

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 82-195

TITLE VAN D. MUELLER AND JUNE NOYES, Petitioners v.
CLYDE E. ALLEN, JR., ET AL.

PLACE Washington, D. C.

DATE April 18, 1983

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IN THE SUPREME COURT OF THE UNITED STATES

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VAN D. MUELLER AND JUNE NOYES, :
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Petitioners :
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v. : No. 82-195
:
CLYDE E. ALLEN, JR., ET AL. :
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Washington, D.C.

Monday, April 18, 1983

The above-entitled matter came on for oral argument
before the Supreme Court of the United States at 12:59 a.m.

APPEARANCES:

WILLIAM I. KAMPF, St. Paul, Minnesota; on behalf
of the Petitioners.

DOUGLAS C. BLOMGREN, ESQ., Special Assistant
Attorney General of Minnesota, St. Paul,
Minnesota; on behalf of the Respondent.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments first this afternoon in Mueller and Noyes against Allen.

Mr. Kampf, you may proceed whenever you are ready.

ORAL ARGUMENT OF WILLIAM I. KAMPF, ESQ.

ON BEHALF OF THE PETITIONERS

MR. KAMPF: Mr. Chief Justice, and may it please the Court:

Minnesota has adopted a comprehensive scheme for compulsory free public education which is embedded in its constitution. Over 730,000 students presently attend public elementary and secondary schools in the State of Minnesota. Minnesota prohibits tuition and fee charges for required educational courses for students attending public schools.

Over 91,000 students presently attend private elementary and secondary schools in Minnesota. Of these, 96% are in schools whose primary function is the inculcation of religion. All of these schools --

QUESTION: Are you speaking of the primary schools?

MR. KAMPF: Primary and secondary, Mr. Justice.

QUESTION: Primary and secondary. You say their function is to inculcate religion or does not the State of Minnesota require certain basic -- the same basic standards as for all public schools?

MR. KAMPF: Mr. Chief Justice, my understanding from

1 this Court's prior rulings in Lemon and Nyquist was that the
2 Court believes that the primary function of a religious school
3 is to inculcate religion through the educational process. And,
4 I am simply giving --

5 QUESTION: Do you understand the Court to have laid down
6 some abstract kind of rule of law about numerous different kinds
7 of parochial schools or private schools; that you don't need
8 record support any more for a particular factual conclusion?

9 MR. KAMPF: Mr. Justice Rehnquist, my understanding is
10 that the 96% of the private school students who attend religious
11 schools are schools that identify themselves as religious schools,
12 and as I believe the Court previously found, those schools'
13 primary function then is to teach religion.

14 QUESTION: You mean found about these particular schools
15 in Minnesota?

16 MR. KAMPF: No.

17 QUESTION: Are you suggesting they are just all
18 homogenized, that if a school is identified as a religious
19 school, as you put it, it is automatically -- Its primary
20 function is to inculcate religion?

21 MR. KAMPF: Yes, I believe that would be the teaching
22 that I have taken from the Court's decision in Lemon and Nyquist.

23 The statute in question permits parents of both public
24 school children who do not incur tuition and parents of sectarian
25 school children who do to deduct expenses incurred for tuition

1 up to \$500 for grades K through 6, \$700 for grades 7 through 12
2 from their taxable income.

3 In addition, deduction for textbook and transportation
4 expenses are permitted even though Minnesota already provides
5 equal amounts of textbooks and transportation to students in both
6 public and parochial schools.

7 QUESTION: Are they all private schools or just church-
8 sponsored schools?

9 MR. KAMPF: Well, Mr. Chief Justice, I refer to
10 parochial schools as a result of the fact that it is such a
11 high percentage, that is to say the 96%, that the remaining 4%,
12 which would be deemed to be non-sectarian, would pay out until
13 insignificance. Obviously by that I mean all private school
14 students --

15 QUESTION: What about a private school that has no
16 church sponsorship?

17 MR. KAMPF: They would receive the same benefits as those
18 that have church sponsorship.

19 QUESTION: Mr. Kampf, how much of these two deductible
20 amounts have been increased since 1956?

21 MR. KAMPF: The original was \$200. It was changed in
22 1976 to the present levels of \$500 and \$700. However, there
23 have been bills in every biennial session of the legislature
24 since to increase it as much as 100% from that level.

25 QUESTION: Those bills have not carried?

1 MR. KAMPF: They have only carried one House at a time
2 up to this date, Mr. Justice Powell.

3 The total of tuition and fees paid to public schools
4 in Minnesota by over 800,000 students in the fiscal year 78-79
5 was approximately \$2 million. This would include driver education
6 charges. The total of other fees paid to the public schools in
7 that year, some of which would be deductible and some of which
8 would not, was only approximately \$900,000.

9 By contrast, the total amount deducted under the
10 statute in that same year was over \$19 million. The only other
11 deductible expenses, other than the \$2.9 million I previously
12 alluded to for public school students' families, would be
13 relatively minor amounts such as pencils, supplies, and atheletic
14 equipment.

15 This statute represents an attempt to do that which
16 this Court has previously prohibited in the Lemon and Nyquist
17 cases. The statute advances religion in that its effect is to
18 subsidize an activity intended to inculcate religion.

19 Petitioners ask the Court to simply apply controlling
20 constitutional standards firmly rooted in prior decisions as set
21 forth in the Nyquist case.

22 QUESTION: Would you challenge the deductions of -- the
23 deductibility of contributions to such schools?

24 MR. KAMPF: No, that is not at issue in this case, Mr.
25 Justice.

1 QUESTION: Well, I just asked you, would you think they
2 would be questionable under your thesis?

3 MR. KAMPF: Not --

4 QUESTION: Are these deductions subsidies, deductions
5 of contributions? Is the right of a donor to deduct contributions
6 to a religiously sponsored school a subsidy?

7 MR. KAMPF: As I would indicate later in my argument,
8 Mr. Justice, the deduction of a contribution which comes out
9 of volunteerism is vastly different than a deduction of a fee for
10 a service.

11 QUESTION: No. What is the answer to my question?

12 MR. KAMPF: I don't believe that this case in any way
13 affects that and I don't believe that deductibility of the
14 contribution to the school would be in question, no, Your Honor.

15 QUESTION: And, your submission wouldn't put those in
16 question?

17 MR. KAMPF: No. This only relates to a fee for a
18 service.

19 This case, we believe, is --

20 QUESTION: Do you think there is a constitutional
21 difference between the two?

22 MR. KAMPF: A vast difference. I think that the Court
23 in Nyquist seemed to indicate that a deduction for a fee for
24 a service is a direct subsidy of the service itself not unlike
25 the deduction for medical services which is clearly a subsidy

1 of good health services.

