

Abstract

A set of beliefs an individual holds on to governs the formation of the self and how his or her life will proceed. Accordingly, everyone has a secured right to his conscience, thought and belief and even though private individuals may come to clash with each other arguing for or against a certain set of belief, it is crucial for the State to stand aloof so as to prevent certain favoritism for and/or repression of a belief, particularly religious in its nature.

That the State needs to take a neutral stance in religion discussed in the above paragraph is explicitly stated in what is referred to as the Establishment Clause in the First Amendment of the Constitution that reads: "Congress shall make no law respecting an establishment of religion". It is under such clause that the program central to the case to be discussed, *Zelman v. Harris*, was brought to the Court's attention.

In Cleveland, Ohio, the School District has recognized the effects of its failing educational system; many of the younger generation has failed to graduate and still many of those who graduated could not write, read or compute at levels of their peers who attended schools at other districts. In light of such facts, the State has initiated its Ohio Pilot Program. The only requirement under the program that the participants had to meet was residence in the covered district. The voucher was then allotted to the eligible participants with the only priority to low-income families.

The primary purpose of the program was to allow the students to escape from the failing public school system by providing the families with some amount of financial aid. However, majority of the aid-recipients (96% in the year 1999-2000) have directed the voucher money to religiously-affiliated private schools. The voucher given to the low-income families subsidized 90% of the tuition. Sixty percent of the children came from families at or below poverty line. Two-thirds of children who chose to attend parochial private schools held a religion different from the religion that the school promoted. The taxpayers have filed a case saying that the state program is a violation of the Establishment Clause.

The majority of the Court held that the case was a case of true private choice that cut the circuit between the State and the religion. The dissenting Justices held that there existed a choice but not genuine in nature, thus failing to meet the conditions set out in the precedents to survive the Establishment Clause challenges. The dissenting Justices also noted that whereas the primary purpose was secular, the primary effects tilted for the benefit of religious institutions, thereby failing to meet the Agostini's two-prong test.

In analyzing the efficacy of the argument provided by both the Court and the dissenting Justices, this paper would first look at the background that prompted the legislators to initiate the Ohio Pilot Program. It would then proceed to address the arguments with references to the precedents. The paper finally aims to bring into attention the inconsistency aroused by the Court in Establishment Clause cases by the Court's final judgment in favor of the Ohio's voucher program.