DOCUMENT RESUME

ED 307 682 EA 020 960

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TITLE The Rehnquist Court and Parochaid: New Directions in the Funding of Religious Schools.
PUB DATE Mar 89
NOTE 25p.; Paper presented at the Annual Meeting of the American Educational Research Association (San Francisco, CA, March 27-31, 1989).
PUB TYPE Speeches/Conference Papers (150) -- Reports - Research/Technical (143) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Court Judges; *Court Litigation; Elementary Secondary Education; Federal Courts; *Parochial Schools; *Private School Aid
IDENTIFIERS *Establishment Clause; *Rehnquist (William); Supreme Court

ABSTRACT

This study examined Chief Justice William Rehnquist's position on four recent Supreme Court cases related to parochaid as well as four other Supreme Court rulings dealing with economic or racial discrimination. The presentation of this study's research should present one perspective on how and why the Establishment Clause is being rewritten and provide a forum for discussing the future reach of the Rehnquist Court on this educational issue. The conclusion that the Rehnquist Court is redefining the Establishment Clause by accentuating accommodation with private schools rather than separation may have the long term effect of promoting judicial restraint in interpreting statutes that siphon public resources to support private school endeavors. (JAM)

THE REHNQUIST COURT AND PAROCHAID
New Directions in the Funding of Religious Schools*

the 1989 Annual Conference of AERA
San Francisco, California

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*This paper is a DRAFT which incorporates material the author has previously published in this area of research, as well as new unpublished research.

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Introduction

In 1987, Ronald Reagan, exercising his presidential prerogative, elevated William Rehnquist to the position of Chief Justice of the Supreme Court. The ascension of Rehnquist, coupled with the addition of Reagan appointees, Justices Scalia and Kennedy, shifted the philosophical approach of the Court from one which had been known for judicial activism under Chief Justice Warren, to one which now associates itself with the policy of judicial restraint.

Does Chief Justice Rehnquist adhere solely to a policy of judicial restraint, or are his opinions a combination of restraint and conservative activism? Given that the latter description may more accurately depict Rehnquist's judicial behavior, what has been his influence first as a Justice, and now, as Chief Justice, upon a particularly volatile educational issue: the use of public funds for religious schools? And what future impact will the Rehnquist Court have on this issue?

In order to provide answers to these questions, a study was undertaken, utilizing a case analysis approach. Four recent Supreme Court decisions relating to parochaid were analyzed, as well as four other Supreme Court rulings dealing with economic or racial discrimination. Chief Justice Rehnquist's position on these issues was examined. Aggregate data from the eight cases were used to define the judicial behavioral pattern adhered to by Chief

Justice Rehnquist. This pattern was then used to draw specific conclusions concerning the impact of Rehnquist upon the issue of parochaid.

How the Supreme Court interprets the Establishment Clause has profound political and educational consequences for America's public schools. Holding that tax credits for private and parochial schools are permissible, or that federal monies can be directed to religious organizations for prescribed reasons, i.e., counseling students about sexuality, effectively shifts public education funds towards private schools. The presentation of this study's research should: (1) present one perspective on how and why the Establishment Clause in regard to parochaid is being "rewritten"; and (2) provide a forum for discussing the future reach of the Rehnquist Court on this educational issue.

The Supreme Court and Parochaid: Past Behavior

Parochaid - the use of public funds to support church-affiliated schools - has been a volatile issue both in the courts and out for the past two decades. Opponents argue that any form of parochaid breaches the "wall of separation" existing between church and state, and therefore, is unconstitutional, while advocates of parochaid maintain that the concept of the wall is a tenuous one at best, and ill-serves the original intent of First Amendment authors - accommodation of religious beliefs, rather than separation.

