

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

ZELMAN, SUPERINTENDENT OF PUBLIC INSTRUCTION OF OHIO, et al. v. SIMMONS-HARRIS et al.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 00—1751. Argued February 20, 2002—Decided June 27, 2002

Ohio's Pilot Project Scholarship Program gives educational choices to families in any Ohio school district that is under state control pursuant to a federal-court order. The program provides tuition aid for certain students in the Cleveland City School District, the only covered district, to attend participating public or private schools of their parent's choosing and tutorial aid for students who choose to remain enrolled in public school. Both religious and nonreligious schools in the district may participate, as may public schools in adjacent school districts. Tuition aid is distributed to parents according to financial need, and where the aid is spent depends solely upon where parents choose to enroll their children. The number of tutorial assistance grants provided to students remaining in public school must equal the number of tuition aid scholarships. In the 1999—2000 school year, 82% of the participating private schools had a religious affiliation, none of the adjacent public schools participated, and 96% of the students participating in the scholarship program were enrolled in religiously affiliated schools. Sixty percent of the students were from families at or below the poverty line. Cleveland schoolchildren also have the option of enrolling in community schools, which are funded under state law but run by their own school boards and receive twice the per-student funding as participating private schools, or magnet schools, which are public schools emphasizing a particular subject area, teaching method, or service, and for which the school district receives the same amount per student as it does for a student enrolled at a traditional public school. Respondents, Ohio taxpayers, sought to enjoin the program on the ground that it violated the Establishment Clause. The Federal District Court granted them summary judgment, and the Sixth Circuit affirmed.

Held: The program does not offend the Establishment Clause. Pp. 6—21.

(a) Because the program was enacted for the valid secular purpose of providing educational assistance to poor children in a demonstrably failing public school system, the question is whether the program nonetheless has the forbidden effect of advancing or inhibiting religion. See *Agostini v. Felton*, 521 U.S. 203, 222—223. This Court’s jurisprudence makes clear that a government aid program is not readily subject to challenge under the Establishment Clause if it is neutral with respect to religion and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice. See, e.g., *Mueller v. Allen*, 463 U.S. 388. Under such a program, government aid reaches religious institutions only by way of the deliberate choices of numerous individual recipients. The incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual aid recipients not the government, whose role ends with the disbursement of benefits. Pp. 6—11.

(b) The instant program is one of true private choice, consistent with the *Mueller* line of cases, and thus constitutional. It is neutral in all respects towards religion, and is part of Ohio’s general and multifaceted undertaking to provide educational opportunities to children in a failed school district. It confers educational assistance directly to a broad class of individuals defined without reference to religion and permits participation of all district schools—religious or nonreligious—and adjacent public schools. The only preference in the program is for low-income families, who receive greater assistance and have priority for admission. Rather than creating financial incentives that skew it towards religious schools, the program creates financial disincentives: Private schools receive only half the government assistance given to community schools and one-third that given to magnet schools, and adjacent public schools would receive two to three times that given to private schools. Families too have a financial disincentive, for they have to copay a portion of private school tuition, but pay nothing at a community, magnet, or traditional public school. No reasonable observer would think that such a neutral private choice program carries with it the *imprimatur* of government endorsement. Nor is there evidence that the program fails to provide genuine opportunities for Cleveland parents to select secular educational options: Their children may remain in public school as before, remain in public school with funded tutoring aid, obtain a scholarship and choose to attend a religious school, obtain a scholarship and choose to attend a nonreligious private school, enroll in a community school, or enroll in a magnet school. The Establishment Clause question whether Ohio is coercing parents into sending their children to religious schools must be answered by evaluating *all* options Ohio provides Cleveland schoolchildren, only one of which is to obtain a scholarship and then choose a religious school. Cleveland’s preponderance of religiously affiliated schools did not result from the program, but is a phenomenon common to many American cities. Eighty-two percent of Cleveland’s private schools are religious, as are 81% of Ohio’s private schools. To attribute constitutional significance to the 82% figure would lead to the absurd result that a neutral school-choice program might be permissible in parts of Ohio where the percentage is lower, but not in Cleveland, where Ohio has deemed such programs most sorely needed. Likewise, an identical private choice program might be constitutional only in States with a lower percentage of religious private schools. Respondents’ additional argument that constitutional significance should be attached to the fact that 96% of the scholarship recipients have enrolled in religious schools was flatly rejected in *Mueller*. The constitutionality of a neutral educational aid program simply does not turn on whether and why, in a particular area, at a particular time, most private schools are religious, or most recipients choose to use the aid at a religious school. Finally, contrary to respondents’ argument, *Committee for Public Ed. & Religious Liberty v. Nyquist*,

413 U.S. 756—a case that expressly reserved judgment on the sort of program challenged here—does not govern neutral educational assistance programs that offer aid directly to a broad class of individuals defined without regard to religion. Pp. 11—21.

234 F.3d 945, reversed.

Rehnquist, C. J., delivered the opinion of the Court, in which O'Connor, Scalia, Kennedy, and Thomas, JJ., joined. O'Connor, J., and Thomas, J., filed concurring opinions. Stevens, J., filed a dissenting opinion. Souter, J., filed a dissenting opinion, in which Stevens, Ginsburg, and Breyer, JJ., joined. Breyer, J., filed a dissenting opinion, in which Stevens and Souter, JJ., joined.

Notes

*. Together with No. 00—1777, *Hanna Perkins School et al. v. Simmons-Harris et al.*, and No. 00—1779, *Taylor et al. v. Simmons-Harris et al.*, also on certiorari to the same court.

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