2 The distinction was in the prohibition --

3 QUESTION: I suppose you could run the argument either
4 way, that this deduction would be even more clearly constitutional
5 than just a contribution to support religion.

6 MR. KAMPF: The difference --

7 QUESTION: This deduction has to do with supporting an
8 educational performance as well. As far as you know, just
9 deducting a contribution could be wholly for religious purposes.

10 MR. KAMPF: The distinction between a deduction for a
11 fee for service and the deduction for a voluntary giving is in
12 the quid pro quo; that is to say the donor receives back the
13 religiously-oriented educational services which would not be
14 present in the voluntary contribution. The voluntary contribution,
15 there is no quid pro quo whatsoever.

16 We believe that there are four ways that this case is
17 controlled by Nyquist, Lemon, and Tilton. First, the effect of
18 this statute is entirely disproportionate and overwhelming in
19 its benefit to religious education.

20 Second, it violates the establishment clause due to
21 the unrestricted nature of the subsidy inherent in the law.

22 Third, as in Nyquist, it violates the establishment
23 clause because it permits a deduction of a fee for a specific
24 service which is inherently religious.

25 And, fourth and lastly, like the aid in Nyquist and

1 Lemon, it would require an impermissible entanglement of the
2 state in religion, both in order to administer and fund it within
3 constitutional limits.

4 With regard to disproportionality, the benefits of
5 this statute flow disproportionately to students attending
6 parochial schools. Since common sense dictates that the major
7 educational expense is tuition, Minnesota's equivalent of tuition
8 for public schools is its foundation aids which this year are
9 over \$1400 per pupil.

10 As can be seen from the facts in this case, the
11 overwhelmingly largest form of aid in this case is the deduction
12 for tuition. This deduction is analytically indistinguishable
13 from the aid allowed in Nyquist.

14 QUESTION: Mr. Kampf, suppose the state, instead of
15 allowing the tax deduction, had simply given -- decided not to
16 run public schools at all and just gave a voucher to the parents
17 and let them send their children to whatever school they wanted.
18 Is there a problem with that?

19 MR. KAMPF: That case is not before the Court and --

20 QUESTION: I know that. But, do you see a problem?

21 MR. KAMPF: I believe that presents some very sub-
22 stantial, different and more sophisticated problems than this
23 case. In the first instance, the fact that the Minnesota
24 Constitution requires a free public education for those who
25 desire it is, I believe, distinguishable under the circumstances

1 since it does not require the funding of private or religious
2 school education.

3 QUESTION: Well, would you concede that a voucher system
4 would be constitutional?

5 MR. KAMPF: No, I would not. I believe that the voucher
6 system would have the same effect in Minnesota as the deduction;
7 that is to say the funding primarily of religious education.

8 As the state's own revenue analyses from 1976, 1978,
9 and 1980 indicate, the state has known throughout that the
10 primary benefit under this statute is the tuition deduction.

11 Although Minnesota points to a broad class that benefits
12 in theory from the deduction, the deductible non-tuition expenses
13 are plainly insignificant in relation to tuition. As the First
14 Circuit indicated in the Norberg case, they are a mere window
15 dressing. Any lack of evidence on this point results from the
16 choice by the state not to require taxpayers to disclose the
17 specific nature of the expenses deducted as the forms appended
18 to the briefs make quite clear. Even without that information,
19 however, the facial availability of the tuition deduction only
20 puts sectarian students into a very small number of non-sectarian
21 private school students suffices to establish impermissible
22 effect under Nyquist.

23 With regard to the lack of restrictions on the aid,
24 the subsidy resultant from this deduction is without restriction
25 and thereby falls afoul of the limits created in Lemon and Nyquist.

1 The flaw lies in the availability of the aid for diversion to
2 religious uses such as the repair of school chapels as was true
3 in Nyquist. Even when the aid is permitted, as this Court
4 permitted in Tilton, requirements have been made that no tax
5 monies flow to religious activities as in the striking down of
6 the 20-year limitation in that case.

7 Even a subsidy neutral on its face must be restricted
8 when granted to a religious institution, a limitation which
9 this statute fails to meet.

10 QUESTION: Well, this subsidy, you say, is a
11 deduction?

12 MR. KAMPF: That is correct. It is a subsidy in the
13 form of a deduction from tax.

14 QUESTION: You just told me you wouldn't question an
15 ordinary deduction for a contribution to a religiously-oriented
16 school. Now, those -- There is no requirement that those
17 contributions not be for a religious purpose, is there?

18 MR. KAMPF: Well, as I indicated, to not tax under
19 those circumstances is the same as to not tax any other idio-
20 homogenary contribtuion.

21 QUESTION: Exactly. I agree with you.

22 MR. KAMPF: But, here, there is an exchange in effect
23 then. The deduction under the statute is a discount or a rebate
24 on tuition.

25 QUESTION: Well, arguably, the state is getting

1 something for its grant here in a way that it isn't when it
2 just lets you deduct and it doesn't get anything in return.

3 MR. KAMPF: Well, the answer to that is that the public
4 schools in Minnesota, I believe, are open to all people. All
5 children in the state must receive, by the Constitution of
6 Minnesota, a free public education.

7 QUESTION: You are not suggesting though if everybody
8 who was going to private school went to public schools it wouldn't
9 cost the public some money?

10 MR. KAMPF: Well, I think the question --

11 QUESTION: Would you? Would you?

12 MR. KAMPF: No, of course not.

13 QUESTION: All right. Well, then, the public is
14 getting a benefit?

15 MR. KAMPF: That is an indirect benefit which I think
16 the First Amendment requires the public to bear by having free
17 public schools.

18 There is nothing in this statute that restricts the
19 deductibility of field trips, tests, maps, globes, instruction
20 materials or religious instruction itself through the tuition
21 deduction.

22 To allow this pirouette around Lemon and Nyquist is
23 to render them meaningless. Just as states may not provide
24 direct aid to religious schools, they may not provide such aid
25 indirectly by tax deductions and credits, as I believe Nyquist

1 so firmly held.

2 With regard to the fee for service, I believe that
3 the Court held in Nyquist the deduction of fees for services
4 is a direct subsidy of the service, as I indicated previously,
5 in effect, a discount or rebate. This is, I believe, directly
6 analogous to the medical services deduction which parenthetically
7 Congress has recently reduced in order to reduce the amount of
8 medical care consumed.

9 The comparison would be to take the other forms of
10 medical subsidy and compare them to that form of subsidy for
11 religion present here. That is to say Medicare and Medicaid
12 are direct subsidies of health services.

