in *Lamb's Chapel* (which the Supreme Court ruled was invalid). Just as the *Lamb's Chapel* school district authorities pointed to the religious views of the group in question in support of their rationale for excluding the group's message, so, in this case, the university justified its denial of SAF funds to WAP on the ground that the contents of the Wide Awake Publication revealed an avowed religious perspective.

There would be a great danger to liberty if government were granted the power to examine publications to determine whether or not they are based on some ultimate idea. Another significant First Amendment concern pertains to the danger posed to free speech by the chilling of individual thought and expression. Such danger is especially real in the university setting, where any state action is viewed against a background and tradition of thought and experiment, in keeping with the definition of a university as a center of intellectual and philosophic traditions.

This case presented a conflict between two bedrock principles of constitutional law: that government should not discriminate against religious speech and that government should not act to advance religion. Before the Court was a line of previous Supreme Court cases that supported each position. The decision of the Court did not exhibit a preference for either of the two conflicting positions, given that the Court held that the financing of WAP's publication from SAF funds did not violate the establishment clause. This decision will certainly delight religious activists who believe that it may eliminate a significant constitutional impediment to government-subsidized vouchers for parochial school education. Additionally, it will cause concern among civil libertarians who fear that it may further erode the wall between church and state.

Discussion Questions

1. Does a university's refusal to authorize payment of the printing costs of a student group's publication solely on the basis of a religious editorial's viewpoint violate the group's right to freedom of speech and press?
2. What reason did the university give for refusing to pay the printing costs?
3. What is meant by content discrimination? Does it apply in this case?

SANTA FE INDEP. SCHOOL DISTRICT V. DOE 120 S. CT. 2266 (2000)

GENERAL RULE OF LAW: Student-led prayer prior to school football games violates the establishment clause of the U.S. Constitution because it is public speech, authorized by a government policy, taking place on government property at government-sponsored school-related events.

PROCEDURE SUMMARY:

Plaintiffs: Jane Doe, and students of Santa Fe Independent School District (P)

Defendant: Santa Fe Independent School District (D)

U.S. District Court Decision: Held for the students (P), that the school's policy of student-led prayer prior to school football games violated the establishment clause of the First Amendment. The court enjoined the school's policy until modifications were made

U.S. Court of Appeals Decision: Affirmed the lower court's ruling, but held that even with modification, the policy was unconstitutional

U.S. Supreme Court Decision: Affirmed

FACTS: Prior to 1995, a student elected as Santa Fe High School's student council chaplain delivered a prayer over the public address system before each home varsity football game. Mormon and Catholic students and alumni and their mothers (P) filed a suit challenging this practice and others under the establishment clause of the First Amendment. The district court entered an order modifying the policy to permit only nonsectarian, nonproselytizing prayer. The Fifth Circuit held that even as modified by the district court, the football prayer policy was invalid.

ISSUE: Does student-led prayer prior to school football games violate the establishment clause of the First Amendment?

HOLDING AND DECISION: (Stevens, J.) Yes. A school district's policy permitting student-led, student-initiated prayer at football games violates the establishment clause of the First Amendment. It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way that establishes a state religion or religious faith, or tends to do so. In cases involving state participation in a religious activity, one of the relevant questions is whether an objective observer, acquainted with the text, legislative history, and implementation of the statute, would perceive it as a state endorsement of prayer in public schools. Regardless of whether one considers a sporting event an appropriate occasion for solemnity, the use of an invocation to foster such solemnity is impermissible when, in actuality, it constitutes prayer sponsored by the school. School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents that they are outsiders and not full members of the political community. It also sends an accompanying message to adherents that they are insiders and favored members of the political community. The delivery of such a message, over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer, is not properly characterized as private speech. Indeed, the common purpose of the religion clauses is to secure religious liberty. Thus, nothing in the U.S. Constitution as interpreted by the Supreme Court prohibits any public school student from voluntarily praying at any time before, during, or after the school day.

COMMENT: This case deals with the difficult issue of whether student-led prayer is an acceptable alternative. Proponents take the position that when it is a student-led religious activity, there is little, or no, government involvement and it thereby avoids the First Amendment concerns. This case took a different position, holding that student-led prayer prior to school football games violated the establishment clause of the U.S. Constitution because it is public speech, authorized by a government policy, taking place on government property at a government-sponsored school-related event. This case continues the contentious issue of dealing with prayer in schools and at school-related events.

Discussion Questions

1. Would an optional prayer ceremony before the game still violate the establishment clause of the First Amendment?
2. How would you handle a nonsectarian prayer if your school chose to initiate a student-led prayer before games?
3. Does the mere mention of God in a prayer violate the establishment clause of the First Amendment?
4. If the student-led prayer had been before or after school, rather than at a school-sponsored football game, would the result have been different?

