



WITTERS

v.

WASHINGTON DEPARTMENT OF SERVICES FOR THE BLIND
SUPREME COURT OF THE UNITED STATES

474 U.S. 481

January 27, 1986

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OPINION: MARSHALL...The Washington Supreme Court ruled that the First Amendment precludes the State of Washington from extending assistance under a state vocational rehabilitation assistance program to a blind person studying at a Christian college and seeking to become a pastor, missionary, or youth director. Finding no such federal constitutional barrier on the record presented to us, we reverse and remand.

I

Petitioner Larry Witters applied in 1979 to the Washington Commission for the Blind for vocational rehabilitation services pursuant to Wash.Rev.Code § 74.16.181. That statute authorized the Commission to "provide for special education and/or training in the professions, business or trades" so as to "assist visually handicapped persons to overcome vocational handicaps and to obtain the maximum degree of self-support and self-care." Petitioner, suffering from a progressive eye condition, was eligible for vocational rehabilitation assistance under the terms of the statute. He was at the time attending Inland Empire School of the Bible, a private Christian college in Spokane, Washington, and studying the Bible, ethics, speech, and church administration in order to equip himself for a career as a pastor, missionary, or youth director.

The Commission denied petitioner aid. It relied on an earlier determination embodied in a Commission policy statement that "the Washington State constitution forbids the use of public funds to assist an individual in the pursuit of a career or degree in theology or related areas" and on its conclusion that petitioner's training was "religious instruction" subject to that ban. That ruling was affirmed by a state hearings examiner, who held that the Commission was precluded from funding petitioner's training "in light of the State Constitution's prohibition against the state directly or indirectly supporting a religion." The hearings examiner cited Wash. Const., Art. I, § 11, providing in part that "no public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment," and Wash. Const., Art. IX, § 4, providing that "all schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence." That ruling, in turn, was upheld on internal administrative appeal.

Petitioner then instituted an action in State Superior Court for review of the administrative decision; the court affirmed on the same state-law grounds cited by the agency. The State Supreme Court affirmed as well. The Supreme Court, however, declined to ground its ruling on the Washington Constitution. Instead, it explicitly reserved judgment on the state constitutional issue and chose to base its ruling on the Establishment Clause of the Federal Constitution. The court stated: "The Supreme Court has developed a 3-part test for determining the constitutionality of state aid under the establishment clause of the First Amendment. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster "an excessive government entanglement with religion." *Lemon v. Kurtzman*¹. To withstand attack under the establishment clause, the challenged state action must satisfy each of the three criteria."

The Washington court had no difficulty finding the "secular purpose" prong of that test satisfied. Applying the second prong, however, that of "principal or primary effect," the court held that "the provision of financial assistance by the State to enable someone to become a pastor, missionary, or church youth director clearly has the primary effect of advancing religion." The court, therefore, held that provision of aid to petitioner would contravene the Federal Constitution. In light of that ruling, the court saw no need to reach the "entanglement" prong; it stated that the record was in any case inadequate for such an inquiry.

We granted certiorari and we now reverse.

II

The Establishment Clause of the First Amendment has consistently presented this Court with difficult questions of interpretation and application. We acknowledged in *Lemon v. Kurtzman* that "we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law." Nonetheless, the Court's opinions in this area have at least clarified "the

¹ Case 1A-R-042 on this website.

broad contours of our inquiry," *Committee for Public Education and Religious Liberty v. Nyquist*², and are sufficient to dispose of this case.

We are guided, as was the court below, by the three-part test set out by this Court in *Lemon*. See *Grand Rapids v. Ball*³. Our analysis relating to the first prong of that test is simple: all parties concede the unmistakably secular purpose of the Washington program. That program was designed to promote the well-being of the visually handicapped through the provision of vocational rehabilitation services, and no more than a minuscule amount of the aid awarded under the program is likely to flow to religious education. No party suggests that the State's "actual purpose" in creating the program was to endorse religion or that the secular purpose articulated by the legislature is merely "sham." *Wallace v. Jaffree*⁴.

