

The Burger Court Opinion Writing Database

Mueller v. Allen

463 U.S. 388 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

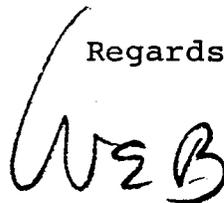
June 14, 1983

Re: No. 82-195, Mueller v. Allen

Dear Bill:

I join.

Regards,

A handwritten signature in dark ink, appearing to read 'WB', is written below the typed word 'Regards,'.

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 3, 1983

Re: No. 82-195 -- Mueller v. Allen

Dear Thurgood, Harry and John:

We four are in dissent in the above. I question that you three would agree with what I would write. Perhaps I should write separately and Thurgood take on the burden of assigning the dissent otherwise.

Sincerely,

Bill

Justice Marshall

Justice Blackmun

Justice Stevens

(B)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 27, 1983

No. 82-195
Mueller v. Allen

Dear Thurgood,

Please join me in your dissent in
the above.

Sincerely,
Bill

Justice Marshall
Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1983

Re: 82-195 - Mueller and Noyes v. Allen

Dear Bill,

I agree.

Sincerely,



Justice Rehnquist

Copies to the Conference

cpm

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Marshall

Circulated: JUN 24 1983

Recirculated: _____

June 24, 1983

No. 82-195

Mueller v. Allen

JUSTICE MARSHALL, dissenting.

The Establishment Clause of the First Amendment prohibits a State from subsidizing religious education, whether it does so directly or indirectly. In my view, this principle of neutrality forbids not only the tax benefits struck down in Committee for Public Education v. Nyquist, 413 U.S. 756 (1973), but any tax benefit, including the tax deduction at issue here, which subsidizes tuition payments to sectarian schools. I also believe that the Establishment Clause prohibits the tax deductions that Minnesota authorizes for the cost of books and other instructional materials used for sectarian purposes.

I

The majority today does not question the continuing vitality of this Court's decision in Nyquist. That decision established that a State may not support religious education either through direct grants to parochial schools or through financial aid to parents of parochial school students. 413 U.S.,

PP. 2, 9, 11

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**
JUN 27 1983

Circulated: _____

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1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-195

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

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[June —, 1983]

JUSTICE MARSHALL, dissenting.

The Establishment Clause of the First Amendment prohibits a State from subsidizing religious education, whether it does so directly or indirectly. In my view, this principle of neutrality forbids not only the tax benefits struck down in *Committee for Public Education v. Nyquist*, 413 U. S. 756 (1973), but any tax benefit, including the tax deduction at issue here, which subsidizes tuition payments to sectarian schools. I also believe that the Establishment Clause prohibits the tax deductions that Minnesota authorizes for the cost of books and other instructional materials used for sectarian purposes.

I

The majority today does not question the continuing vitality of this Court's decision in *Nyquist*. That decision established that a State may not support religious education either through direct grants to parochial schools or through financial aid to parents of parochial school students. 413 U. S., at 780, 785-786. *Nyquist* also established that financial aid to parents of students attending parochial schools is no more permissible if it is provided in the form of a tax credit than if provided in the form of cash payments. *Id.*, at 789-791; see *ante*, at 7-8, & n. 6. Notwithstanding these accepted

P-1

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Blackmun
 Justice Powell
 Justice Stevens
 Justice O'Connor

SUPREME COURT OF THE UNITED STATES

From: Justice Marshall

No. 82-195

Circulated: _____

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

Re-circulated: **JUN 28 1983**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE EIGHTH CIRCUIT

[June 29, 1983]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN, JUSTICE BLACKMUN and JUSTICE STEVENS join, dissenting.

The Establishment Clause of the First Amendment prohibits a State from subsidizing religious education, whether it does so directly or indirectly. In my view, this principle of neutrality forbids not only the tax benefits struck down in *Committee for Public Education v. Nyquist*, 413 U. S. 756 (1973), but any tax benefit, including the tax deduction at issue here, which subsidizes tuition payments to sectarian schools. I also believe that the Establishment Clause prohibits the tax deductions that Minnesota authorizes for the cost of books and other instructional materials used for sectarian purposes.

I

The majority today does not question the continuing vitality of this Court's decision in *Nyquist*. That decision established that a State may not support religious education either through direct grants to parochial schools or through financial aid to parents of parochial school students. 413 U. S., at 780, 785-786. *Nyquist* also established that financial aid to parents of students attending parochial schools is no more permissible if it is provided in the form of a tax credit than if provided in the form of cash payments. *Id.*, at 789-791;

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 27, 1983

Re: No. 82-195 - Mueller v. Allen

Dear Thurgood:

Please join me in your dissent.

Sincerely,



Justice Marshall

cc: The Conference

May 31, 1983

82-195 Mueller v. Allen

Dear Bill:

I think your opinion in this case is a good one. You have distinguished Nyquist about as well as one can.

My clerk Jim Browning (who did a bench memo for me in this case) also has read your draft and has no specific suggestions. I enclose a little memo that Jim prepared at my request. Your clerk can ascertain from Jim the sources of his statistics. If they check out - as I think they will - they may merit a footnote.

It is clear that the presence of the statute for more than a quarter of a century has not resulted in an increase in the patronage of private schools to the detriment of public schools. One can argue, I suppose, that these figures also rebut any inference that the statute encourages a religious establishment.

Of course, the dissent will have some very strong answers but you can wait to see exactly how they are advanced.

Sincerely,

Justice Rehnquist

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 1, 1983

82-195 Mueller v. Allen

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Stevens
 Justice O'Connor

From: **Justice Rehnquist**

Circulated: JUN 1 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-195

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

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE EIGHTH CIRCUIT

[June —, 1983]

JUSTICE REHNQUIST delivered the opinion for the Court.

Minnesota allows taxpayers, in computing their state income tax, to deduct certain expenses incurred in providing for the education of their children. Minn. Stat. § 290.09 (22).¹ The United States Court of Appeals for the Eighth Circuit held that the Establishment Clause of the First and

¹ Minn. Stat. § 290.09(22) (1982) permits a taxpayer to deduct from his or her computation of gross income the following:

Tuition and transportation expense. The amount he has paid to others, not to exceed \$500 for each dependent in grades K to 6 and \$700 for each dependent in grades 7 to 12, for tuition, textbooks and transportation of each dependent in attending an elementary or secondary school situated in Minnesota, North Dakota, South Dakota, Iowa, or Wisconsin, wherein a resident of this state may legally fulfill the state's compulsory attendance laws, which is not operated for profit, and which adheres to the provisions of the Civil Rights Act of 1964 and chapter 363. As used in this subdivision, "textbooks" shall mean and include books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and shall not include instructional books and materials used in the teaching of religious tenets, doctrines or worship, the purpose of which is to inculcate such tenets, doctrines or worship, nor shall it include such books or materials for, or transportation to, extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 24, 1983

Re: No. 82-195 Mueller v. Allen

Dear Thurgood:

In this case, as in Barclay v. Florida, I very much appreciate your having furnished me an advanced copy of your dissent. Having read the dissent, I think the issue is fairly joined between us, and I do not anticipate changing my present draft.

Sincerely,

Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 27, 1983

Re: No. 82-195 Mueller v. Allen

Dear Chief:

I think the votes are all in in this case, and it
can now be brought down.

Sincerely,



The Chief Justice

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 27, 1983

Re: 82-195 - Mueller v. Allen

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 1, 1983

No. 82-195 Mueller & Noyes v. Allen

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference