

Zobrest v. Catalina Foothills School District (1993)

509 U.S. 1

Under the Individuals with Disabilities Education Act (IDEA), Congress provides funds to states and localities to assist them in providing educational services to disabled students. Pursuant to IDEA, James Zobrest, who had been deaf since birth, requested the Catalina Foothills School District to furnish a sign-language interpreter to accompany him to classes at Salpointe Catholic High School. The school district refused, believing that to do so would violate the Establishment Clause, because Salpointe High was a sectarian school and because religious values pervaded the school's curriculum. Zobrest sued, claiming that the district had violated his rights under IDEA and the Free Exercise Clause. After a federal district court and a court of appeals ruled against Zobrest, the Supreme Court granted certiorari and agreed to hear the case.

Opinion of the Court: Rehnquist, White, Scalia, Kennedy, Thomas.

Dissenting opinions: Blackmun, Souter, Stevens (in part), O'Connor (in part); O'Connor, Stevens.

THE CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

We have never said that “religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs.” *Bowen v. Kendrick* (1988). For if the Establishment Clause did bar religious groups from receiving general government benefits, then “a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair.” *Widmar v. Vincent* (1981). Given that a contrary rule would lead to such absurd results, we have consistently held that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge just because sectarian institutions may also receive an attenuated financial benefit. Nowhere have we stated this principle more clearly than in *Mueller v. Allen* (1983), and *Witters v. Washington Dept. of Services for Blind* (1986), two cases dealing specifically with government programs offering general educational assistance.

In *Mueller*, we rejected an Establishment Clause challenge to a Minnesota law allowing taxpayers to deduct certain educational expenses in computing their state income tax, even though the vast majority of those deductions (perhaps over 90%) went to parents whose children attended sectarian schools.

Witters was premised on virtually identical reasoning. In that case, we upheld against an Establishment Clause challenge the State of Washington’s extension of vocational assistance, as part of a general state program, to a blind person studying at a private Christian college to become a pastor, missionary, or youth director.

That same reasoning applies with equal force here. The service at issue in this case is part of a general government program that distributes benefits neutrally to any child qualifying as “handicapped” under the IDEA, without regard to the “sectarian-nonsectarian, or public-nonpublic nature” of the school the child attends. By according parents freedom to select a school of their choice, the statute ensures that a government-paid interpreter will be present in a sectarian school only as a result of the private decision of individual parents. In other words, because the IDEA creates no financial incentive for parents to choose a sectarian school, an

interpreter's presence there cannot be attributed to state decision-making. When the government offers a neutral service on the premises of a sectarian school as part of a general program that "is in no way skewed toward religion," it follows under our prior decisions that provision of that service does not offend the Establishment Clause. Indeed, this is an even easier case than *Mueller* and *Witters* in the sense that, under the IDEA, no funds traceable to the government ever find their way into sectarian schools' coffers. The only indirect economic benefit a sectarian school might receive by dint of the IDEA is the handicapped child's tuition-and that is, of course, assuming that the school makes a profit on each student; that, without an IDEA interpreter, the child would have gone to school elsewhere; and that the school, then, would have been unable to fill that child's spot.

Respondent contends, however, that this case differs from *Mueller* and *Witters*, in that petitioners seek to have a public employee physically present in a sectarian school to assist in James' religious education. In light of this distinction, respondent argues that this case more closely resembles *Meek v. Pittenger* and *School Dist. of Grand Rapids v. Ball*.

Respondent's reliance on *Meek* and *Ball* is misplaced for two reasons. First, the programs in *Meek* and *Ball*, through direct grants of government aid, relieved sectarian schools of costs they otherwise would have borne in educating their students. For example, the religious schools in *Meek* received teaching material and equipment from the State, relieving them of an otherwise necessary cost of performing their educational function. "Substantial aid to the educational function of such schools," we explained, "necessarily results in aid to the sectarian school enterprise as a whole," and therefore brings about "the direct and substantial advancement of religious activity." So, too, was the case in *Ball*: The programs challenged there, which provided teachers in addition to instructional equipment and material, "in effect subsidize[d] the religious functions of the parochial schools by taking over a substantial portion of their responsibility for teaching secular subjects. This kind of direct aid," we determined, "is indistinguishable from the provision of a direct cash subsidy to the religious school." The extension of aid to petitioners, however, does not amount to "an impermissible 'direct subsidy' " of Salpointe. For Salpointe is not relieved of an expense that it otherwise would have assumed in educating its students. And, as we noted above, any attenuated financial benefit that parochial schools do ultimately receive from the IDEA is attributable to "the private choices of individual parents." Handicapped children, not sectarian schools, are the primary beneficiaries of the IDEA; to the extent sectarian schools benefit at all from the IDEA, they are only incidental beneficiaries. Thus, the function of the IDEA is hardly "to provide desired financial support for non-public, sectarian institutions."