13 If the State of Minnesota were to fund a program
14 similar to Medicare and Medicaid for religious education,
15 quite clearly under the Lemon case this Court would strike it
16 down.

17 The effect then of this statute is the same as in
18 Nyquist; that is to say the taxpayer acts in either case in
19 anticipation of receiving the benefit of the deduction, thereby
20 subsidizing attendance at a religious school by deducting the
21 fees charged for it.

22 Lastly, this deduction impermissibly entangles the
23 state in religion in two ways. First, if the state were to
24 undertake the duty Tilton and Lemon establish of insuring that
25 expenses deducted are not for services or materials used in the

1 teaching of religious tenants, then comprehensively entangling
2 audits of tax returns would be required, a task the state has
3 quite obviously already failed at as even a cursory examination
4 of the Minnesota tax returns were revealed.

5 QUESTION: Does the record in this case, Mr. Kampf,
6 show what is the actual cost per capita to education children
7 in the private schools or in the parochial, church-sponsored
8 schools?

9 MR. KAMPF: The only thing we have in the record would
10 be the national averages of \$500 to \$700 in tuition, not the
11 actual cost, Mr. Chief Justice. We don't have anything in the
12 record with regard to the actual cost of such --

13 QUESTION: It must be a great deal more than \$500 or
14 \$700.

15 MR. KAMPF: I would assume so or they wouldn't be
16 receiving much of an education, I imagine.

17 QUESTION: That figure should not be difficult to
18 ascertain and could have been put in the record by taking the
19 total cost of the primary and secondary schools and dividing it
20 by the number of pupils.

21 MR. KAMPF: Unfortunately with regard to private
22 schools, I don't believe that information --

23 QUESTION: I am just talking about the public schools.

24 MR. KAMPF: Oh! In the public schools, the foundation
25 aids this year in Minnesota are approximately \$1400. It is

1 actually called a pupil unit. So, we can surmise that the
2 expense of education in the public schools was something slightly
3 in excess of that number.

4 QUESTION: So that the \$500 or \$700 doesn't cover the
5 entire cost?

6 MR. KAMPF: No. No more so than the subsidies present
7 in Lemon or in the repair subsidies present in the Nyquist case.

8 The tuition deduction itself does not permit examination
9 of the cost as I indicated was true in Lemon and Nyquist, without
10 entering into an investigation of the school itself, a procedure
11 which I believe would be more damaging to the religious function
12 of the school than it would be to the state. Similarly, since
13 the textbook and transportation expense is deductible or for
14 expenses over and above those already provided equally to
15 public and private school children and since the State of
16 Minnesota prohibits charging for textbooks in the public schools,
17 the textbook and transportation deductions may well be for some-
18 thing beyond secular needs of the students.

19 Again, without entanglingly audits which the state
20 does not undertake, an impermissible danger exists that the state
21 is aiding religious activities despite the facial prohibitions
22 of this statute.

23 The second form of entanglement is with regard to
24 politics. The State of Minnesota has been undergoing a fiscal
25 crisis. During the past year, the Minnesota legislature has had

1 to cut aid to public schools twice. Despite those substantial
2 cuts, this deduction and the subsidy inherent from it has not
3 been affected in any way.

4 As I indicated previously, in every legislative session--

5 QUESTION: Well, maybe the legislature feels that
6 private schools are doing a better job than the public schools.

7 MR. KAMPF: That is quite possible.

8 QUESTION: That is certainly a logical inference from
9 the fact you just stated, isn't it?

10 MR. KAMPF: I assume it is quite possible, Mr. Justice
11 Rehnquist, but I am not sure that the First Amendment would
12 permit that.

13 QUESTION: It wouldn't permit the State of Minnesota
14 to feel that private schools were doing a better job than public
15 schools?

16 MR. KAMPF: To fund them is what I am discussing, Mr.
17 Justice Rehnquist.

18 QUESTION: Mr. Kampf, you suggested the financial
19 crisis in Minnesota. Would that crisis be benefited or augmented
20 if all the parochial schools were closed up?

21 MR. KAMPF: I don't think there is anything in the
22 record of this case or any other case --

23 QUESTION: What does your common sense tell you?

24 MR. KAMPF: That -- Obviously, if all the parochial
25 and private schools of the State of Minnesota or of any other

1 state closed, it would cause great economic hardship on the state.

2 QUESTION: But, you were talking about a financial
3 crisis contributed to these deductions.

4 MR. KAMPF: I don't think --

5 QUESTION: It cost the state \$2,400,000 did you say?
6 What is the annual cost?

7 MR. KAMPF: That was in 1978. I believe that the
8 costs more recently -- The last numbers that I saw of an
9 estimate were \$15 million for the biennium that is presently
10 going to end June 30th.

11 QUESTION: Is that in loss of taxes to the state?

12 MR. KAMPF: Yes.

13 QUESTION: What is the two million four?

14 MR. KAMPF: That was the loss of taxes in 1978.

15 QUESTION: And they increased to \$17 million?

16 MR. KAMPF: For biennium. That is for two years.
17 Minnesota operates fiscally on a biennium.

18 QUESTION: What is the total budget for public education
19 in Minnesota?

20 MR. KAMPF: I am not sure of that, Mr. Justice Powell.
21 I believe it is in the billions.

22 QUESTION: Did you say the pupil cost -- What did you
23 say, \$1200, \$1400?

24 MR. KAMPF: In excess of \$1400.

25 QUESTION: In excess of \$1400. What percentage of

1 the total school population was attending sectarian schools in
2 1956 when this statute was enacted?

3 MR. KAMPF: I don't have those figures. The only
4 figures that we have available are for the period from 1976
5 to the present and during that period of time they appeared to
6 have increased substantially.

7 QUESTION: What do you mean by substantially?

8 MR. KAMPF: Well, the numbers in sectarian schools
9 appear to have remained stable, slightly risen, from 85,000 to
10 91,000, while the number of students attending public schools
11 between 1978 and the present have reduced from -- I think it
12 was 815,000 to 730,000.

13 QUESTION: Do you know what the figures were, do you
14 have an estimate in 1956?

15 MR. KAMPF: No, I do not have any knowledge of what
16 was true in 1956.

17 QUESTION: The annual reports of the State Board of
18 Education would show, wouldn't they?

19 MR. KAMPF: Yes, I am sure that they would.

20 QUESTION: Do you agree that the state has a sub-
21 stantial interest in the preservation of non-public schools to
22 afford a choice?

23 MR. KAMPF: I believe that the state has an important
24 interest in not being hostile to the continued existence of
25 private and parochial schools.

1 QUESTION: Is that what Nyquist said?

2 MR. KAMPF: I believe that is what the Court held in
3 Nyquist; that there should not be any hostility to the continued
4 existence of those schools. And, where aid was possible in a
5 mutual fashion, not true in this statute, as was true in Everson
6 and Allen. I think the distinction between this statute and
7 Everson-Allen deductions is quite -- a) it is quite clear from
8 the fact that in the Marburger case, summarily affirmed by this
9 Court, a subsidy in dollars for textbooks was disallowed because
10 there was no control, no guarantee of secular nature of the aid.
11 That certainly is not present in this statute. There is no
12 guarantee.

13 QUESTION: I think you -- Are you finished, Justice
14 Powell?

15 QUESTION: For the moment.

16 (Laughter)

17 QUESTION: I think you referred to this subsidy, as
18 you have described it, as an indirect aid to religion.

19 MR. KAMPF: Well, it is a direct aid in the sense of
20 it being a discount or rebate on the cost of religious school
21 education.

22 QUESTION: Well, now, in Walz the Court held that
23 contributions to churches were constitutional, the allowance for
24 a deduction was. Now, that, of course, is a very direct aid
25 to a church, is it not?

1 MR. KAMPF: Well, as I understood Walz, it was an
2 exemption from property tax of the church buildings itself. I
3 think the distinction between the Walz exemption and the deduction
4 of user fee here lies, as I indicated, with the fact that Walz
5 was dealing with a historically embedded, more than 200 years of
6 history, of non-hostility and protection of church and other
7 idiohomogenary institutions from hostile taxation. This is not
8 the same. This is --

9 QUESTION: It surely is a very direct aid to a church,
10 is it not?

11 MR. KAMPF: Well, again, the distinction lies in the
12 giver. Here, there is an exchange, a quid pro quo between the
13 giver of the money who receives through their child a service,
14 religious education.

15 QUESTION: Do you suggest that the churches give nothing
16 to their parishioners?

17 MR. KAMPF: Well, I don't know that it is something
18 that the courts of the United States have ever measured nor one
19 that one could place in a quid pro quo; that is to say an
20 exchange. At least I don't believe that any religion thus far
21 has indicated it is an exchange dollar for dollar for some service.

22 I think that what we are discussing here is an exact
23 dollar for dollar, in effect, service; that is to say the
24 religious education flows to the child of the giver of the dollars
25 who then deducts them. I think it is more analogous to the

1 medical deduction or home interest deduction.

2 I would like to reserve my remaining time for rebuttal.

3 CHIEF JUSTICE BURGER: Mr. Blomgren?

4 ORAL ARGUMENT OF DOUGLAS C. BLOMGREN, ESQ.

5 ON BEHALF OF THE RESPONDENT

6 MR. BLOMGREN: Mr. Chief Justice, and may it please the
7 Court:

8 The issue in this case is whether by exempting that
9 portion of a taxpayer's income which has been devoted to the
10 general educational expenses of his or her children. The State
11 of Minnesota has adopted legislation respecting the establishment
12 of religion.

13 The statute was adopted in 1955 and, as Mr. Justice
14 Powell's questions elicited, it was amended in 1976 to include
15 within the ambit of the deductions certain textbooks and materials
16 which before that time were not covered by the deduction.

17 It was again amended in 1978 to assure that the deduction
18 was taken for those expenses related to curricular activities
19 rather than extracurricular activities.

20 The challenged deduction does not result in a straight
21 \$500 benefit or a straight \$700 benefit, rather it constitutes
22 a deduction against the income of a taxpayer in calculating
23 taxable income. As a matter of fact --

24 QUESTION: Mr. Blomgren, to that extent, all of the
25 taxpayers of the state share, do they not?

1 MR. BLOMGREN: Certainly they do. Certainly they do.
2 And, it is that broad class of beneficiaries which we have said
3 is a crucial part of this particular deduction. It was that
4 point which was relied upon by the three judge district panel
5 which upheld this statute originally in 1978 and by the District
6 Court and the Eighth Circuit Court of Appeals which upheld it
7 again when it was challenged in 1980.

8 Now, in assessing the validity of this statute under
9 the Establishment Clause, it is very important that the Court
10 keep foremost in mind that the central prohibition of the
11 Establishment Clause is the singling out of religious organiza-
12 tions or religious groups for direct assistance.

13 The question of whether or not a statute provides
14 direct assistance is crucial because it is that type of assistance
15 which denotes sponsorship, advancement, a relationship between
16 the state and the religious institutions of the state which is
17 one of sponsor and sponsored. It is also a symbolic matter
18 that this Court recognized in Grendel's Den whether or not the state
19 has entered into a sponsorship relationship with religion.

20 It is also important whether or not a statute singles
21 out any particular group or any particular type of institution
22 for benefits, because the Establishment Clause requires neutrality,
23 it requires that legislatures adopt laws which neither advance
24 nor inhibit religious institutions, and to the extent that broad
25 classes of beneficiaries have been identified under a statute,

1 it indicates that any religious benefit is incidental to that
2 broad classification.

3 The plaintiff suggests that this case is controlled by
4 Nyquist, but the differences between this case and Nyquist are
5 the differences which lie at the heart of the Establishment
6 Clause.

7 QUESTION: Then you are not asking that Nyquist be
8 overruled?

9 MR. BLOMGREN: We are not, Your Honor. We submit that
10 Nyquist was properly decided and can stand equally beside this
11 case.

12 QUESTION: I would like to have you explain the
13 differences between this case and Nyquist.

14 MR. BLOMGREN: Okay. Nyquist involved two types of
15 programs. The first was a direct transfer of monies from the
16 state treasury to low-income people, approximately \$50,
17 essentially in exchange for enrolling their children in non-
18 public schools. Coupled with that was a very careful --

19 QUESTION: One can certainly say that that was true
20 here at least indirectly.

21 MR. BLOMGREN: Your Honor, if it can be said that it
22 is true, it is going to have to be extremely indirectly, because
23 what the legislation --

24 QUESTION: Explain that, then.

25 MR. BLOMGREN: Okay. What the legislature has said is

1 that for those actual expenditures incurred by a particular
2 taxpayer in educating his or her child either in a public or
3 private school, if they actually incurred those expenditures,
4 then it is going to be treated as a reduction in one's net income
5 in arriving at one's taxable income.

6 Essentially what the legislature has said is that we
7 are going to acknowledge the fact that educational expenses,
8 regardless of where those monies are paid, constitute a reduction
9 in available income, in disposable income, in much the same way
10 that payments to physicians or --

11 QUESTION: So that the rich man's son who goes to St.
12 Paul's Academy in your city gets the same benefit on his parents'
13 return?