The answer to the question posed by the second prong of the *Lemon* test is more difficult. We conclude, however, that extension of aid to petitioner is not barred on that ground either. It is well settled that the Establishment Clause is not violated every time money previously in the possession of a State is conveyed to a religious institution. For example, a State may issue a paycheck to one of its employees, who may then donate all or part of that paycheck to a religious institution, all without constitutional barrier; and the State may do so even knowing that the employee so intends to dispose of his salary. It is equally well-settled, on the other hand, that the State may not grant aid to a religious school, whether cash or inkind, where the effect of the aid is "that of a direct subsidy to the religious school" from the State. *Grand Rapids v. Ball*. Aid may have that effect even though it takes the form of aid to students or parents. *Wolman v. Walter*⁵; *Committee for Public Education and Religious Liberty v. Nyquist*; *Sloan v. Lemon*⁶. The question presented is whether, on the facts as they appear in the record before us, extension of aid to petitioner and the use of that aid by petitioner to support his religious education is a permissible transfer similar to the hypothetical salary donation described above, or is an impermissible "direct subsidy."

Certain aspects of Washington's program are central to our inquiry. As far as the record shows, vocational assistance provided under the Washington program is paid directly to the student, who transmits it to the educational institution of his or her choice. Any aid provided under Washington's program that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients. Washington's program is "made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited," *Committee for Public Education and Religious Liberty v. Nyquist*, and is in no way skewed towards religion. It is not one of "the ingenious plans for channeling state aid to sectarian schools that periodically reach this Court." It creates no financial incentive for students to undertake sectarian education. It does not tend to provide greater or broader benefits for recipients who apply their aid to religious education, nor are the full benefits of the program limited, in large part or in whole, to students at sectarian institutions. On the contrary, aid

² Case 1A-R-047 on this website.

³ Case 1A-R-070 on this website.

⁴ Case 1A-R-068 on this website.

⁵ Case 1A-R-054 on this website.

⁶ Case 1A-R-049 on this website.

recipients have full opportunity to expend vocational rehabilitation aid on wholly secular education, and as a practical matter have rather greater prospects to do so. Aid recipients' choices are made among a huge variety of possible careers, of which only a small handful are sectarian. In this case, the fact that aid goes to individuals means that the decision to support religious education is made by the individual, not by the State.

Further, and importantly, nothing in the record indicates that, if petitioner succeeds, any significant portion of the aid expended under the Washington program as a whole will end up flowing to religious education. The function of the Washington program is hardly "to provide desired financial support for nonpublic, sectarian institutions." *Sloan v. Lemon*; *Meek v. Pittenger*⁷. The program, providing vocational assistance to the visually handicapped, does not seem well suited to serve as the vehicle for such a subsidy. No evidence has been presented indicating that any other person has ever sought to finance religious education or activity pursuant to the State's program. The combination of these factors, we think, makes the link between the State and the school petitioner wishes to attend a highly attenuated one.

On the facts we have set out, it does not seem appropriate to view any aid ultimately flowing to the Inland Empire School of the Bible as resulting from a *state* action sponsoring or subsidizing religion. Nor does the mere circumstance that petitioner has chosen to use neutrally available state aid to help pay for his religious education confer any message of state endorsement of religion. *Lynch v. Donnelly*⁸ (O'CONNOR, J., concurring). Thus, while *amici* supporting respondent are correct in pointing out that aid to a religious institution unrestricted in its potential uses, if properly attributable to the State, is "clearly prohibited under the Establishment Clause," *Grand Rapids*, because it may subsidize the religious functions of that institution, that observation is not apposite to this case. On the facts present here, we think the Washington program works no state support of religion prohibited by the Establishment Clause.

