primary effect prong of the *Lemon* test, the Court asserted, is religious neutrality, *i.e.*, whether "aid 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 nondiscriminatory basis." [116] Finding the Title I program to meet that test, the Court concluded that "accordingly, we must acknowledge that *Aguilar*, as well as the portion of *Ball* addressing Grand Rapids' Shared Time program, are no longer good law." [117]

Later, in *Mitchell v. Helms* [118] the Court abandoned the presumptions that religious elementary and secondary schools are so pervasively sectarian that they are constitutionally ineligible to participate in public aid programs directly benefiting their educational functions and that direct aid to such institutions must be subject to an intrusive and constitutionally fatal monitoring. At issue in the case was a federal program that distributed funds to local educational agencies to provide instructional materials and equipment, such as computer hardware and software, library books, movie projectors, television sets, VCRs, laboratory equipment, maps, and cassette recordings, to public and private elementary and secondary schools. Virtually identical programs had previously been held unconstitutional by the Court in *Meek v. Pittenger* [119] and *Wolman v. Walter*.[120] But in this case the Court overturned those decisions and held the program to be constitutional.

Mitchell had no majority opinion. The opinions of Justice Thomas, joined by Chief Justice Rehnquist and Justices Scalia and Kennedy, and of Justice O'Connor, joined by Justice Breyer, found the program constitutional. They agreed that to pass muster under the primary effect prong of the *Lemon* test direct public aid has to be secular in nature and distributed on the basis of religiously neutral criteria. They also agreed, in contrast to past rulings, that sectarian elementary and secondary schools should not be deemed constitutionally ineligible for direct aid on the grounds that their secular educational functions are "inextricably intertwined" with their reli-

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[116] In *Agostini*, the Court nominally eliminated entanglement as a separate prong of the *Lemon* test. "[T]he factors we use to assess whether an entanglement is 'excessive,'" the Court stated, "are similar to the factors we use to examine 'effect.'" "Thus," it concluded, "it is simplest to recognize why entanglement is significant and treat it—as we did in *Walz*—as an aspect of the inquiry into a statute's effect." 521 U.S. at 232, 233.

[117] Justice Souter, joined by Justices Stevens and Ginsburg, dissented from the Court's ruling, contending that the Establishment Clause mandates a "flat ban on [the] subsidization" of religion (521 U.S. at 243) and that the Court's contention that recent cases had undermined the reasoning of *Aguilar* was a "mistaken reading" of the cases. Id. at 248. Justice Breyer joined in the second dissenting argument.

[118] 530 U.S. 793 (2000).

[119] 421 U.S. 349 (1975).

[120] 433 U.S. 229 (1977).