14 MR. BLOMGREN: Your Honor, as with any deduction, there
15 is going to be a disparate effect with regard to the amount of
16 money one actually pays and their particular income. That is
17 inherent in a deduction under a progressive income tax system.
18 Just as if someone chooses to pay far more money than his neighbor
19 to physicians or for mortgage payments and that person has a
20 higher income, they are going to receive a larger deduction and
21 they are going to be in a substantially different position than
22 those who pay less.

23 But, that has to do with whether or not deductions
24 under progressive income tax system are wise or not. But, it
25 doesn't implicate Establishment Clause values, because it is not

1 a distinction made upon religious lives or the singling out of
2 religious institutions or those attending those institutions, but
3 rather is a long, traditional line of income and expenditure which
4 are the classic definitions, classic classifications used in an
5 income tax system.

6 Continuing on --

7 QUESTION: While I have you interrupted, let me ask
8 you something about your textbook deduction. Actually you had
9 most of this under Allen anyway, didn't you?

10 MR. BLOMGREN: As a matter of fact that is true. There
11 is an Allen type provision of textbooks to both public and private
12 students. The --

13 QUESTION: Well, then, your Minnesota deduction really
14 gives the parent on the textbook end something that he wouldn't
15 have had under Allen?

16 MR. BLOMGREN: Okay. First, one must assume that
17 textbooks, secular textbooks, which would fall under deduction,
18 are generally being provided throughout. They are generally
19 being provided. So that it is unlikely that they are going to
20 be major amounts of deductions taken which are attributable to
21 textbooks.

22 QUESTION: But, what bothers me with the argument on
23 both sides is it seems to me you are arguing statistics and I
24 think we really ought to be arguing basic principles.

25 MR. BLOMGREN: I agree, Your Honor, that we ought not

1 be arguing statistics beyond a particular point. It seems to
2 me that the crucial statistics are those which identify whether
3 or not the nominal class provided by the statute actually does
4 result in real and substantial benefits across that class. And,
5 once it has been established that, by statistical analysis if
6 that need be, that benefits to those in public schools are
7 not illusory, it seems to me then that the classification system
8 has been proven to be neutral and does not result in direct
9 assistance to any specialized class.

10 QUESTION: Now may I get back to my question about --

11 MR. BLOMGREN: About Nyquist, yes.

12 QUESTION: No, about Allen.

13 MR. BLOMGREN: Oh, I am sorry.

14 QUESTION: -- and the additional items which your
15 statute gives that you don't already have under Allen. And,
16 my second question, of course, there is is it not then benefiting
17 parochial school students?

18 MR. BLOMGREN: Your Honor, there is included within
19 the ambit of deduction of materials beyond textbooks. Those
20 will include things such as art supplies, home economics, shop
21 supplies. They will include gym uniforms, tennis shoes. They
22 will include very mundane items such as pencils, paper, notebooks,
23 all of which are deductible.

24 The provision of a deduction in that particular case,
25 however, doesn't provide any state sponsorship of those

1 expenditures. There is no money being transferred out of the
2 legislature here so that those things will be provided. Thus,
3 it is entirely unlike those provisions where a particular
4 equipment is being supplied by the state. These are all being
5 supplied by individual expenditures and there is no transfer
6 of money by the state.

7 It is also important to know that under Section 170,
8 a wealthy benefactor might buy these same materials, receive a
9 deduction for them and make them available to those attending
10 sectarian schools. There the Court, it appears to me, is not
11 likely to say that that would constitute state or federal
12 sponsorship. The religious institutions that may benefit simply
13 because a wealthy person has provided a fund for those students
14 to use in buying books, in buying materials, or even in paying
15 tuition.

16 There are also benefits available to public school
17 students under that textbook expenditure. As we have indicated,
18 materials such as personal items, personal physical education
19 items, and it is this type of expenditure that is not taken into
20 consideration by the statistics that the plaintiffs have presented.
21 They assume in all their briefs below and in the brief before
22 this Court that any benefit to those attending public schools
23 must be de minimus. But, there are about 800,000 public school
24 students and if a small percentage of those people took deductions
25 for relatively minor amounts, the statistical analysis would be

1 completely different, vastly different, than what has been pre-
2 sented by the plaintiffs so far.

3 QUESTION: I am puzzled about that because isn't the
4 whole purpose of the statute to provide support for the private
5 sector and keep the other school system alive and to the extent
6 that money is funneled into the people that go to public schools,
7 it really is kind of incidental, isn't it? It doesn't serve the
8 major purpose of the statute, let me put it that way.

9 MR. BLOMGREN: Your Honor, the major purpose of the
10 statute is to assure -- There are several purposes of the
11 statute, but one of them is to assure that there is an availability
12 of choice that individuals can make as to whether to attend or not.

13 It is also a legislative recognition that the income
14 devoted to educating one's child does constitute a drain which
15 can equitably and reasonably be recognized by the legislature in
16 identifying taxable income much the same way when you expend money
17 on medical assistance or things of that sort. The legislature
18 is going to recognize that in calculating taxable income.

19 So that there are benefits and the purpose of the
20 statute is pursued to the extent that there are benefits available
21 for public school students as well.

22 It also seems to me too that even if the purpose were
23 limited solely to maintaining the continued viability, if you
24 will, of private schools so long as there is not a primary effect
25 which advances religion, that purpose certainly is not going to

1 be considered and invalid sectarian purpose. Many of the cases
2 that this Court has reviewed and many of the types of programs
3 that it has already upheld relate solely to those people attend-
4 ing private schools, non-public schools. A very good example
5 most recently are those benefits that were available to the non-
6 public schools in the Regan case where reimbursements for taking
7 attendance, for administering tests, for grading tests were all
8 valid and that is even where you have a purpose that is clearly
9 aimed only at non-public schools. I don't think that is the case
10 with regard to this particular statute.

11 The plaintiffs do suggest that in a 1976 Revenue
12 Memorandum prepared by a staff member of the Department of
13 Revenue, and it is dated several days after the effective date
14 of the legislature, but I understand there was one before the
15 effective date of the law, but it is my understanding that there
16 was another one floating around before that time, suggests that
17 the benefits are only available to those attending non-public
18 schools.

