HOW WE WON THE CHOICE CASE

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After eight years, nine court arguments, and thousands of pages of briefs, the legal battle over school choice in Wisconsin finally is over. Despite the massive resources arrayed against us, the forces for parental empowerment emerged victorious: or, more accurately, David slew Goliath.

On November 9, 1998, the United State Supreme Court declined to consider an appeal of the decision by the Wisconsin Supreme Court, which upheld the Milwaukee Parental Choice Program. While that does not establish a binding national precedent, it seals the legal victory for choice in Wisconsin. The case is at an end.

Despite the program's humble beginnings in 1990 – to limited to 1,000 low-income youngsters who could choose only nonsectarian private schools – the education establishment determined that it could not allow the program to survive. It opened a two-front attack: challenging the program's constitutionality and imposing a barrage of regulations. Fortunately, both efforts ultimately were beaten back, leading to the program's expansion in 1995 to include religious schools and open the program to as many as 15,000 children.

Again, a lawsuit followed, focused primarily on the issue of religious establishment. On that score, the litigation raised two challenges: the Wisconsin Constitution, which forbids the use of public funds for the "benefit" of religious schools, and the First Amendment to the U.S. Constitution, which forbids laws "respecting as establishment of religion."

The Wisconsin Supreme Court ruled 4-2 in favor of the program on the Wisconsin constitutional issue, which is significant because many other states have similar provisions in their constitutions. The Court voted 4-0, with no comment from the two dissenting justices, to uphold the program against the First Amendment challenge. It was this issue that the Supreme Court would have considered had it chosen to take the case.

In the meantime, the Institute for Justice continues to defend school choice programs in the Ohio, Vermont, Arizona and Maine Supreme Courts.

One of the key lessons from our efforts in Milwaukee is that the legal battle requires strong community support. It is essential that

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parents and community leaders play a visible role and that the program performs well for children. Here the Milwaukee battle was a model of success, thanks to the efforts of many political leaders, community activists, and policy and philanthropic organizations. If school choice is to succeed around the country, we will have to replicate the superb Milwaukee effort.

Equally important is the omnipresent regulatory threat. Before the ink could dry on the Wisconsin Supreme Court decision, the Department of Public Instruction attempted again to strangle participating schools with a plethora of illegal regulations. Again, the threat was defeated. But the program's ultimate success will require eternal vigilance.

The people of Milwaukee and the entire state should be justifiably proud of their path-breaking efforts in education reform. Painfully, no good legislative deed goes unpunished in court, and our job is to protect education reform against the inevitable legal challenge. Despite the Supreme Court's action, the ultimate fight is not yet won. But we have something the other side can never have: the tenacity and good will of our friends and allies, and the best interests of the children of Milwaukee.

The following are excerpts from the Wisconsin Supreme Court decision on the Milwaukee Parental Choice Program (MPCP) delivered on June 10, 1998. The sections given involve the court's opinion on both the federal and state religious establishment clauses.

The complete decision, including notation of the cited court cases, is available on-line at the Wisconsin Supreme Court web site at: http://www.courts.state.wi.us/html/sc/97/97-0270.HTM

United States Constitution Establishment Clause

The first issue we address is whether the amended MPCP violates the Establishment Clause of the First Amendment to the United States Constitution. Neither the circuit court nor the court of appeals reached this issue. Upon review we conclude that the amended MPCP does not violate the Establishment Clause because it has a secular purpose, it will not have the primary effect of advancing religion, and it will not lead to excessive entanglement between the State and participating sectarian private schools.

The First Amendment to the United States Constitution provides in part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This mandate applies equally to state legislatures by virtue of the Due Process Clause of the Fourteenth Amendment. The Establishment Clause, therefore, prohibits state governments from passing laws which have either the purpose or effect of advancing or inhibiting religion.

When assessing any First Amendment challenge to a state statute, we are bound by the results and interpretations given that amendment by the decisions of the United States Supreme Court. "Ours [is] not to reason why; ours [is] but to review and apply." Our limited role is not aided by the Supreme Court's candid admission that in applying the Establishment Clause, it has "sacrifice[d] clarity and predictability for flexibility."

The Supreme Court has repeatedly recognized that the Establishment Clause raises difficult issues of interpretation, and cases arising under it "have presented some of the most perplexing questions to come before [the] Court." We are therefore cognizant of the Court's warnings that:

> There are always risks in treating criteria discussed by the Court from time to time as 'tests' in any limiting sense of that term. Constitutional adjudication does not lend itself to the absolutes of the physical sciences or mathematics . . . [C]andor compels the acknowledgment that we can only dimly perceive the boundaries of permissible government activity in this sensitive area of constitutional adjudication.

In an attempt to focus on the three main evils from which the Establishment Clause was intended to afford protection: sponsorship, financial support, and active involvement of the sovereign in religious activity, the Court has promulgated a three-pronged test to determine whether a statute complies with the Establishment Clause. Under this test, a statute does not violate the Establishment Clause if (1) it has a secular legislative purpose; (2) its principal or primary effect neither advances nor inhibits religion; and (3) it does not create excessive entanglement between government and religion. We must apply this three-part test to determine the constitutionality of Wis. Stat. § 119.23.

a. First Prong - Secular Purpose

Under the first prong of the *Lemon* test, we examine whether the purpose of the state legislation is secular in nature. Our analysis of the amended MPCP under this prong of the *Lemon* test is straightforward. Courts have been "reluctan[t] to attribute unconstitutional motives to the states, particularly when a plausible secular purpose for the state's program may be discerned from the face of the statute."

As the court of appeals recognized, the secular purpose of the amended MPCP, as in many Establishment Clause cases, is virtually conceded. The purpose of the program is to provide low-income parents with an opportunity to have their children educated outside of the embattled Milwaukee Public School system. The propriety of providing educational opportunities for children of poor families in the state goes without question:

> A State's decision to defray the cost of educational expenses incurred by parents—regardless of the type of schools their children attend—evidences a purpose that is both secular and understandable. An educated populace is essential to the political and economic health of any community, and a State's efforts to assist parents in meeting the rising cost of educational expenses plainly serves this secular purpose of ensuring that the State's citizenry is well-educated.

The propriety of such legislative purpose, however, does not immunize the amended MPCP from further constitutional challenge. If the amended MPCP either has a primary effect that advances religion or if it fosters excessive entanglements between church and state, then the program is constitutionally infirm and must be struck down.

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b. Second Prong - Primary Effect of Advancing Religion

Analysis of the amended program under the second prong of the *Lemon* test is more difficult. While the first prong of *Lemon* examines the legislative purpose of the challenged statute, the second prong focuses on its likely effect. A law violates the Establishment Clause if its principal or primary effect either advances or inhibits religion.

This does not mean that the Establishment Clause is violated every time money previously in the possession of a state is conveyed to a religious institution. "The simplistic argument that every form of financial aid to church-sponsored activity violates the Religion Clauses was rejected long ago . . . ." The constitutional standard is the separation of church and state. "The problem, like many problems in constitutional law, is one of degree."

We begin our analysis under the second prong of the *Lemon* test by first considering the cumulative criteria developed over the years and applying to a wide range of educational assistance programs challenged as violative of the Establishment Clause. Although the lines with which the Court has sketched the broad contours of this inquiry are fine and not absolutely straight, the Court's decisions generally can be distilled to establish an underlying theory based on neutrality and indirection: state programs that are wholly neutral in offering educational assistance directly to citizens in a class defined without reference to religion do not have the primary effect of advancing religion. The Court has explained:

> 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.

The Court's general principle under the Establishment Clause has, since its decision in *Everson*, been one of neutrality and indirection. Writing for the majority in *Everson*, Justice Black set out the view of the Establishment Clause that still guides the Court's thinking today. The *Everson* Court explained that "the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'" The Court tempered its statement, however, by cautioning that in maintaining this wall of separation, courts must "be sure that [they] do not inadvertently prohibit [the government] from extending its general State law benefits to all its citizens without regard to their religious belief." Under this reasoning, the Court held that the Establishment Clause does not prohibit New Jersey from spending tax-raised funds to reimburse parents directly for the bus fares of parochial school pupils as a part of a general program under which the State pays the fares of pupils attending public and other schools.