In a series of Supreme Court decisions focusing on the constitutionality of parochaid, judicial opinion has been

divided, and at times, seemingly inconsistent. State laws authorizing the provision of free transportation and textbooks to parochial school students have been upheld,[1] while statutes sanctioning salary stipends, transportation for field trips, and the loaning of instructional equipment have been struck down.[2]

Articulation of a Uniform Standard

In 1971, the Supreme Court developed what members hoped would be a more uniform standard and applied the "Tripartite Test" in Lemon v. Kurtzman, where the Court held that aid to parochial schools in the form of salary stipends or purchase of services agreements violated the Establishment Clause.[3] Chief Justice Burger, speaking for the majority, cited "excessive entanglement" of government and religion as the basis for the Court's finding. Prior to Lemon, the constitutionality of a state statute involving religion was decided in light of two criteria: does the statute have a secular purpose; and, provided that it does, is the primary effect of the statute to advance or inhibit religion? With the Lemon ruling, the Court applied a third standard, "excessive entanglement," the parameters of which Burger outlined:

> In order to determine whether the government entanglement with religion is excessive, we must examine (1) the character and purposes of the institutions which are benefited, (2) the nature of the aid that the state provides, and (3) the resulting relationship between the government and the religious authority.[4]

Upon examination of the Lemon case, the Court found that the schools involved were religiously oriented (Catholic) with virtually all employees members of the Catholic faith. To ensure that religious classes were not taught by state-paid teachers and that state funds were not used for promoting religious activities, 'an intimate and continuing relationship between church and state"[5] would be necessary. Such extensive state monitoring of teachers' activities and programs would infringe upon the religous schools' First Amendment right to be free of governmental interference where religion was concerned. Hence, the practice of providing direct reimbursements to parochial schools for teacher salaries was judged unconstitutional due to excessive entanglement of church and state interests.

Subsequent to the Lemon decision, excessive entanglement, together with secular purpose and primary effect, became known as the Three-Pronged or Tripartite Test. Throughout the decade following Lemon, this judicial standard was consistently used to settle church-state conflicts involving public funding of sectarian schools.[6] During the Reagan administration, however, the legitimacy of the Tripartite Test was challenged by some of the then minority High Court members. In his dissent in Aguilar v.Felton,[7] a 1985 parochaid case, Chief Justice Burger questioned the continued reliance of the Court upon the three-part test which he had endorsed in 1970, stating that the majority had developed an "obsession" in the application of the Test to parochaid cases.[8] Burger was not alone in his undermining of the Tripartite Test.

Justices O'Connor, Rehnquist, and White also concurred with Burger in his assessment that the test was outmoded. Given that this minority has now become the majority on the Bench, the survival of the Tripartite Test as the standard for measuring constitutionality under the Establishment Clause is questionable. The following cases substantiate this prediction.

The Reagan Administration and Parochaid

Two fundamental principles of the Reagan administration's national education agenda were religion and parental choice. When combined with other administrative themes - vouchers, tuition tax credits, privatization of education - religion and parental choice translated into a green light for parochaid.

Two forms of parochaid which received judicial scrutiny during the Reagan years were tuition tax credits and the use of Chapter 1 funds in parochial schools. A third type of aid available through the Adolescent Family Life Act, which provides funds to religious agencies for combatting problems associated with teenage sexuality, was recently upheld by the Court.[9]

Tuition tax credits

In 1983, in a 5-4 decision, the Supreme Court upheld a Minnesota statute granting tax dedu tions for tuition, textbooks, and school transportation.[10] The distinguishing factor between Mueller v.Allen and the preceding case in this area, Committee for Public Education and Religious Liberty v. Nyquist[11] was the population to whom the tax credits were available - in Mueller, all parents, in Nyquist, parents of parochial school student only.