19 That memorandum represents an attempt by the Revenue
20 Department to say these are the figures we can get, we are going
21 to assume it is only for tuition. If there is anything that
22 showed what actually is going on and what their effect of the
23 statute is it is going to be the more recent data submitted by
24 the Revenue Department which, as the Justice Department's
25 amicus brief indicates, over 204,000 dependents were represented

1 by that deduction and at that time there were only about 90,000
2 sectarian students. So that the majority of those people taking
3 the deduction are actually not attending sectarian schools.

4 That, it seems to me, is a clear indication of the
5 broad effect, the broad availability of the deduction.

6 QUESTION: Does the record tell how large the deduction
7 was that they took?

8 MR. BLOMGREN: No, it does not.

9 QUESTION: It may be \$5.00 for each or something like
10 that.

11 MR. BLOMGREN: Yes. It does not, although that is
12 definitely a shortcoming in the statistics, but it is not a
13 material one, because --

14 QUESTION: Well, is it likely that a parent of a public
15 school child would have \$500 of non-tuition expenses that would
16 be deductible?

17 MR. BLOMGREN: Your Honor, it is possible that those
18 attending public schools may. For instance, those --

19 QUESTION: It may be possible, but you are talking
20 about 100,000 people in your example.

21 MR. BLOMGREN: That is right.

22 QUESTION: Do you think 100,000 of them had a \$500
23 deduction? It seems very unlikely.

24 MR. BLOMGREN: It is very unlikely that 100,000 of
25 them have a full \$500 deduction. But, it is also unlikely that

1 all of those people attending sectarian schools or non-public
2 schools will have maximum deductions as well.

3 In order to achieve that calculation, you have to
4 assume that all private schools charge tuition and I think it
5 is fairly clear that there are some who provide or charge on
6 a basis of whether one can afford it, to what degree one can
7 afford it.

8 The decisions of this case clearly indicate that
9 extensions from taxation do not constitute the active sort of
10 assistance which traditionally has been thought to constitute
11 state sponsorship of religion. This was true in the Walz case
12 where property tax exemption was found not to constitute any
13 active sponsorship of the religious institution. And, it is
14 based upon several factors which go to the very heart of the
15 Establishment Clause and go to the very nature of tax deductions.

16 When a state government determines to abstain from
17 taxing income devoted to particular activities, it has not
18 transferred any state money from the treasury to any particular
19 individual or to any particular group.

20 QUESTION: But, there is no escape, is there, from
21 the fact that every tax deduction, however it is described,
22 whatever its form may be, in effect spreads the burden of that
23 tax deduction over all the taxpayers?

24 MR. BLOMGREN: That is true.

25 QUESTION: That was true in Walz, was it not?

1 MR. BLOMGREN: Yes, that is absolutely true in Walz.

2 QUESTION: There are atheists and agnostics and persons
3 of a whole range of non-belief were contributing to a part of
4 the church who received the exemption.

5 MR. BLOMGREN: Your Honor, I don't believe that they
6 are contributing to the support of the church. What they are
7 contributing to is the support of the state and whether or not
8 the state can identify --

9 QUESTION: They are making up for the fact that the
10 church property was not taxed, were they not? Didn't Walz
11 recognize that?

12 MR. BLOMGREN: Walz recognized the fact that to the
13 extent that some institutions are relieved of the tax burden
14 others will be called upon to pay more.

15 QUESTION: To pay more.

16 MR. BLOMGREN: But, what is involved at the heart of
17 the Establishment Clause is whether or not the legislature or
18 state government has decided to enter into a sponsorship
19 relationship with the church, advancing its cause by either
20 directing money to an obviously sectarian purpose or singling
21 it out for some particular special kind of benefit.

22 In Walz it was particularly important that religious
23 institutions fell inside a broader class of non-profit
24 institutions and this case essentially presents the issue of
25 whether or not Walz were limited only to educational institutions.

1 It would somehow therefore be rendered unconstitutional. The
2 fact is that those institutions which fall inside the category,
3 the expenditures at those institutions which fall inside the
4 classification system used in the Minnesota deduction constitute
5 all of those expenses that are likely to be incurred or generally
6 are incurred by those attending public or private schools.

7 It is impossible to identify, I believe, even if we
8 put our minds to it very strenuously, some type of expenditure
9 which public school students incur which does not receive a
10 deductible status, but, which if incurred by private school
11 students would. Those expenditures which are actually incurred
12 by those in public schools do result in tax deductions.

13 The benefits that any individual receives under this
14 particular type of deduction are as Justice White pointed out in
15 his question at least more indirect than those an institution
16 would have received under a Walz style tax exemption.

17 What is going on, for instance, in Section 170 is a
18 direct payment to an institution which qualifies for tax
19 deduction.

20 Now, the plaintiffs suggests that the fundamental,
21 crucial distinction is between deductions which are received
22 for payments which flow from disinterested generosity and those
23 which flow from payment as user fees. But, it is impossible
24 to identify a constitutionally significant difference in those.
25 If, for instance, the purpose of the Establishment Clause is to

1 make sure that the state does not enter into a relationship of
2 sponsorship with a church, then the user fee analysis that the
3 plaintiffs put forth distinguishes between the Section 170 type
4 of direct payment to religious institutions for obviously
5 religious purposes, the building of buildings and payment of
6 fees to clergy, things of that sort, and makes that valid. It
7 makes it invalid for persons to pay tuition to an institution
8 that provides education to his or her child or if, for instance,
9 we were to say that the Establishment Clause's purpose was to make
10 sure that no one is taxed in order to support a religion other than of
11 their own choosing, we find that the user fee analysis makes
12 another decision that bears no relationship to the Establishment
13 Clause. What it does is to say that equally indirect benefits
14 to individuals and to institutions are somehow different under
15 that purpose and permits one and invalidates the other.

16 The plaintiffs use of statistics is also difficult in
17 this particular case, difficult to identify the reasons for
18 which it is material to Establishment Clause analysis. Their
19 statistics indicate that about 10% of those attending schools
20 attend sectarian schools in Minnesota and Mr. Justice Powell
21 requested some information about the percentage of those people
22 attending schools earlier. It is my understanding that the
23 early statistics for which they know the percentage of sectarian
24 students. It is about 1959 to 1960 according to education data
25 which is issued every March.

1 In about 1959 or 1960, about 18.7% of the school
2 student population attended sectarian institutions. Now, that
3 has plummeted and it is now -- was -- about 10%. I think it has
4 grown to 10.1 or 10.2 within the last year. And, I apologize
5 for making reference to non-record data, but it appears to be
6 information that you requested.