In *Nyquist*, the Court struck down on Establishment Clause grounds a New York program that, *inter alia*, provided tuition grants to parents of children attending private schools. Under the program, New York sought to assure that participating parents would continue to send their children to religion-oriented schools by relieving their financial burdens. Before striking the tuition grants, the Court distinguished on two grounds the New York statute from the New Jersey statute reviewed in *Everson*: (1) unlike the statute in *Everson*, the New York statute was non-neutral because it provided benefits solely to private schools and parents with children in private schools; and (2) the New York statute provided financial assistance rather than bus rides. The Court concluded that the fact that aid was distributed directly to parents rather than the schools, although a factor in its analysis, did not save the statute because the effect of New York's program was "unmistakably to provide desired financial support for nonpublic, sectarian institutions."

Significant to the case now before us, however, the Court in *Nyquist* specifically reserved the issue whether an educational assistance program that was both neutral and indirect would survive an Establishment Clause challenge:

> Because of the manner in which we have resolved the tuition grant issue, we need not decide whether the significantly religious character of the statute's beneficiaries might differentiate the present cases from a case involving some form of public assistance (e.g., scholarships) made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited.

In cases following its decision in *Nyquist*, the Court has piecemeal answered this question as it has arisen in varying fact situations.

In *Mueller*, the Court rejected an Establishment Clause challenge to a Minnesota statute allowing taxpayers to deduct certain educational expenses in computing their state income tax, even though a majority of those deductions went to parents whose children attended sectarian schools. "Two factors, aside from the States' traditionally broad taxing authority, informed [the *Mueller* Court's] decision." First, the Court noted that, unlike the statute in *Nyquist*, the Minnesota law "permits all parents— whether their children attend public school or private—to deduct their children's educational expenses." Second, the Court emphasized that under Minnesota's tax deduction scheme, public funds become available to sectarian schools "only as a result of numerous private choices of individual parents of school-age children," thus distinguishing *Mueller* from other cases involving "the direct transmission of assistance from the state to the schools themselves." The Court concluded:

> 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.

Mueller 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* test, because any aid to religion results from the private choices of individual beneficiaries."

The Court reaffirmed the dual importance of neutrality and indirect aid in *Witters*. In *Witters*, the Court *unanimously* held that the Establishment Clause did not bar a state from issuing a vocational tuition grant to a blind person who intended to use the grant to attend a Christian college and become a pastor, missionary, or youth director. The Court focused first on the program's indirect aid, finding that because the aid was paid to the student rather than the institution "[a]ny aid provided under Washington's program that ultimately flows to religious institutions does so only as a result of genuinely independent and private choices of aid recipients."

... any aid to religion results from the private choices of individual beneficiaries

As in *Mueller*, the *Witters* Court then emphasized the neutrality of the program, finding that "Washington's program is 'made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefited,'" and therefore "creates no financial incentive for students to undertake sectarian education." In light of these factors, the Court held that Washington's program—even as applied to a student who sought state assistance so that he could become a pastor—would not advance religion in a manner inconsistent with the Establishment Clause.

The Supreme Court applied the same logic in *Zobrest*, where it held that the Establishment Clause did not prohibit a school district from providing to a deaf student a sign-language interpreter under the Individuals with Disabilities Education Act (IDEA), even though the interpreter would be a mouthpiece for religious instruction. The *Zobrest* Court, basing its reasoning upon *Mueller* and *Witters*, again looked to neutrality and indirection as its guiding principles.

Specifically focusing on the general availability of the statute, the Court found that the "service at issue in this case is part of a general government program that distributes benefits neutrally to any child . . . without regard to the . . . 'nature' of the school the child attends."