Justice Rehnquist, in writing for the majority, differentiated between the two cases on the following grounds: (1) the intent of the law was secular, i.e., to defray the educational costs expended by all parents of students in the state of Minnesota; (2) the tax deductions as outlined by the Minneosta statute were available to parents of all students, public and private; and (3) there involved no excessive monitoring by the government because the assistance flowed to the parents, not the sectarian schools.[12]

In his dissent, Justice Marshall disputed the majority's assertion that the aid only accrued to the parents, not the parochial schools, maintaining that aid flows indirectly to the schools; and "as a result of the tax benefit [aid] is not restricted, and cannot be restricted to the secular functions of those schools."[13] Furthermore, contrary to what the law facially provides - a tax credit to all parents - Marshall pointed out that a tax deduction for tuition is a benefit "not available to all parents, but only to parents whose children attend schools that charge, which is a category comprised almost entirely of sectarian schools."[14]

Aside from the rather dubious conclusions reached by a slim majority, of greater import are the judicial grounds upon which those conclusions were drawn. An examination of the majority opinion reveals a disturbing departure from previous precedents involving parochial aid questions.

First, Rehnquist applauded Minnesota's efforts in attempting to defray costs for parents of parochial school children, noting

that the state has concluded, "that there is a strong public interest in assuring the continued financial health of private schools, both sectarian and non-sectarian...that such schools relieve public schools of a correspondingly great burden."[15] Continuing in this vein, Rehnquist pointed out that parents of parochial school children "bear a particularly great financial burden in educating their children;" consequently, "whatever unequal effect may be attributed to the statutory classification can fairly be regarded as a rough return for the benefits....provided to the state and all taxpayers by parents sending their children to parochial schools."[16]

When presented with statistical evidence that 96 percent of Minnesota students in private schools attend church-affiliated institutions, Rehnquist chose to dismiss the evidence, stating, "We would be loath to adopt a rule grounding the constitutionality of a facially neutral law on annual reports reciting the extent to which various classes of private citizens claimed benefits under the law."[17] As Justice Thurgood Marshall pointed out in his dissent, it was precisely the reverse of this thinking which was decisive in the Nyquist case: "In Nyquist we unequivocally rejected any suggestion that, in determining the effect of a tax statute, this court should look exclusively to what the statute on its face purports to do and ignore the actual operation of the challenged provision."[18]

By highlighting possible benefits parochial schools provide to a State, while simultaneoulsy dismissing statistical data, the Court

stepped decisively away from its previous stance in parochiaid questions, i.e., complete separation of church and state. Instead it adopted a position of "accomodation."

Vigorously disagreeing with this new interpretation of the Establishment Clause, the four dissenting justices pointed out the fallacies of the majority's conclusion concerning the primary effect of the Minnesota statute. In this regard, Marshall argued that whether or not an equivalent deduction for other school expenses was made available to parents of public school students, is of little concern:

Insofar as the Minnesota Statute provides a deduction for parochial school tuition, it provides a benefit to parochial schools that furthers the religious mission of those schools.[19]

A final word on the Mueller decision concerned the majority's opinion of the Founding Fathers' interpretation of the Establishment Clause. Here, again, Rehnquist suggested that the Court no longer needed to be concerned about the separation of church and state. Thus he wrote: "at this point in the 20th century we are quite far removed from the dangers that prompted the Framers to include the Establishment Clause in the Bill of Rights.... The risk of significant religious or denominational control over our democratic processes - or even of deep political division along religious lines - is remote...[20] Rejecting the Court's interpretation first enunciated in Everson, Rehnquist asserted:

The historic purposes of the Clause simply do not encompass the sort of attenuated financial benefit, ultimately controlled by the private choices of individual parents, that eventually flows to parochial schools from the neutrally available tax benefit at issue in this case.[21]

Chapter I Funds

In 1985, the use of Chapter I funds to pay for on-the-premises instruction by public school teachers at parochial schools was declared unconstitutional by the Supreme Court.[22] In Aguilar v. Felton, the Court noted that "...the aid is provided in a pervasively sectarian environment. Second, because assistance is provided in the form of teachers, ongoing inspection is required to ensure the absence of a religious message."[23] Consequently, "This pervasive monitoring by public authorities in the sectarian schools infringes precisely those Establishment Clause values at the root of the prohibition of excessive entanglement."[24] Although the majority successfully invoked the Tripartite Test in this decision and also in an accompanying ruling on Shared Time Programs in the city of Grand Rapids,[25] the validity of the Test was questioned by the four dissenting justices, thereby placing in jeopardy the use of the Test with the subsequent change in Court membership.