Second, the task of a sign-language interpreter seems to us quite different from that of teacher or guidance counselor. Notwithstanding the Court of Appeals' intimations to the contrary, the Establishment Clause lays down no absolute bar to the placing of a public employee in a sectarian school. Such a flat rule, smacking of antiquated notions of "taint," would indeed exalt form over substance. Nothing in this record suggests that a sign-language interpreter would do more than accurately interpret whatever material is presented to the class as a whole. In fact, ethical guidelines require interpreters to "transmit everything that is said in exactly the same way it was intended." James' parents have chosen of their own free will to place him in a pervasively sectarian environment. The sign-language interpreter they have requested will neither add to nor subtract from that environment, and hence the provision of such assistance is not barred by the Establishment Clause.

The IDEA creates a neutral government program dispensing aid not to schools but to individual handicapped children. If a handicapped child chooses to enroll in a sectarian school, we hold that the Establishment Clause does not prevent the school district from furnishing him with a sign-language interpreter there in order to facilitate his education.

The judgment of the Court of Appeals is therefore reversed.

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE SOUTER joins, dissenting.

Despite my disagreement with the majority's decision to reach the constitutional question, its arguments on the merits deserve a response. Until now, the Court never has authorized a public employee to participate directly in religious indoctrination. Yet that is the consequence of today's decision.

At Salpointe, where the secular and the sectarian are "inextricably intertwined," governmental assistance to the educational function of the school necessarily entails governmental participation in the school's inculcation of religion. A state-employed sign-language interpreter would be required to communicate the material covered in religion class, the nominally secular subjects that are taught from a religious perspective, and the daily Masses at which Salpointe encourages attendance for Catholic students. In an environment so pervaded by discussions of the divine, the interpreter's every gesture would be infused with religious significance. Indeed, petitioners willingly concede this point: "that the interpreter conveys religious messages is a given in this case." By this concession, petitioners would seem to surrender their constitutional claim.

The majority attempts to elude the impact of the record by offering three reasons why this sort of aid to petitioners survives Establishment Clause scrutiny. First, the majority observes that provision of a sign-language interpreter occurs as "part of a general government program that distributes benefits neutrally to any child qualifying as 'handicapped' under the IDEA, without regard to the 'sectarian-nonsectarian, or public-nonpublic' nature of the school the child attends." Second, the majority finds significant the fact that aid is provided to pupils and their parents, rather than directly to sectarian schools. As a result, "[a]ny aid ... that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients." And, finally, the majority opines that "the task of a sign-language interpreter seems to us quite different from that of a teacher or guidance counselor."

But the majority's arguments are unavailing. As to the first two, even a general welfare program may have specific applications that are constitutionally forbidden under the Establishment Clause. For example, a general program granting remedial assistance to disadvantaged school children attending public and private, secular and sectarian schools alike would clearly offend the Establishment Clause insofar as it authorized the provision of teachers. See *Aguilar v. Felton* (1985); *Grand Rapids School District v. Ball* (1985); *Meek v. Pittenger* (1975). Such a program would not be saved simply because it supplied teachers to secular as well as sectarian schools. Nor would the fact that teachers were furnished to pupils and their parents, rather than directly to sectarian schools, immunize such a program from Establishment Clause scrutiny.

The majority's decision must turn, then, upon the distinction between a teacher and a sign language interpreter.

“Although Establishment Clause jurisprudence is characterized by few absolutes,” at a minimum “the Clause does absolutely prohibit government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith.” In keeping with this restriction, our cases consistently have rejected the provision by government of any resource capable of advancing a school’s religious mission. Although the court generally has permitted the provision of “secular and nonideological services unrelated to the primary, religion-oriented educational function of the sectarian school,” it has always proscribed the provision of benefits that afford even “the opportunity for the transmission of sectarian views.”

These distinctions perhaps are somewhat fine, but “lines must be drawn.” And our cases make clear that government crosses the boundary when it furnishes the medium for communication of a religious message. If petitioners receive the relief they seek, it is beyond question that a state-employed sign-language interpreter would serve as the conduit for petitioner’s religious education, thereby assisting Salpointe in its mission of religious indoctrination. But the Establishment Clause is violated when a sectarian school enlists “the machinery of the State to enforce a religious orthodoxy.” *Lee v. Weisman* (1992).

Witters and *Mueller v. Allen* (1983) are not to the contrary. Those cases dealt with the payment of cash or a tax deduction, where governmental involvement ended with the disbursement of funds or lessening of tax. This case, on the other hand, involves ongoing, daily, and intimate governmental participation in the teaching and propagation of religious doctrine. When government dispenses public funds to individuals who employ them to finance private choices, it is difficult to argue that government is actually endorsing religion. But the graphic symbol of the concert of church and state that results when a public employee or instrumentality mouths a religious message is likely to “enlis[t]-at least in the eyes of impressionable youngsters-the powers of government to the support of the religious denomination operating the school.” And the union of church and state in pursuit of a common enterprise is likely to place the imprimatur of governmental approval upon the favored religion, conveying a message of exclusion to all those who do not adhere to its tenets.

The Establishment Clause “rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.” *McCollum v. Board of Education* (1948). To this end, our cases have strived to “chart a course that preserve[s] the autonomy and freedom of religious bodies while avoiding any semblance of established religion.” *Walz v. Tax Commission* (1970). I would not stray, as the Court does today, from the course set by nearly five decades of Establishment Clause jurisprudence. Accordingly, I dissent.