The *Zobrest* Court then looked to whether the aid was direct or indirect, explaining that "[b]y 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 result of the private decision of individual parents." Based on these two findings, the Court concluded: "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 towards religion,' it follows under our prior decisions that provision of that service does not offend the Establishment Clause."

In *Rosenberger*, the Supreme Court held that the Establishment Clause did not prohibit the university from funding a student organization, which otherwise would have been entitled to publication funds, merely because it published a newspaper with a Christian point of view. The Court clarified that the critical aspect of the analysis was whether the state conferred a benefit which neither inhibited nor promoted religion. As long as the benefit was neutral with respect to religion, what the student did with that benefit, even if it was to spend all of it on religion-related expenditures, was irrelevant for purposes of analyzing whether the law or policy violated the Establishment Clause.

Finally, in *Agostini*, the Supreme Court held that a federally funded program providing supplemental, remedial instruction on a neutral basis to disadvantaged children at sectarian schools is not invalid under the Establishment Clause when sufficient safeguards exist. The Court explained that while the general principles used to evaluate Establishment Clause cases have remained unchanged, the Court's "understanding of the criteria used to assess" the inquiry has changed in recent years. The Court reiterated that the unchanged principle under the Establishment Clause remains neutrality, and that the Court will continue to ask whether the government acts with the purpose or effect of advancing or inhibiting religion. Writing for the Court, Justice O'Connor set out three criteria the Court has in recent years used to evaluate whether an impermissible effect exists. The aid must "not result in governmental indoctrination; define its recipients by reference to religion; or create an excessive entanglement."

After considering these three criteria, the Court held that the program did not have the primary effect of advancing religion. The Court first concluded that placing full-time employees on parochial school campuses under this program did not result in advancing religion through indoctrination. The Court then considered whether the criteria by which the program identified beneficiaries created a financial incentive to undertake religious indoctrination. The Court, synthesizing the central establishment clause principle, concluded that no such incentive existed under the program: "[t]his incentive is not present, however, where the aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis." The Court also concluded that the federal program did not result in an excessive entanglement between church and state.

The Supreme Court, in cases culminating in *Agostini*, has established the general principle that state educational assistance programs do not have the primary effect of advancing religion if those programs provide public aid to both sectarian and nonsectarian institutions (1) on the basis of neutral, secular criteria that neither favor nor disfavor religion; and (2) only as a result of numerous private choices of the individual parents of school-age children. The amended MPCP is precisely such a program. Applying to the amended MPCP the criteria the Court has developed from *Everson* to *Agostini*, we conclude that the program does not have the primary effect of advancing religion.

First, eligibility for benefits under the amended MPCP is determined by "neutral, secular criteria that neither favor nor disfavor

religion," and aid "is made available to both religious and secular beneficiaries on a nondiscriminatory basis." Pupils are eligible under the amended MPCP if they reside in Milwaukee, attend public schools (or private schools in grades K-3) and meet certain income requirements. Beneficiaries are then selected on a random basis from all those pupils who apply and meet these religious-neutral criteria. Participating private schools are also selected on a religious-neutral basis and may be sectarian or nonsectarian. The participating private schools must select on a random basis the students attending their schools under the amended program, except that they may give preference to siblings already accepted in the school. In addition, under the new "opt-out" provision, the private schools cannot require the students participating in the program to participate in any religious activity provided at that school.

Under the amended MPCP, beneficiaries are eligible for an equal share of per pupil public aid regardless of the school they choose to attend. To those eligible pupils and parents who participate, the amended MPCP provides a religious-neutral benefit—the opportunity "to choose the educational opportunities that they deem best for their children." The amended MPCP, in conjunction with existing state educational programs, gives participating parents the choice to send their children to a neighborhood public school, a different public school within the district, a specialized public school, a private nonsectarian school, or a private sectarian school. As a result, the amended program is in no way "skewed towards religion."

The amended MPCP therefore satisfies the principle of neutrality required by the Establishment Clause. As Justice Jackson explained in *Everson*:

> A policeman protects a Catholic, of course—but not because he is a Catholic; it is because he . . . is a member of our society. The fireman protects the Church school—but not because it is a Church school; it is because it is property, part of the assets of our society. Neither the fireman nor the policeman has to ask before he renders aid 'Is this man or building identified with the Catholic Church.'