7 QUESTION: Why didn't you put it in the record?

8 MR. BLOMGREN: The record --

9 QUESTION: Didn't you realize it was going to come up?

10 MR. BLOMGREN: Your Honor, the record consists
11 primarily of information which was supplied by the Department of
12 Education and the Department of Revenue in response to certain
13 requests and by the hard work of --

14 QUESTION: Don't you have the whole resources of the
15 State of Minnesota to get information and facts?

16 MR. BLOMGREN: Your Honor, we have facts concerning
17 that portion of the population in the test year which is 1978.
18 It indicates that 10% of the people attending school attended
19 sectarian schools.

20 QUESTION: What is there in the record that will help
21 Justice Powell out?

22 MR. BLOMGREN: In the record --

23 QUESTION: In the record.

24 MR. BLOMGREN: Okay.

25 QUESTION: Zero.

1 MR. BLOMGREN: Your Honor, the record --

2 QUESTION: You have one figure in there, zero.

3 MR. BLOMGREN: The record that is contained in there,
4 and it is the record that was submitted by the plaintiffs in
5 this case, suggests the percentage of those attending non-
6 sectarian schools, percentage of -- amount of revenue loss, things
7 of that type.

8 QUESTION: Would the reports of the State Board of
9 Education provide this information?

10 MR. BLOMGREN: The reports of the State Board of
11 Education would show you the general population trends of those
12 attending non-public schools as opposed to those attending
13 public schools.

14 The revenue data, which is the most recently available,
15 is attached at the end of our memorandum. It is from a study
16 that was conducted which amicus in support of the petitioners
17 made reference to and which resulted in certain calculations
18 which appear at the back of our memorandum.

19 But, ultimately -- Ultimately, details concerning what
20 particular group of people benefited more or were the predominate
21 beneficiaries under the particular statute is, in our estimation
22 and in the estimation of the District Court and the Court of
23 Appeals, irrelevant. It is not material to the case.

24 For instance, if we were to look at which organizations
25 or group of organizations was the predominate beneficiary under

1 Section 170, historically we would find that religious
2 institutions took the bulk of deductions or the contributions
3 to religious institutions received the bulk of deductions.

4 Similarly, I would suspect, although I am not certain,
5 that religious institutions are also the predominant beneficiaries
6 under Walz style property tax exemptions. But, those facts are
7 not going to be sufficient to hold that that property tax
8 exemption in Walz or Section 170 of the Internal Revenue Code
9 are unconstitutional. The reason is that the -- The Establishment
10 Clause requires that religious institutions and those associated
11 with religious groups be treated neutrally; that they not be
12 hindered, that they not be advanced, but the Establishment
13 Clause does not require that religious institutions always come
14 out second best or religious always come out second best under
15 any neutral set of criteria.

16 The plaintiffs have also suggested that it is important
17 in this case that there is no restriction on the tuition fees
18 which may be paid or the textbooks -- Excuse me, the transporta-
19 tion uses which will qualify for deductions. They suggest that
20 because you cannot identify the secular from the sectarian or
21 because the statute doesn't attempt to identify the secular from
22 the sectarian that it is unconstitutional; that we either have a
23 primary effect problem or we are going to have an entanglement
24 problem.

25 The fact is, however, that those types of -- that type

1 of separation is very important when you have direct state
2 assistance, money or goods flowing out of the treasury to
3 individuals or to religious institutions. When you supply
4 textbooks, when you supply equipment, it is important because
5 of the symbolic sponsorship problem that may arise, that
6 institutions not receive assistance to clearly sectarian
7 activities.

8 But, we recognize in Walz and under Section 170 that
9 tax deductions are going to be available for people who make
10 direct payments to the institution.

11 As I have indicated before, Section 170 would permit
12 an individual to supply textbooks, supply Bibles, supply buses
13 to private schools and take a deduction for them. Yet, if
14 individuals purchase that sort of equipment, that sort of
15 transportation from an institution and spend their own money in
16 much the same way a contributor might, that is going to be
17 unconstitutional. The difference between them seems to be
18 impossible to reconcile with the purposes of the Establishment
19 Clause, to avoid the sponsorship or the symbolic appearance of
20 sponsorship.

21 It is also difficult to identify the source of the
22 petitioners' indication that \$17 million in revenue loss is
23 attributable to this deduction for the biennial. I am not
24 certain where the figure came from. I do know that the Revenue
25 Department estimated for 1980 it was about \$4.1 million. And,

1 although I don't believe it is particularly relevant to the
2 resolution of this case, Mr. Justice Powell asked concerning
3 the budget for public schools and I can only entertain the same
4 type of estimation that was presented here. The foundation
5 aids formula is based upon approximately \$1400 per student and
6 currently there are between 750,000 -- about 750,000 or 800,000
7 public students.

8 So, the legislature anticipates expenditures of
9 approximately 1.2 billion or in excess of a billion dollars for
10 public education. I am not certain of the actual appropriated
11 funds, because the appropriation says as much money as necessary
12 will be transferred from the treasury to pay foundation aid.

13 QUESTION: This is the operating budget and does not
14 include capital expenditures?

15 MR. BLOMGREN: Your Honor, there again, I am afraid
16 that I can't tell you precisely how that breaks down. All I
17 can tell you is the foundation aids formula assumes expenditures --

18 QUESTION: Do the counties in Minnesota also contribute
19 to public education?

20 MR. BLOMGREN: There are property taxes paid --

21 QUESTION: Yes.

22 MR. BLOMGREN: -- to districts, school districts, and
23 state aids.

24 QUESTION: State general revenue funds?

25 MR. BLOMGREN: That is correct. It is not based on --

1 QUESTION: You also have federal funds?

2 MR. BLOMGREN: That is correct.

3 The primary argument of the plaintiffs and the
4 petitioners here is that Nyquist must control the case. I
5 think it is important to draw the distinction between Nyquist
6 and this case because the Nyquist distinctions go to the very
7 heart of the Establishment Clause jurisprudence.

8 The Nyquist case involved benefits where the legis-
9 lature had identified specific amounts of money it wanted to
10 make available to individuals who had enrolled their children
11 in private, predominately sectarian schools. It represents
12 a legislative determination that for performing a specific act
13 a specific amount of money is going to be provided to individuals.

14 In order to achieve that result, a particularly -- what
15 shall we say -- detailed form of tax table was provided so that
16 if you had an income of less than "X" amount, you were to take --
17 exempt from your income a particular amount regardless of whether
18 that was more or less or any relationship to what you pay to
19 a particular institution.