Justice Rehnquist in his dissent stated, "We have indeed travelled far afield from the concerns which prompted the adoption of the First Amendment when we rely on gossamer abstractions to

invalidate a law which obviously meets an entirely secular need."[26] Justice Sandra O'Connor in a separate dissent perceived the entanglement issue as an exaggeration and proposed that she "would not invalidate it (a statute) merely because it requires some on-going cooperation between church and state or some state supervison to ensure that state funds do not advance religion."[27] (emphasis added) In O'Connor's dissent, the concept of accomodating religion rather than separating religion from state matters, is again invoked as a valid reinterpretation of the Establishment Clause.

In Aguilar's companion case, Grand Rapids School District v. Ball, the Court considered the primary effect of Shared Time Programs, and attempted to determine whether their principal effect was to advance religion.[28] In weighing the facts, the Court found that "the challenged public-school programs operating in the religious schools may impermissibly advance religion in three different ways":[29] (1) state-paid instructors may subtly or overtly indoctrinate the students in particular religious tenets at public expense; (2) the symbolic union of church and state threatens to convey a message of state support for religion to students and to the general public; and (3) the programs in question subsidize the religious functions of the parochial schools by taking over a substantial portion of their responsibility for teaching secular subjects.[30]

Acknowledging the ever-ensuing conflict between state concerns and First Amendment rights, the Court asserted, "Providing for the education of schoolchildren is surely a praiseworthy purpose. But

our cases have consistently recognized that even such a praiseworthy, secular purpose cannot validate goverment aid to parochial schools when the aid has the effect of promoting a single religion or religion generally or when the aid unduly entangles the government in matters religious. For just as religion throughout history has provided spiritual comfort, guidance, and inspiration to many, it can also serve powerfully to divide societies and to exclude those whose beliefs are not in accord with particular religions or sects that have from time to time achieved dominance. The solution to this problem adopted by the Framers and consistently recognized by this Court is jealously to guard the right of every individual to worship according to the dictates of conscience while requiring the government to maintain a course of neutrality among religions, and between religion and nonreligion."[31]

In their separate dissents the four justices comprising the minority were of one voice in regarding the Shared Time programs as constitutionally valid; rejecting the majority's opinion that such programs might be construed as advancing religion. Rehnquist, again, called into question the original intent as defined in Everson, "In Grand Rapids, the Court relies heavily on the principles of Everson and McCollum...but declines to discuss the faulty 'wall' premise upon which those cases rest."[32] Justices White, Burger, and O'Connor agreed with Rehnquist, although Burger and O'Connor did concur with the majority that Community Education

programs taught by parochial school teachers who were paid by the Grand Rapids School District did violate the Establishment Clause.

Adolescent Family Life Act Funds

In late June 1988, a 5-4 majority in Bowen v. Kendrick upheld the constitutionality of the Adolescent Family Life Act which provides federal funds to public and nonpublic agencies for care and preventative services in combatting teenage sexuality problems.[33] The Act requires that grantees describe how they will "involve religious and charitable organizations" in the provision of services to adolescents.[34] Furthermore, the Act imposes restrictions which directly correspond with the beliefs of particular religions: (1) no funds can be used for family planning services; (2) no grantees can provide abortions, abortion counseling, or referral services; and, (3) no grants can be awarded to programs advocating or encouraging abortion.[35] An extremely controversial decision, Bowen v. Kendrick takes the Court in a direction far afield from its long-established doctrine on separation of church and state.