The amended MPCP works in much the same way. A student qualifies for benefits under the amended MPCP not because he or she is a Catholic, a Jew, a Moslem, or an atheist; it is because he or she is from a poor family and is a student in the embattled Milwaukee Public Schools. To qualify under the amended MPCP, the student is never asked his or her religious affiliation or beliefs; nor is he or she asked whether the aid will be used at a sectarian or nonsectarian private school. Because it provides a neutral benefit to beneficiaries selected on religious-neutral criteria, the amended MPCP neither leads to "religious indoctrination," nor "creates [a] financial incentive for students to undertake sectarian education." As Judge Roggensack concluded, "[t]he benefit neither promotes religion nor is hostile to it. Rather, it promotes the opportunity for increased learning by those currently having the greatest difficulty with educational achievement."

A student qualifies for benefits ... because he or she is from a poor family and is a student in the embattled Milwaukee Public Schools

Second, under the amended MPCP public aid flows to sectarian private schools only as a result of numerous private choices of the individual parents of school-age children. Under the original MPCP, the State paid grants directly to participating private

schools. As explained above, the program was amended so that the State will now provide the aid by individual checks made payable to the parents of each pupil attending a private school under the program. Each check is sent to the parents' choice of schools and can be cashed only for the cost of the student's tuition. Any aid provided under the amended MPCP that ultimately flows to sectarian private schools, therefore, does so "only as a result of genuinely independent and private choices of aid recipients."

We recognize that under the amended MPCP the State sends the checks directly to the participating private school and the parents must restrictively endorse the checks to the private schools. Nevertheless, we do not view these precautionary provisions as amounting to some type of "sham" to funnel public funds to sectarian private schools. In our assessment, the importance of our inquiry here is not to ascertain the path upon which public funds travel under the amended program, but rather to determine who ultimately chooses that path. As with the programs in *Mueller* and *Witters*, not one cent flows from the State to a sectarian private school under the amended MPCP except as a result of the necessary and intervening choices of individual parents. As a result, "[n]o reasonable observer is likely to draw from [these facts] an inference that the State itself is endorsing a religious practice or belief."

The amended MPCP, therefore, places on equal footing options of public and private school choice, and vests power in the hands of parents to choose where to direct the funds allocated for their children's benefit. We are satisfied that the implementation of the provisions of the amended MPCP will not have the primary effect of advancing religion.

c. Third Prong - Excessive Government Entanglement

The final question for us to determine under the Lemon test is whether the amended MPCP would result in an excessive governmental entanglement with religion. Stated another way, it is necessary to determine whether "[a] comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions [against the inculcation of religious tenets] are obeyed and the First Amendment otherwise respected."

Not all entanglements have the effect of advancing or inhibiting religion. The Court's prior holdings illustrate that total separation between church and state is not possible in an absolute sense. "Judicial caveats against entanglement must recognize that the line of separation, far from being a 'wall,' is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship." Some relationship between the State and religious organizations is inevitable. "Entanglement must be 'excessive' before it runs afoul of the Establishment Clause."

The amended MPCP will not create an excessive entanglement between the State and religion. Under the amended program, the State need not, and in fact is not given the authority to impose a "comprehensive, discriminating, and continuing state surveillance" over the participating sectarian private schools. Participating private schools are subject to performance, reporting, and auditing requirements, as well as to applicable nondiscrimination, health, and safety obligations. Enforcement of these minimal standards will require the State Superintendent to monitor the quality of secular education at the sectarian schools participating in the plan. But this oversight already exists. In the course of his existing duties, the Superintendent currently monitors the quality of education at all sectarian private schools.

