



Tilton v. Richardson (1971) - Chief Justice Burger - 5/4.

Issue: A Federal Act authorizes grants and loans to institutions of higher education for the construction of a wide variety of academic facilities and expressly excludes any facility used or to be used for sectarian instruction as a place of religious worship or any facility which is used or is to be used primarily in connection with any part of the program of a school or department of divinity. At issue are grants for 5 projects at 4 institutions. A library building at Sacred Heart University, a music/drama/arts building at Annapolis College, a science building and library at Fairfield U. and a language lab at Albertus Magnus College. The District Court upheld the constitutionality of the Act.

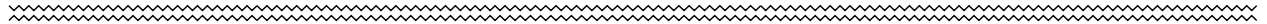
Held: Affirmed. The Act is constitutional with one exception.

Reasoning: The Establishment Clause seeks to protect against “sponsorship, financial support and active involvement of government in religious activity.” Does the Act reflect a secular purpose? Is the primary effect to advance or inhibit religion? Does the administration of the Act foster excessive entanglement with religion? Does the implementation of the Act inhibit the free exercise of religion?

The legislative purpose states a legitimate secular objective; i.e., “the security and welfare of the U.S. requires that this and future generations of American youth be assured ample opportunity for the fullest development of intellectual capacity...This will be jeopardized unless the Nation’s colleges and universities are encouraged and assisted in their efforts to accommodate rapidly growing numbers of youth who aspire to a higher education.” Bus transportation, textbooks and tax exemptions have all been upheld, yet all give aid in the sense that religious bodies would otherwise have been forced to find other sources to finance these services. **The crucial question is not whether some benefit accrues to a religious institution as a consequence of a legislative program, but whether its principal or primary effect advances religion.** All of these buildings are indistinguishable from a typical state university. There is one aspect, however, that is inadequate to ensure that the impact of federal aid will not advance religion. The Act only required a 20 year oversight by the Federal government as to “uses.” Then, apparently, the institutions could use them however

they wished. This was struck down. The Court also found no excessive entanglement as it had found in *Lemon*¹. There are significant differences between the religious aspects of church related institutions of higher learning and parochial elementary and secondary schools. The dominant policy in pre-college church schools is to assure future adherents to the faith by having control over education at an early age. **College students are less susceptible to religious indoctrination. Here, non-Catholic students are admitted and there are non-Catholics on the faculty. Students are not required to attend religious functions. The dominant purpose of these schools is to provide a secular education.**

Dissent: Justice Douglas...**Money not spent for one purpose becomes available for other purposes. These grants make these Catholic schools more viable.**



¹Case 1A-R-042 on this website.