ciple.[125] The second subsidiary argument that the Court rejected was that, because the Pennsylvania program reimbursed parents who sent their children to nonsectarian schools as well as to sectarian ones, the portion respecting the former parents was valid and "parents of children who attended sectarian schools are entitled to the same aid as a matter of equal protection."[126] The Court found the argument "thoroughly spurious," adding, "The Equal Protection Clause has never been regarded as a bludgeon with which to compel a State to violate other provisions of the Constitution."[127]

In 1983, the Court clarified the limits of the *Nyquist* holding. In *Mueller v. Allen*,[128] the Court upheld a Minnesota deduction from state income tax available to parents of elementary and secondary school children for expenses incurred in providing tuition, transportation, textbooks, and various other school supplies. Because the Minnesota deduction was available to parents of public and private schoolchildren alike, the Court termed it "vitally different from the scheme struck down in *Nyquist*," and more similar to the benefits upheld in *Everson* and *Allen* as available to *all* schoolchildren.[129] The Court declined to look behind the "facial neutrality" of the law and consider empirical evidence of its actual impact, citing a need for "certainty" and the lack of "principled standards" by which to evaluate such evidence.[130] Also important to the Court's refusal to consider

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[125] 413 U.S. at 788–89. *But cf.* Lynch v. Donnelly, 465 U.S. 668, 673 (1984) (Free Exercise Clause "affirmatively mandates accommodation, not merely tolerance, of all religions").

[126] Sloan v. Lemon, 413 U.S. 825, 834 (1973).

[127] 413 U.S. at 834. In any event, the Court sustained the district court's refusal to sever the program and save that portion as to children attending nonsectarian schools on the basis that, because so large a portion of the children benefited attended religious schools, it could not be assumed the legislature would have itself enacted such a limited program.

In Wheeler v. Barrera, 417 U.S. 402 (1974), the Court held that states receiving federal educational funds were required by federal law to provide "comparable" but not equal services to both public and private school students within the restraints imposed by state constitutional restrictions on aid to religious schools. In the absence of specific plans, the Court declined to review First Amendment limitations on such services.

[128] 463 U.S. 388 (1983).

[129] 463 U.S. at 398. *Nyquist* had reserved the question of "whether the significantly religious character of the statute's beneficiaries might differentiate the present cases from a case involving some form of public assistance (*e.g.*, scholarships) made available generally without regard to the sectarian-nonsectarian, or public-nonpublic nature of the institution benefitted." 413 U.S. at 783 n.38.

[130] 463 U.S. at 401. Justice Marshall's dissenting opinion, joined by Justices Brennan, Blackmun, and Stevens, argued that the tuition component of the deduction, unavailable to parents of most public schoolchildren, was by far the most significant, and that the deduction as a whole "was little more that a subsidy of tuition masquerading as a subsidy of general educational expenses." 463 U.S. at 408–09. *Cf.* Grand Rapids School Dist. v. Ball, 473 U.S. 373 (1985), where the Court emphasized that 40 of 41 nonpublic schools at which publicly funded programs operated