These oversight activities relating to conformity with existing law do not create excessive entanglement merely because they are part of the amended MPCP's requirements. As the Court held in *Hernandez v. Commissioner*:

> [R]outine regulatory interaction which involves no inquiries into religious doctrine, no delegation of state power to a religious

> body, and no 'detailed monitoring and close administrative contact' between secular and religious bodies, does not of itself violate the nonentanglement command.

The program does not involve the State in any way with the schools' governance, curriculum, or day-to-day affairs. The State's regulation of participating private schools, while designed to ensure that the program's educational purposes are fulfilled, does not approach the level of constitutionally impermissible involvement.

In short, we hold that the amended MPCP, which provides a neutral benefit directly to children of economically disadvantaged families on a religious-neutral basis, does not run afoul of any of the three primary criteria the Court has traditionally used to evaluate whether a state educational assistance program has the purpose or effect of advancing religion. Since the amended MPCP has a secular purpose, does not have the primary effect of advancing religion, and does not create an excessive entanglement, it is not invalid under the Establishment Clause.

The program does not involve the State in any way with the schools' governance, curriculum, or day-to-day affairs

State of Wisconsin Establishment Clause

The next question presented in this case is whether the amended MPCP violates art. I, § 18 of the Wisconsin Constitution. The Respondents argue, and the court of appeals concluded, that the amended MPCP violates both the "benefits clause" and the "compelled support clause" of art. I, § 18. Upon review, we conclude that the amended MPCP violates neither provision.

The "benefits clause" of art. I, § 18 provides: "nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries." This is Wisconsin's equivalent of the Establishment Clause of the First Amendment. This court has remarked that the language of art. I, § 18, while "more specific than the terser" clauses of the First Amendment, carries the same import; both provisions "are intended and operate to serve the same dual purpose of prohibiting the 'establishment' of religion and protecting the 'free exercise' of religion." Although art. I, § 18 is not subsumed by the First Amendment, we interpret and apply the benefits clause of art. I, § 18 in light of the United States Supreme Court cases interpreting the Establishment Clause of the First Amendment.

Unlike the court of appeals, which focused on whether sectarian private schools were "religious seminaries" under art. I, § 18, we focus our inquiry on whether the aid provided by the amended MPCP is "for the benefit of" such religious institutions. We have explained that the language "for the benefit of" in art. I, § 18 "is not to be read as requiring that some shadow of incidental benefit to a church-related institution brings a state grant or contract to purchase within the prohibition of the section." Furthermore, we have stated that the language of art. I, § 18 cannot be read as being "so prohibitive as not to encompass the primary-effect test." The crucial question, under art. I, §18, as under the Establishment Clause, is "not whether some benefit accrues to a religious institution as a consequence of the legislative program, but whether its principal or primary effect advances religion."

Applying the primary effect test developed by the Supreme Court, we have concluded above that the primary effect of the amended MPCP is not the advancement of a religion. We find the Supreme Court's primary effect

test, focusing on the neutrality and indirection of state aid, is well reasoned and provides the appropriate line of demarcation for considering the constitutionality of neutral educational assistance programs such as the amended MPCP. Since the amended MPCP does not transgress the primary effect test employed in Establishment Clause jurisprudence, we also conclude that the statute is constitutionally inviolate under the benefits clause of art. I, § 18.

This conclusion is not inconsistent with Wisconsin tradition or with past precedent of this court. Wisconsin has traditionally accorded parents the primary role in decisions regarding the education and upbringing of their children. This court has embraced this principle for nearly a century, recognizing that: "parents as the natural guardians of their children [are] the persons under natural conditions having the most effective motives and inclinations and being in the best position and under the strongest obligations to give to such children proper nurture, education, and training."

In this context, this court has held that public funds may be placed at the disposal of third parties so long as the program on its face is neutral between sectarian and nonsectarian alternatives and the transmission of funds is guided by the independent decisions of third parties, and that public funds generally may be provided to sectarian educational institutions so long as steps are taken not to subsidize religious functions.