20 Now, it is that kind of relationship, the fundamental
21 decision of a legislature to benefit particular individuals for
22 particular acts, which is important to Establishment Clause
23 analysis. It is also important that the only group who could
24 benefit under the Nyquist provision were those in private
25 schools. There were no benefits. If there were expenditures

1 associated with attending public school beyond those which are
2 covered by state payments or public school payments, there is no
3 way that those are going to result in any benefits under the
4 provision there. And, it is this singling out of a particular
5 group for benefits which are not available across the board, which
6 shows that benefits to religious institutions were not incidental,
7 which shows that there may be problems of political divisiveness,
8 because groups being formed along private lines which become
9 predominately sectarian lines.

10 QUESTION: Isn't that argument undercut, the deduction
11 for tuition benefits, for tuition payments, because they are
12 not available across the board. Only those attending private
13 school pay tuition.

14 MR. BLOMGREN: There are about four types of tuition
15 that are actually paid by those people in public schools. There
16 are those who pay non-resident tuition. And, in 1978 there were
17 only about 79 people who did that. But, there are other types
18 of --

19 QUESTION: Surely it is not the state policy to
20 encourage non-residents to attend schools other than in their
21 own district, is there?

22 MR. BLOMGREN: It is certainly the policy to make it
23 available to them if they want. For instance, it may very well
24 be that although one is in one district, the school is closer
25 to someone else. In rural areas particularly, it is very

1 important to some that they be attending schools that are closer
2 to their own residence and not farther from their own residence.

3 And, there are other kinds of tuition payments avail-
4 able too. If there were only 79 people who paid the tuition,
5 you would have benefits -- You would not show payments of lower
6 than \$2 million in tuition payments in 1978 alone.

7 My time is through. Thank you very much.

8 QUESTION: Mr. Kampf, on these statistics that have
9 been discussed, suppose a case was before the Court with a
10 record that showed that 60% of all the people in the state under
11 a statute like this were in private schools, some of which were
12 non-denominational, non-church sponsored, and some church
13 sponsored. What would your view be of the statute then?

14 MR. KAMPF: Well, at that point, one would have to
15 determine whether the primary effect of the statute was, indeed,
16 to aid the religious schools. That is not the facts before us
17 and I believe that the question is capability of diversion and
18 restriction or lack of it in the statute.

19 QUESTION: Well, what about my hypothetical? We often
20 ask hypothetical questions just to test the argument.

21 MR. KAMPF: As I recall, the same question was asked
22 in the Nyquist argument and I think the answer is less than
23 comforting since I am not sure that that hypothetical exists.
24 Nevertheless, ultimately, since there is no restriction on the
25 subsidy inherent in the statute, it runs into the same problem,

1 which is that it is capable of diversion to religious function.

2 ORAL ARUGUMENT OF WILLIAM I. KAMPF

3 ON BEHALF OF THE PETITIONERS

4 MR. KAMPF: Speaking of the deductions, I should point
5 out that the table, which is appended to the State's brief, has
6 an anaylsis of the number of returns by amount of deduction
7 appended to it and that a clear reading of that same table, as
8 we indicated in Footnote Three of our reply brief, indicates
9 that the greatest proportion of the dollars deducted was in the
10 higher dollar ranges, thereby benefiting, quite obviously,
11 tuition.

12 There were, as Mr. Justice Stevens indicated, a large
13 number of returns taking small numbers of tuitions, tuition
14 deductions. This is quite clearly analogous to the Wolman
15 decision where the Court sorted amongst kind of aid as in Meek
16 and disallowed some and allowed others. The tuition deduction
17 itself must clearly fall because it is a benefit to the religious
18 institutions. It is a subsidy.

19 QUESTION: Mr. Kampf, under the Lemon test, as I
20 recall, the question is whether or not there is a primary effect
21 that benefits or furthers an establishment of religion. Would
22 you tell us exactly what benefit an establishment of religion
23 has experienced under this statute and then compare it with the
24 benefit the state itself has enjoyed as a result of helping to
25 support private schools?

1 MR. KAMPF: If by that, Mr. Justice Powell, you are
2 asking for an exact analytical, statistical study, obviously
3 that is not available.

4 QUESTION: Does the record back you up in your claim
5 that there was a primary effect?

6 MR. KAMPF: Well, the answer --

7 QUESTION: A primary effect of furthering an establish-
8 ment of religion?

9 MR. KAMPF: I believe --

10 QUESTION: Which one?

11 MR. KAMPF: The fact that there has been an increase
12 in students at religious schools while there has been a decrease
13 in students at public schools can lead one to that conclusion.

14 QUESTION: But, counsel -- Your friend on the other
15 side says that there has been a decrease since '56.

16 MR. KAMPF: But, that was before the large increase
17 in this statute which resulted after this Court's decision in
18 Nyquist and the subsequent decision in the Minnesota Supreme
19 Court struck down a Nyquist kind of statute in Minnesota. So,
20 the comparisons are difficult to make.

21 QUESTION: So, your answer is that the increased
22 number of pupils in the sectarian schools?

23 MR. KAMPF: I think that is the only evidence we have
24 in the record before us.

25 QUESTION: Do you think that is a greater benefit

1 to the religious entities than the state has experienced
2 financially and in providing some sort of option to parents
3 who wish to have an option?

4 MR. KAMPF: That question is an academic one. It is
5 very difficult to answer because we cannot --

6 QUESTION: Why is it acadmeic in this case?

7 MR. KAMPF: Because we cannot determine what the
8 Minnesota legislature would do if there was a substantial
9 reduction. The politics of funding of education are obviously
10 a delicate balance of taxation and expenditure.

11 To say that the legislature would not simply appropri-
12 ate more money were there fewer students in the parochial schools
13 is an academic exercise that we cannot answer here today.
14 What we do know is that if Walz is to govern this case, then
15 this Court's decisions in Lemon, Meek, and Wolman are rendered
16 meaningless.

17 I have completed my time. Thank you very much.

18 CHIEF JUSTICE BURGER: Thank you, gentlemen, the
19 case is submitted.

20 We will hear arguments next in Boston Firefighters
21 against NAACP.

22 (Whereupon, at 1:55 p.m., the case in the above-
23 entitled matter was submitted.)
24
25

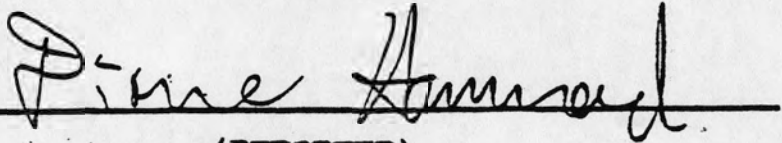
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VAN D. MUELLER AND JUNE NOYES, Petitioner v. CLYDE E. ALLEN, JR.,
ET AL # 82-195

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A handwritten signature in cursive script, appearing to read "Pine Hammond", written over a horizontal line.

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