In ruling the Act constitutional, the majority chose to adopt "a cramped view of what constitutes a pervasively sectarian institution"[36] (parochial schools); and relied heavily upon cases in which the Court has upheld federal funds flowing to religious hospitals, colleges or universities.[37] The majority also declined to review the District Court's compilation of evidence which revealed "the extent to which the AFLA has in fact 'directly and immediately' advanced religion, funded 'pervasively sectarian'

institutions, or permitted the use of federal tax dollars for education and counseling that amounts to the teaching of religion."[38] Instead, the majority supported its assertions that the grantees were not pervasively sectarian by reviewing 1986 AFLA records, choosing not to review the cumulative spending record of the Act (1982-86). In studying those figures, Brennan, writing for the dissenters, found that during the four year period, approximately "$10 million went to the 13 organizations specifically cited in the District Court's opinion for constitutional violations."[39] Brennan concluded:

On a continuum of "sectarianism" running from parochial schools at one end to the colleges funded by the statutes upheld in Tilton, Hunt, and Roemer at the other, the AFLA grantees described by the District Court clearly are much closer to the former than to the latter.[40]

Since the majority defined pervasively sectarian as applying to parochial schools only, it then was able to reject the District Court's conclusion that "asking religious organizations to teach and counsel youngsters on matters of deep religious significance, yet expect them to refrain from making reference to religion is both foolhardy and unconstitutional,"[41] as irrelevant to the case, because such conclusions can only be reached when an institution has been found to be pervasively sectarian, which according to the majority, these agencies were not. In relying upon postsecondary cases, the majority bypassed the age issue: "In those cases in which funding of colleges with religious affiliations has been

upheld, the Court has relied on the assumption that 'college students are less impressionable and less susceptible to religious indoctrination'."[42] However, in Bowen, the religious agencies are being asked "to educate impressionable young minds on issues of religous moment."[43] Thus, two previously-held standards -- age and the context in which the counseling occurs -- receive no consideration in this most recent case concerning public funds provided to religious organizations for educational purposes.

Judicial Restraint or Conservative Activism?

Several recent cases separate from the parochaid issue seem to support the argument that under Rehnquist, judicial activism operates alongside judicial restraint - when it supports the conservative platform.

In 1983, Bob Jones University v. United States, a case involving racial discrimination and the tax-exempt status of a private university was decided.[44] In this case, the majority rejected the position of the Reagan administration which was opting for judicial restraint.[45] Instead, the Court ruled that the Internal Revenue Service (IRS) could revoke the tax-exempt status of the school in view of its racially discriminatory student behavior policy.[46]

Declaring that "racial discrimination in education violates deeply and widely accepted views of elementary justice,"[47] the majority maintained that the IRS's interpretation of a 1970 regulation was correct, "that an institution seeking tax-exempt status must serve a public purpose and not be contrary to

established public policy,"[48] i.e., a national public policy opposed to racial discrimination.

In his lone dissent, Rehnquist advocated judicial restraint, maintaining that "...this Court should not legislate for Congress."[49] While agreeing with the majority that legislative history shows "that Congress intended in that statute [501(c)(3)] to offer a tax benefit to organizations that Congress believed were providing a public benefit,"[50] Rehnquist insisted that the Court erred in its conclusion that "public benefit" meant an organization "must demonstrably serve and be in harmony with the public interest.[51] Rather, Rehnquist argued for a narrower interpretation of the regulations, calling the majority's interpretation "a heavyhanded creation."[52]

Chief Justice Rehnquist's policy of judicial restraint becomes judicial activism in the recent Court decision to reexamine a prior ruling. In April 1988, newly appointed Justice Kennedy cast the deciding vote in a highly controversial decision to have the Court reexamine during its 1988-89 term, the 1976 civil rights case, Runyon v. McCrary.[53] In Runyon, the Court ruled that an individual may sue a private institution for racially discriminatory practices. The ruling has been a powerful tool for fighting racial discrimination within private organizations and schools. Reversal of the Runyon decision would strike a mortal blow to efforts towards advancing equality; and would erect a formidible roadblock for any future administration committed to finally ending inequality.

