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Zelman v. Simmons-Harris

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ZELMAN v. SIMMONS-HARRIS, 536 U.S. 639 (2002), argued 20 Feb. 2002, decided 27 June 2002 by vote of 5 to 4; Rehnquist for the Court, O'Connor and Thomas concurring, Souter, Stevens, and Breyer in dissent. As part of a plan to improve educational opportunities in Cleveland, the state of Ohio enacted legislation providing tuition aid to low-income parents. These parents, rather than send their children to the usual public school, could make use of a state-subsidized voucher to send their children to participating public or private schools. In the 1999–2000 school year, no suburban public school participated in the program; instead, 82 percent of the participating schools were religious and 96 percent of the students participating in the program attended these religiously affiliated schools.

In 1999 and 2000, a federal district judge in the Northern District of Ohio and a divided panel of the Sixth U.S. Circuit Court of Appeals concluded that the Ohio law had the primary effect of advancing religion and therefore violated the Establishment Clause of the First Amendment. The Supreme Court overturned this finding, contending that previous decisions have drawn a “consistent distinction between government programs that provide aid directly to religious schools, and programs of true private choice, in which government aid reaches religious schools only as a result of the genuine and independent choice of private individuals” (p. 649). It did not matter that nearly all students attended religiously affiliated schools and that there were few options available for parents who did not want to send their child to a religiously affiliated school. Instead, the Court emphasized that the program was facially “neutral in all respects toward religion” (p. 653) and that the number of students attending religiously affiliated schools varies from year to year. The dissenters, in contrast, stressed these enrollment patterns. Noting that two-thirds of the parents participating in the program sent their children to schools that “proselytized in a religion not their own” (p. 704), Justice David Souter accused the majority of “ignoring the meaning of neutrality and private choice.”

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