

or classrooms in which religion is taught.<sup>69</sup> It also struck down a program subsidizing field trip transportation for children attending sectarian elementary and secondary schools, because field trips are inevitably interwoven with the schools' educational functions.<sup>70</sup>

But the Court has not imposed a secular use limitation on aid programs that benefit sectarian entities only indirectly, *i.e.*, as the result of decisions by someone other than the government itself. The initial beneficiaries of the public aid must be determined on the basis of religiously neutral criteria, and they must have a genuine choice about whether to use the aid at sectarian or nonsectarian entities. But, where those standards have been met, the Court has upheld indirect aid programs even though the sectarian institutions that ultimately benefit may use the aid for religious purposes. Moreover, the Court has gradually broadened its understanding of what constitutes a genuine choice so that now most voucher or tax benefit programs benefiting the parents of children attending sectarian schools seem able to pass constitutional muster.

Thus, the Court initially struck down tax benefit and educational voucher programs where the initial beneficiaries were limited to the universe of parents of children attending sectarian schools and where the aid, as a consequence, was virtually certain to go to sectarian schools.<sup>71</sup> Subsequently, however, it upheld a state program that allowed taxpayers to take a deduction from their gross income for educational expenses, including tuition, incurred in sending their children to public or private schools, because the deduction was "available for educational expenses incurred by all parents" and the aid became available to sectarian schools "only as a result of numerous, private choices of individual parents of school-age children."<sup>72</sup> It upheld for the same reasons a vocational rehabilitation program that made a grant to a blind person for training at a Bible college for a religious vocation<sup>73</sup> and another program that provided a sign-language interpreter for a deaf student attending a sectarian secondary school.<sup>74</sup> Most recently, it upheld as constitutional a tuition voucher program made available to the parents of children attending failing public schools, notwithstanding that most of the private schools at which the vouchers could be used

<sup>69</sup> Committee for Public Educ. & Religious Liberty v. Nyquist, 413 U.S. 756 (1973).

<sup>70</sup> Wolman v. Walter, 433 U.S. 229 (1977).

<sup>71</sup> Committee for Public Educ. & Religious Liberty v. Nyquist, 413 U.S. 756 (1973), and Sloan v. Lemon, 413 U.S. 825 (1973).

<sup>72</sup> Mueller v. Allen, 463 U.S. 388, 397–399 (1983).

<sup>73</sup> Witters v. Washington Dep't of Social Services, 474 U.S. 481 (1986). In this decision the Court also cited as important the factor that the program was not likely to provide "any significant portion of the aid expended under the . . . program" for religious education. *Id.* at 488.

<sup>74</sup> Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1 (1993).