



July 5, 2000

COURT LETS PRIVATE SCHOOLS CONTINUE RECEIVING COMPUTERS

(*Mitchell v. Helms*, No. 98-1949)

Last week the U.S. Supreme Court gave the Washington Legal Foundation (WLF) a long-awaited victory, when it decided that private schools may continue to receive federally-subsidized computers and other high-tech educational tools.

The Court's decision in *Mitchell v. Helms* was a victory for WLF, which had filed a brief asking the Court to reverse a ruling by the U.S. Court of Appeals for the Fifth Circuit, which had found that a federal school aid program that provides computers, VCRs, and similar equipment violates the First Amendment Establishment Clause when that aid is distributed to private religious schools. A clear majority of the Supreme Court agreed with WLF, holding 6-3 that the federal aid program was constitutional.

In reversing the Fifth Circuit's ruling, the Court began by assuming, as those challenging the law had conceded, that the program has a secular purpose. The Court therefore asked only whether the program had the unconstitutional effect of advancing religion. For two reasons it found that the law passed constitutional scrutiny. First, the Court found that the aid program "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 non-discriminatory basis." Second, the Court determined that the aid program is neutral, meaning that it allocates funding according to the private choices of students and their parents and that the content of any materials subsidized under the program are non-religious.

This case arose from a constitutional challenge to a federal school aid program administered in Jefferson Parish, Louisiana. Federal law gives state and local education agencies "block grants" to buy computers, videos, library books, and other educational materials. Under the law, states and local school districts receive federal aid based on the number of children attending elementary and secondary schools. In Louisiana, nearly three-quarters of such aid flows to public schools. But to ensure that every young American enjoys the educational benefits of modern technology, Congress wrote the law to extend the same assistance to private secular and religious schools, as well. These

private schools receive federally-funded materials on loan, and the local school district reviews the list of equipment and materials and excludes any religiously-oriented items.

Nonetheless, a group of taxpayers in Jefferson Parish brought a suit in federal district court, claiming that the program in Jefferson Parish violated the Constitution. After an initial decision striking down the program, the district court ultimately found that it was constitutionally valid. The U.S. Court of Appeals for the Fifth Circuit reversed, ruling that the Jefferson Parish program offends the Constitution because it allows private religious schools to receive federally funded materials other than textbooks. The court reasoned that Supreme Court precedent allows the government to loan textbooks, but not other materials, to private religious schools.

In its brief filed with the U.S. Supreme Court, WLF argued that the Fifth Circuit's decision unnecessarily discriminates between children attending public schools, who may "read about the latest in Mesopotamian archaeology on CD ROMs," and children at private religious schools, who are reduced to using textbooks. WLF urged the Court to find that Congress need not discriminate against private religious schools to satisfy the Constitution, so long as such schools receive federal aid under the terms of a neutral government program. Justice O'Connor specifically agreed with WLF's argument in her concurring opinion:

[T]echnology's advance . . . has only made the distinction between textbooks and instructional materials and equipment more suspect. In this case, for example, we are asked to draw a constitutional line between lending textbooks and lending computers. Because computers constitute instructional equipment, adherence to [two of the Court's prior decisions] would require the exclusion of computers from any government school aid program that includes religious schools. Yet, computers are now as necessary as were schoolbooks 30 years ago, and they play a somewhat similar role in the educational process.

"All American schoolchildren ought to have a high quality education," said WLF Senior Counsel for Litigation Affairs R. Shawn Gunnarson. "This decision by the Court clears the way for Congress to continue giving every young American—regardless of the school he attends—the opportunity to learn from computers and videos, as well as books and chalkboards."

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