III

We therefore reject the claim that, on the record presented, extension of aid under Washington's vocational rehabilitation program to finance petitioner's training at a Christian college to become a pastor, missionary, or youth director would advance religion in a manner inconsistent with the Establishment Clause of the First Amendment. **On remand, the state court is of course free to consider the applicability of the "far stricter" dictates of the Washington State Constitution...We decline petitioner's invitation to leapfrog consideration of those issues by holding that the Free Exercise Clause *requires* Washington to extend vocational rehabilitation aid to petitioner regardless of what the State Constitution commands or further factual development reveals, and we express no opinion on that matter.**

The judgment of the Washington Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

⁷ Case 1A-R-051 on this website.

⁸ Case 1A-R-066 on this website.

CONCURRENCE: WHITE...I remain convinced that the Court's decisions finding constitutional violations where a State provides aid to private schools or their students misconstrue the Establishment Clause and disserve the public interest. Even under the cases in which I was in dissent, however, I agree with the Court that the Washington Supreme Court erred in this case. Hence, I join the Court's opinion and judgment. At the same time, I agree with most of Justice POWELL's concurring opinion with respect to the relevance of *Mueller v. Allen* to this case.

CONCURRENCE: POWELL/BURGER/REHNQUIST...The Court's omission of *Mueller v. Allen*⁹ from its analysis may mislead courts and litigants by suggesting that *Mueller* is somehow inapplicable to cases such as this one. I write separately to emphasize that *Mueller* strongly supports the result we reach today.

As the Court states, the central question in this case is whether Washington's provision of aid to handicapped students has the "principal or primary effect" of advancing religion. *Lemon v. Kurtzman*. *Mueller* makes the answer clear: state programs that are wholly neutral in offering educational assistance to a class defined without reference to religion do not violate the second part of the *Lemon v. Kurtzman* test, because any aid to religion results from the private choices of individual beneficiaries. Thus, in *Mueller*, we sustained a tax deduction for certain educational expenses, even though the great majority of beneficiaries were parents of children attending sectarian schools. We noted the State's traditionally broad taxing authority, but the decision rested principally on two other factors. First, the deduction was equally available to parents of public school children and parents of children attending private schools. Second, any benefit to religion resulted from the "numerous private choices of individual parents of school-age children."

The state program at issue here provides aid to handicapped students when their studies are likely to lead to employment. Aid does not depend on whether the student wishes to attend a public university or a private college, nor does it turn on whether the student seeks training for a religious or a secular career. It follows that under *Mueller* the State's program does not have the "principal or primary effect" of advancing religion.

The Washington Supreme Court reached a different conclusion because it found that the program had the practical effect of aiding religion *in this particular case*. In effect, the court analyzed the case as if the Washington Legislature had passed a private bill that awarded respondent free tuition to pursue religious studies.

Such an analysis conflicts with both common sense and established precedent. Nowhere in *Mueller* did we analyze the effect of Minnesota's tax deduction on the parents who were parties to the case; rather, we looked to the nature and consequences of the program *viewed as a whole*. The same is true of our evaluation of the tuition reimbursement programs at issue in *Nyquist* and *Sloan v. Lemon*. This is the appropriate perspective for this case as well. Viewed in the proper light, the Washington program easily satisfies the second prong of the *Lemon* test.

⁹ Case 1A-R-064 on this website.

I agree, for the reasons stated by the Court, that the State's program has a secular purpose, and that no entanglement challenge is properly raised on this record. I therefore join the Court's judgment. On the understanding that nothing we do today lessens the authority of our decision in *Mueller*, I join the Court's opinion as well.

CONCURRENCE: O'CONNOR...I join Parts I and III of the Court's opinion, and concur in the judgment. I also agree with the Court that both the purpose and effect of Washington's program of aid to handicapped students are secular. As Justice POWELL's separate opinion persuasively argues, the Court's opinion in *Mueller v. Allen* makes clear that "state programs that are wholly neutral in offering educational assistance to a class defined without reference to religion do not violate the second part of the *Lemon v. Kurtzman* test, because any aid to religion results from the private decisions of beneficiaries." The aid to religion at issue here is the result of petitioner's private choice. No reasonable observer is likely to draw from the facts before us an inference that the State itself is endorsing a religious practice or belief. *Lynch v. Donnelly* (O'CONNOR, J., concurring).