JUSTICE BRENNAN delivered the opinion of the Court.

The City of New York uses federal funds to pay the salaries of public employees who teach in parochial schools. In this companion case to School District of Grand Rapids v. Ball, — U. S. — (1985), we determine whether this practice violates the Establishment Clause of the First Amendment.

I

The program at issue in this case, originally enacted as Title I of the Elementary and Secondary Education Act of
1965,\textsuperscript{1} authorizes the Secretary of Education to distribute financial assistance to local educational institutions to meet the needs of educationally deprived children from low income families. The funds are to be appropriated in accordance with programs proposed by local educational agencies and approved by state educational agencies. § 3805(a).\textsuperscript{2} "To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provisions for including special educational services and arrangements . . . in which such

\textsuperscript{1}Title I was codified at 20 U. S. C. § 2701 et seq. Section 2701 provided:

"In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following parts of this subchapter) to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute particularly to meeting the special educational needs of educationally deprived children."

Effective July 1, 1982, Title I was superseded by Chapter I of the Education Consolidation and Improvement Act of 1981, 20 U. S. C. § 3801 et seq. See 20 U. S. C. § 3801 (current Chapter I analogue of § 2701). The provisions concerning the participation of children in private schools under Chapter I are virtually identical to those in Title I. Compare 20 U. S. C. § 2740 (former Title I provision) with 20 U. S. C. § 3806 (current Chapter I provision). For the sake of convenience, we will refer adopt the usage of the parties and continue to refer to the program as "Title I."

\textsuperscript{2}The statute provides:

"A local educational agency may receive a grant under this subchapter for any fiscal year if it has on file with the State educational agency an application which describes the programs and projects to be conducted with such assistance for a period of not more than three years, and such application has been approved by the State educational agency."

See also 20 U. S. C. § 2731 (former Title I analogue).
children can participate.” § 3806(a). The proposed programs must also meet the following statutory requirements: the children involved in the program must be educationally deprived, § 3804(a), the children must reside in areas comprising a high concentration of low-income families, § 3805(b), and the programs must supplement, not supplant, programs that would exist absent funding under Title I. § 3807(b).

3 In Wheeler v. Barrera, 417 U. S. 402 (1974), we addressed the question whether this provision requires the assignment of publicly employed teachers to provide instruction during regular school hours in parochial schools. We held that Title I mandated that private school students receive services comparable to, but not identical to, the Title I services received by public school students. Id., at 420–421. Therefore, the statute would permit, but not require, that on-site services be provided in the parochial schools. In reaching this conclusion as a matter of statutory interpretation, we explicitly noted that “we intimate no view as to the Establishment Clause effect of any particular program.” Id., at 426. Wheeler thus provides no authority for the constitutionality of the program before us today.

4 The statute provides:

“Each State and local educational agency shall use the payments under this subchapter for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of educationally deprived children.”

5 The statute provides:

“The application described in subsection (a) of this section shall be approved if . . . the programs and projects described— (1)(A) are conducted in attendance areas of such agency having the highest concentration of low-income children . . . .”

6 The statute provides:

“A local educational agency may use funds receive under this subchapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this subchapter, and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection a local education
Since 1966, the City of New York has provided instructional services funded by Title I to parochial school students on the premises of parochial schools. Of those students eligible to receive funds in 1981-1982, 13.2% were enrolled in private schools. Of that group, 84% were enrolled in schools affiliated with the Roman Catholic Archdiocese of New York and the Diocese of Brooklyn and 8% were enrolled in Hebrew day schools. With respect to the religious atmosphere of these schools, the Court of Appeals concluded that "the picture that emerges is of a system in which religious considerations play a key role in the selection of students and teachers and which has as its substantial purpose the inculcation of religious values." 739 F. 2d 48, 68 (1984).

The programs conducted at these schools include remedial reading, reading skills, remedial mathematics, English as a second language, and guidance services. These programs are carried out by regular employees of the public schools (teachers, guidance counselors, psychologists, psychiatrists and social workers) who have volunteered to teach in the parochial schools. The amount of time that each professional spends in the parochial school is determined by the number of students in the particular program and the needs of these students.