In *Nusbaum II*, this court upheld a state program that provided educational benefits without charge to students with exceptional educational needs. Where public resources were inadequate to attend to a student's exceptional needs, the State could under the program directly contract with private sectarian institutions to provide the necessary services. Reviewing the program, the *Nusbaum II* court emphasized the neutral process by which students were chosen to participate in the program, and the great lengths to which the legislature had gone to make sure that the inculcation of religious tenets did not take place. Applying the primary effect test of *Lemon*, the court concluded that the program violated neither the Establishment Clause nor art. I, § 18.

In *Atwood*, this court upheld a program, much like the amended MPCP, that provided neutral educational assistance. The *Atwood* court considered the constitutionality of educational benefits for returning veterans that encompassed paying the cost of schooling, at any high school or college, including religious schools. Under that program, a student could choose a school, and the State directly paid to the schools the actual increased cost of operation attributed to the additional students. Upholding the program under art. I, § 18, the court concluded:

> The contention that financial benefit accrues to religious schools from [this program] is equally untenable. Only actual increased cost to such schools occasioned by the attendance of beneficiaries is to be reimbursed. They are not enriched by the service they render. Mere reimbursement is not aid.

In concluding that the amended MPCP violated art. I, § 18, the court of appeals relied heavily on this court's decisions in *State ex rel. Weiss v. District Board* and *State ex rel. Reynolds v. Nusbaum*. We find the court's reliance was misplaced.

In *Weiss*, the court held that reading of the King James version of the Bible by students attending public school violated the religious benefits clause of art. I, § 18. Although the court's reasoning in *Weiss* may have differed from ours, its holding is entirely consistent with the primary effects test the Supreme Court has developed and we apply today. Requiring public school students to read from the Bible is neither neutral nor indirect. The Edgerton schools reviewed in *Weiss* were directly supported by public funds, and the reading of the Bible was anything but religious-neutral. The program considered in *Weiss* is far different from the neutral and indirect aid provided under the amended

MPCP. The holding in *Weiss*, therefore, does not control our inquiry in this case.

In *Reynolds*, the court struck down a publicly supported transportation program it perceived was designed to benefit parochial schools. In reaching its conclusion, the *Reynolds* court applied a stricter standard under art. I, § 18 than that used by the Supreme Court under the Establishment Clause. This court has since rejected applying this stricter standard in cases arising under the benefits clause of art. I, § 18. The court's analysis and conclusion in *Reynolds* are therefore not dispositive in our inquiry here.

The Respondents additionally argue that the amended MPCP violates the "compelled support clause" of art. I, § 18. The compelled support clause provides "nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry without consent . . . ." The Respondents assert that since public funds eventually flow to religious institutions under the amended MPCP, taxpayers are compelled to support places of worship against their consent. This argument is identical to the Respondents' argument under the benefits clause. We will not interpret the compelled support clause as prohibiting the same acts as those prohibited by the benefits clause. Rather we look for an interpretation of these two related provisions that avoids such redundancy.

In *Holt*, this court interpreted the compelled support provision and applied it to a state program under which public school children were released from school so that they could attend religious centers for religious instruction. In the context provided in *Holt*, the court interpreted the compelled support clause to prohibit the state from forcing or requiring students to attend or participate in religious instruction. Under this interpretation, the court upheld the program, finding that the children participating in the program did so only by choice and that, although proof of attendance at the religious instruction was required, the program's requirements were directed at preventing deception rather than compelling attendance. "Compulsion to attend is not, initially or subsequently, a part of the program." The court therefore rejected the compelled support challenge.

Applying in this case the interpretation of the compelled support clause provided in *Holt*, we conclude that the amended MPCP does not violate that constitutional provision. Like the program in *Holt*, the amended MPCP does not require a single student to attend class at a sectarian private school. A qualifying student only attends a sectarian private school under the program if the student's parent so chooses. Nor does the amended MPCP force participation in religious activities. On the contrary, the program prohibits a sectarian private school from requiring students attending under the program to participate in religious activities offered at such school. The choice to participate in religious activities is also left to the students' parents. Since the amended MPCP neither compels students to attend sectarian private schools nor requires them to participate in religious activities, the program does not violate the compelled support clause of art. I, § 18.