SCHOOL DIST. OF ABINGTON TOWNSHIP V. SCHEMPP; MURRAY V. CURLETI 374 U.S. 203, 83 S. CT. 1560 (1963)

GENERAL RULE OF LAW: A public school may not begin its class day with readings from religious texts.

PROCEDURE SUMMARY:

Plaintiffs: Parents (P) of two children in Pennsylvania; parents and a child (P) in Maryland

Defendants: School administrators in Pennsylvania and Maryland (D)

State Trial Court Decisions: Judgment for Schempp (P), a parent in Pennsylvania; for Curleti (D), a school official in Maryland

State Appellate Court Decisions: Affirmed in both cases

U.S. Supreme Court Decisions: Affirmed as to the Pennsylvania action; reversed as to the Maryland action

FACTS: School districts in both Pennsylvania and Maryland had a similar practice of beginning each school day with a recitation of several verses from the Bible. These were read without comment. In Pennsylvania, Schempp (P), a parent of a child enrolled in school, brought an action to stop the practice, contending it violated the First Amendment. In Maryland, Murray (P), another such parent, brought a similar action. The Pennsylvania trial court held the practice unconstitutional; the Maryland trial court held to the contrary. The appellate courts in both states affirmed.

ISSUE: May a public school begin its class day with readings from religious texts?

HOLDING AND DECISION: (Clark, J.) No. A public school may not begin its class day with readings from religious texts. The First Amendment clearly prohibits state authorities from advancing religion. The place

of the Bible as an instrument of religion cannot be disputed. Therefore, to read passages from this or any other religious text to a captive audience amounts to the advancement of religion. The government is under a command to be strictly neutral with respect to religion, and the practices at issue here clearly are not. Affirmed as to the Schempp case; reversed as to Murray.

COMMENT: The Court advanced the following test to illustrate the effect of the statute: When the primary effect of an enactment advances or inhibits religion, the legislative enactment exceeds the scope of legislative power under the Constitution. Even when attendance is not compulsory, it is unconstitutional to promote Bible reading or the recitation of prayers on school grounds. The First Amendment's establishment clause (made applicable to the states by the Fourteenth Amendment) requires that the state remain neutral toward religion and forbids the state to "establish" a religion. The Pennsylvania law, which required a prayer at the beginning of the school day, was held to be an impermissible establishment of religion, whether or not students were required to participate.

Discussion Questions

1. Why doesn't allowing students not to participate satisfy the neutrality concern?
2. Do you think school districts allow Bible readings today?
3. Would you support a "moment of silence" at the beginning of the school day?

SCHOOL DISTRICT OF THE CITY OF GRAND RAPIDS V. BALL 473 U.S. 373 (1985)

GENERAL RULE OF LAW: State aid to nonpublic, religious schools violates the establishment clause of the First Amendment when it has the primary or principal effect of advancing a particular religion or religion generally, or when it unduly entangles government in religious matters.

PROCEDURE SUMMARY:

Plaintiffs: Ball (P), and other taxpayers (P)

Defendant: Grand Rapids School District (School District) (D)

U.S. District Court Decision: Held for plaintiffs

U.S. Court of Appeals Decision: Affirmed

U.S. Supreme Court Decision: Affirmed

FACTS: Grand Rapids School District (D) adopted two programs, the "Shared Time" and "Community Education" programs, providing classes to nonpublic school students that were held at nonpublic schools and funded by tax revenue. The programs were taught by public school teachers in classrooms that were leased in the nonpublic schools. The "Shared Time" program classes were offered during the school day, in order to supplement core curriculum courses. The "Community Education" program held voluntary classes

after regular school hours, some of which were also offered in the public schools. Forty of the 41 schools participating in the programs had religious affiliations. Six taxpayers (P) commenced suit against the School District (D) and state officials (D), claiming the programs violated the establishment clause of the First Amendment. The district court held in favor of the taxpayers (P), and issued an injunction prohibiting the School District (D) from further operating the programs. The court of appeals affirmed. The school district (D) appealed.

ISSUE: Does state aid to nonpublic, religious schools violate the establishment clause of the First Amendment when it has the primary or principal effect of advancing a particular religion or religion generally, or when it unduly entangles government in religious matters?

HOLDING AND DECISION: (Brennan, J.) Yes. State aid to nonpublic, religious schools violates the establishment clause of the First Amendment when it has the primary or principal effect of advancing a particular religion or religion generally, or when it unduly entangles government in religious matters. The establishment clause prohibits government sponsorship or financial support of, or active involvement in, religious activities. It also prohibits the passing of legislation benefiting a particular religion or religion in general, or the levying of taxes to support religious activities or institutions. In determining whether a violation of the establishment clause has occurred, the Court follows the three-part test set forth in *Lemon*. First, the challenged statute must have a secular purpose. Second, its principal or primary effect must neither advance nor inhibit religion. Third, the statute must not promote excessive entanglement between the government and religion. The first prong was satisfied here, as both the district court and court of appeals found that the purpose of the programs was secular. Next, the Court must determine whether the programs' primary or principal effect was the advancement or inhibition of religion. This requires an examination of the institutions in which the programs were offered. Forty of the 41 schools participating in the programs were religiously affiliated. Here, the Court found that the programs impermissibly advanced religion in several ways. First, there was a risk that the teachers may unintentionally advance particular religious beliefs at the public's expense. Moreover, the programs may symbolically link the state and religion, causing the children and the general public to perceive that the government endorses the particular religion operating the school. Last, the programs may directly promote religion by providing the religious institution with a subsidy for teaching its secular classes. Affirmed.

CONCURRENCE: (O'Connor, J.) The Shared Time program does not impermissibly advance religion and should be upheld. The fact that 13 of the Shared Time program instructors formerly were employed by parochial schools did not increase the risk that the program would be perceived as advancing religion at the public's expense. The Community Education program, however, impermissibly had the effect of advancing religion because the classes were taught mainly by full-time employees of the parochial schools to students who attended their regular classes, and they were operated under the parochial school's supervision.

DISSENT: (Rehnquist, J.) The record here did not demonstrate any evidence that the programs attempted religious inculcation of the students.

COMMENT: The Court has held that the state may not impose taxes for the purpose of supporting religious activities or institutions. Likewise, it has held that attempts to make payments from public funds

directly to religious educational institutions are unconstitutional. The Court has distinguished between two types of programs in which public money is utilized to fund secular activities that would otherwise be funded by the religious school itself. Where the government uses primarily secular means to accomplish a primarily secular goal, the aid granted is indirect and does not have the primary effect of advancing religion. In contrast, if the aid has the primary effect of directly and substantially advancing the religious enterprise, it is impermissible even if the government is acting for a secular purpose. While the mere possibility of subsidization does not render a program unconstitutional, the Court must determine whether, in the particular case, the effect of the subsidy is "direct and substantial." The programs in this case, which provided the religious institutions with teachers and instructional materials, were held to be the equivalent of a direct subsidy and thus had the impermissible effect of advancing religion in violation of the establishment clause.

Discussion Questions

1. What was the main reason that the Court failed to support this program?
2. How important is it that 40 of the 41 participating schools were religiously affiliated?
3. What is the significance of the fact that these programs were "subsidized"?

U.S. V. BD. OF EDUC. OF SCHOOL D. OF PHILADELPHIA 911 F.2D 882 (3RD CIR. 1990)

GENERAL RULE OF LAW: Preservation of an atmosphere of religious neutrality in the public school system is a compelling state interest justifying statutes prohibiting teachers from wearing religious garb while teaching.

PROCEDURE SUMMARY:

Plaintiff: United States of America (P)

Defendant: Board of Education for the School District of Philadelphia; Commonwealth of Pennsylvania (D)

U.S. District Court for the Western Dist. of Pennsylvania Decision: Judgment for the United States (P) and against school board, but for Commonwealth of Pennsylvania regarding the constitutionality of the Pennsylvania Garb Statute

U.S. Court of Appeals Decision: Reversed holding against school board and affirmed constitutionality of Garb Statute

FACTS: Alima Delores Reardon became a devout Muslim in 1982. She had been teaching as a substitute teacher in the Philadelphia School District since 1970. Upon embracing her religion, she followed the practice of covering her head and neck and wearing specific clothing. While teaching, she wore "a head scarf which covered her head, neck, and bosom, leaving her face visible, and a long loose dress which covered

her arms to her wrists." Near the end of 1984, on three separate occasions, she was told by school principals that pursuant to Pennsylvania Garb Statute, P.L. 282, she could not teach in religious clothing. Reardon was given the opportunity to return home to change, but she refused each time. Reardon filed charges of discrimination with the Equal Employment Opportunity Commission based on violations of Title VII of the Civil Rights Act of 1964.

ISSUE: May schools restrict teachers' right to wear religious apparel while performing their teaching duties?

DECISION AND HOLDING: Yes. While the Pennsylvania Garb Statue may have constituted a burden on Reardon's free exercise rights, when properly construed, the statute was actually upholding states' interests in preserving the appearance of religious neutrality in public schools. The school board was upholding this law and would have been in violation of the law had it not done so.