Another type of discrimination has been upheld under Rehnquist's doctrine of judicial restraint: economic discrimination. Although wealth is not recognized as a suspect classification and education is not considered a fundamental right by the Supreme Court, two recent cases suggest that a child's economic circumstances largely determine whether or not a student has equal access to an education. In both cases, however, Rehnquist opted for a narrow interpretation of the Equal Protection Clause and voted to uphold state statutes which created grave disparities between rich and poor for educational opportunities.[54]

In the 1982 case, Plyler v. Doe, a slim (5-4) majority of the Court prevailed and struck down a Texas statute that sought to exclude children of illegal aliens from school.[55] While acknowledging that education was not a fundamental right, the Court maintained that it was of such paramount importance, that denial of it warranted a stricter review than the rational relationship standard.[56] Under this heightened scrutiny, access to an education far outweighed the reasons for the statute which the Majority felt were directly contrary to what educating these children would achieve.[57]

Writing for the dissenters - whose number included Rehnquist - former Chief Justice Burger vigorously disagreed with the majority's use of a heightened review. Adopting a judicial restraint stance, Burger opined that it was not for the Court to decide what method to use to deter illegal immigration. This was an issue for state legislatures to decide; and that the denial of

an education was a rational means for achieving a legitimate state purpose, i.e., stemming the flow of illegal aliens into the state.[58]

This reliance upon narrow interpretation of statutory law and superficial analyses of constitutional rights has continued under Chief Justice Rehnquist. Only now justices favoring a policy of judicial restraint are no longer in the minority; rather, they comprise the majority. The impact of this change is reflected in a decision reached during the summer of 1988 involving rural schoolchildren and economic discrimination. In Kadrmas v. Dickinson Public Schools,[59] a North Dakota statute allowing "nonreorganized" (unconsolidated) districts to charge a fee for transportation to and from school was upheld in another closely contested decision (5-4). Rejecting appellants' claims that "Dickinson's user fee for bus service unconstitutionally deprives those who cannot afford to pay it of 'minimum access to education,'"[60] and, as in Plyler, heightened scrutiny should be used, the majority pointed out that although a user fee might place a "greater obstacle to education in the path of the poor than it does in the path of wealthier families,"[61] the Court "has previously rejected the suggestion that statutes having different effects on the wealthy and the poor should on that account alone be subjected to strict equal protection scrutiny."[62]

In a moving, eloquent dissent Justice Marshall labeled the majority's decision as a "retreat from the promise of equal educational opportunity" pledged years ago in Brown v. Board of

Education.[63] Attacking the Court's "facile analysis" of the case, Marshall charged that the majority had forgotten that "the Constitution is concerned with 'sophisticated as well as simpleminded modes of discrimination'."[64] Declaring that "the North Dakota statute discriminates on the basis of economic status," Marshall contended that contrary to the majority's opinion, the Plyler ruling applied, in that "the Court made clear [in Plyler] that the infirmity of the Texas law stemmed from its differential treatment of a discrete and disadvantaged group of children with respect to the provision of education."[65] Marshall concluded with an unequivocal assessment of the Court's behavior: In allowing a State to burden the access of poor persons to an education, the Court denies equal opportunity and discourages hope. I do not believe the Equal Protection Clause countenances such a result."[66]

The Rehnquist Court: Future Trends

It appears from the above eight case analyses, that the judicial behavior pattern most adhered to by Chief Justice Rehnquist is one which imposes a judicial restraint analysis upon the law. This is vividly depicted by the majority opinion in Kadrmas:

[W]e are evidently being urged to apply a form of strict or "heightened" scrutiny to the North Dakota statute. Doing so would require us to extend the requirements of the Equal Protection Clause beyond the limits recognized in our cases, a step we decline to take.[67] [emphasis added]

Rehnquist's influence is apparent, for in Plyler, action taken by the majority was precisely opposite to that of Kadrmas. The majority in Plyler extended the requirements of the Equal Protection Clause to include education because the state law "pose[d] an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit."[68] The situation in Kadrmas is identical to Plyler -denial of equal access to an education - however, the present majority, under the leadership of Rehnquist, chooses to ignore the similarities; and instead adheres to a policy of judicial restraint.