COMMENTS: The U.S. Court of Appeals reversed the lower court's judgment against the Board of Education while agreeing with the judgment in favor of the Commonwealth of Pennsylvania. One reason for this was that to take a contract position would impose an undue hardship, requiring the accommodation of Ms. Reardon and others similarly situated. Title VII of the Civil Rights Act of 1964 was also at issue because the state law failed to allow for a "reasonable accommodation." Title VII provides, in part, that an employer must "reasonably accommodate to an employee's . . . religious observances or practice without undue hardship on the conduct of the employer's business." The balancing of interests or equities called for an analysis of whether reasonably accommodating the employee's religious practice was stronger than the violation of the establishment clause of the First Amendment. In this case, the preservation of an atmosphere of religious neutrality in the public schools is a compelling state interest justifying statutes prohibiting teachers from wearing religious garb while teaching in the public schools.

Discussion Questions

1. In the balancing of the equities, the teacher's free exercise rights were not given as much consideration as preserving the state's appearance of neutrality. Do you agree with this position?
2. Would this decision require a principal to prevent a nun from teaching while wearing an informal habit?
3. May a Christian wear a cross around his or her neck?

ZORACH V. CLAUSON 343 U.S. 306, 72 S. CT. 679 (1952)

GENERAL RULE OF LAW: A city may permit schoolchildren to attend off-campus religious instruction during school hours.

PROCEDURE SUMMARY:

Plaintiffs: Zorach (P) and other New York taxpayer-residents (P)

Defendants: Clauson (D) and other city officials overseeing New York's educational system (D)

State Trial Court Decision: Held for Clauson (D)

State Court of Appeals Decision: Affirmed

U.S. Supreme Court Decision: Affirmed

FACTS: New York City instituted a program whereby schoolchildren in its public school system could, if their parents so chose, attend off-campus religious instruction during school hours. The administrative and financial aspects of the program were borne by the participating religious groups. Zorach (P), a citizen of New York, brought an action in state court against Clauson (D) and other education officials, seeking a declaration that the program violated the First Amendment's separation of church and state. Zorach (P) also argued that a "released time" program "coerces" students to attend the religious instruction because the public school helped monitor students released and because normal classroom activities halted. The trial court sustained the program, and the New York Court of Appeals affirmed. The U.S. Supreme Court granted review.

ISSUE: May a city permit schoolchildren to attend off-campus religious instruction during school hours?

HOLDING AND DECISION: (Douglas, J.) Yes. A city may permit schoolchildren to attend off-campus religious instruction during school hours. In no way can the program at issue be construed to violate the First Amendment's free exercise clause because no compulsion occurs. Students are free to attend or not attend, as they and their parents choose. Neither does the program violate the establishment clause because state resources are not utilized. Since neither clause has been violated, the program withstands First Amendment scrutiny. Affirmed.

COMMENT: The court relied heavily on the fact that the record did not contain any evidence of actual coercion on the part of teachers to implement the program. On the other hand, a dissenting justice suggested that operation of the program itself constituted pressure and coercion upon students and parents to persuade attendance. Taxpayers who challenged this released time religious instruction program, whereby public school students were permitted (with parental permission) to leave the school building during school hours in order to go to religious centers for instruction, claimed that this policy was, in essence, no different than the one declared unconstitutional in *McCollum v. Board of Education* (1948).[14] The court disagreed, given that this program required no state financial support. The released time policy was not counter to First Amendment prohibitions because it did not create or establish a religion, nor did it deny the free exercise of religion.

Discussion Questions

1. Why is coercion by teachers such a concern?
2. How would many teachers feel about a program that releases students from school during regular school hours (regardless of their religious concerns)?

3. Isn't there some support for religion merely because schools must provide monitoring services to children who exercise the release time opportunity?

NOTES

1. Aguilar v. Felton, 473 U.S. 402, 413 (1985), at 414.
2. Witters v. Washington Dept. of Servs. for Blind, 474 U.S. 481, 487 (1986).
3. Everson v. Board of Education, 330 U.S. 1, 67 S. Ct. 504 (1947).
4. Aguilar v. Felton, 473 U.S. 402 (1985); School Dist. of Grand Rapids v. Ball, 473 U.S. 373 (1985).
5. Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982).
6. Lynch v. Donnelly, 465 U.S. 668, 104 S. Ct. 1355 (1984).
7. Zobrest v. Catalina Foothills School District, 509 U.S. 1 (1993).
8. Committee for Public Education v. Nyquist, 413 U.S. 756 (1973).
9. See Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 46 (1983).
10. Lamb's Chapel v. Center Moriches Union Free School Dist., 113 S. Ct. 2141 (1993).
11. Board of Ed. of Kiryas Joel v. Grumet, 114 S. Ct. 2481 (1994).
12. See Regan v. Taxation with Representation of Wash., 461 U.S. 540, 548 (1983).
13. See, e.g., Widmar v. Vincent, 454 U.S. 263 (1981).
14. McCollum v. Board of Education, 333 U.S. 203 (1948).