In the area of parochaid, what then, can be expected from a Rehnquist Court? In light of past Rehnquist opinions, one can expect future Court decisions based upon narrow interpretations of constitutional law, or the use of judicial activism, in order to eradicate the "errors" of the Warren Court, on such issues as parochaid or discrimination. In parochaid questions, such activism is disguised by a redefinition of the Establishment Clause -- accommodation rather than separation -- or occurs by invoking a policy of judicial restraint in interpreting statutes. The long-range effect of this stance taken by the Rehnquist Court could well be an erosion of Federal intervention in education on behalf of the "have nots." Instead of tax dollars going towards the support of public school students, public resources will be siphoned off to support individual choices of parents desiring a private or

religious education for their children, and ultimately, to support the sectarian institutions which those children attend.

1. Everson v. Board of Education, 330 U.S. 1 (1947); Board of Education v. Allen, 392 U.S. 236 (1968).

2. Lemon v. Kurtzman, 403 U.S. 602 (1970); Meek v. Pittenger, 421 U.S. 350 (1973).

3. Lemon v. Kurtzman, supra.

4. Id. 615.

5. Id. at 613

6. Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973); Levitt v. Committee for Public Education, 413 U.S. 472 (1973); Meek v. Pittenger, supra; Woman v. Walter, 433 U.S. 229 (1977).

7. 473 U.S. 402 (1985).

8. Id.

9. Public Law 97-35, 95 Stat. 578, 42 U.S.C. sec. 300z et. seq., (1982 ed. and Supp. III).

10. Mueller v. Allen, 463 U.S. 388; 103 S.Ct. 3062 (1983).

11. supra, note 6.

12. Mueller, supra.

13. Id. at 3076.

14. Id.

15. Id. at 3067.

16. Id. at 3070.

17. Id.

18. Id. at 3074.

19. Id. at 3074.

20. Id. at 3069.

21. Id.

22. Aguilar v. Felton, supra.

23. Id. at 412.

24. Id. at 413.

25. Grand Rapids School District v. Ball, 87 L.Ed. 2d 267, 473 U S. 373 (1985).

26. Aguilar v. Felton, op. cit., at 310.

27. Id. at 311.

28. 87 L.Ed. 2d 267, supra.

29. Id. at 278.

30. Id.

31. Id. at 276.

32. Id. at 288.

33. 56 LW 4818 (6-28-88).

34. Id. at 4820.

35. Id.

36. Id. at 4829.

37. Id.

38. Id.

39. Id.

40. Id. at 4830.

41. Id. at 4831.

42. Id.

43. Id.

44. 461 U.S. 574 (1983).

45. Id.

46. Id.

47. Id. at 592.

48. Id. at 586.

49. Id. at 622.

50. Id.

51. Id.

52. Id.

53. Runyon v. McCrary, 427 U.S. 160 (1976).

54. Plyler v. Doe, 467 U.S. 202 (1982); Kadrmas v. Dickinson Public Schools, 56 I[illegible] 4777 (1988).

55. Plyler, supra.

56. Id.

57. Id.

58. Id.

59. Kadrmas, supra.

60. Id. at 4779.

61. Id.

62. Id.

63. Id. at 4781.

64. Id. at 4782.

65. Id.

66. Id. at 4783.

67. Id. at 4779.

68. Plyler, supra at 221-222.