The City's Bureau of Nonpublic School Reimbursement makes teacher assignments, and the instructors are supervised by field personnel, who attempt to pay at least one unannounced visit per month. The field supervisors, in turn, report to program coordinators, who also pay occasional unannounced supervisory visits to monitor Title I classes in the parochial schools. The professionals involved in the program are directed to avoid involvement with religious activities that are conducted within the private schools and to bar religious materials in their classrooms. All material and equipment used in the programs funded under Title I are provided by the public school personnel. All material and equipment used in the programs funded under Title I are provided by the public school personnel.
supplied by the Government and are used only in those programs. The professional personnel are solely responsible for the selection of the students. Additionally, the professionals are informed that contact with private school personnel should be kept to a minimum. Finally, the administrators of the parochial schools are required to clear the classrooms used by the public school personnel of all religious symbols.

B

In 1978, six taxpayers commenced this action in the District Court for the Eastern District of New York, alleging that the Title I program administered by the City of New York violates the Establishment Clause. These taxpayers, appellees in today's case, sought to enjoin the further distribution of funds to programs involving teaching on the premises of parochial schools. Initially the case was held for the outcome of National Coalition for Public Education and Religious Liberty v. Harris ("PEARL"), 489 F. Supp. 1248 (SDNY 1980), which involved an identical challenge to the Title I program. When the District Court in PEARL affirmed the constitutionality of the Title I program, ibid., and this Court dismissed the appeal for want of jurisdiction, 449 U.S. 808 (1980), the challenge of the present appellees was renewed. The District Court granted the appellants' motion for summary judgment based upon the evidentiary record developed in PEARL.

A unanimous panel of the Court of Appeals for the Second Circuit reversed, holding that "[t]he Establishment Clause, as it has been interpreted by the Supreme Court in Public Funds for Public Schools v. Marburger, 358 F. Supp. 29 (D. N. J. 1973), aff'd mem., 417 U. S. 961 (1974); Meek v. Pittenger, 421 U. S. 349 (1975) (particularly Part V, pp. 367-372); and Wolman v. Walter, 433 U. S. 229 (1977), constitutes an insurmountable barrier to the use of federal funds to send public school teachers and other professionals into
Aguilar v. Felton

reliance on instruction, remedial or otherwise, or to provide clinical and guidance services of the sort at issue here." 739 F. 2d, at 50.

We noted probable jurisdiction to decide whether the program administered by the City of New York and funded under Title I violates the Establishment Clause. —— U. S. —— (1984). We affirm.

II

In *City of Grand Rapids v. Ball*, ante, the Court has today held unconstitutional under the Establishment Clause two remedial and enhancement programs operated by the Grand Rapids Public School District, in which classes were provided to private school children at public expense in classrooms located in and leased from the local private schools. The New York programs challenged in this case are very similar to the programs we examined in *Ball*. In both cases, publicly funded instructors teach classes composed exclusively of private school students in private school buildings. In both cases, an overwhelming number of the participating private schools are religiously affiliated. In both cases, the publicly funded programs provide not only professional personnel, but also all materials and supplies necessary for the operation of the programs. Finally, the instructors in both cases are told that they are public school employees under the sole control of the public school system.

The appellants attempt to distinguish this case on the ground that the City of New York, unlike the Grand Rapids Public School District, has adopted a system for monitoring the religious content of publicly funded Title I classes in the religious schools. At best, the supervision in this case would assist in preventing the Title I program from being used, intentionally or unwittingly, to inculcate the religious beliefs of the surrounding parochial school. But appellants' argument fails in any event, because the supervisory system established by the City of New York inevitably results in the...
excessive entanglement of church and state, an Establishment Clause concern distinct from that addressed by the effects doctrine. Even where state aid to parochial institutions does not have the primary effect of advancing religion, the provision of such aid may nonetheless violate the Establishment Clause owing to the nature of the interaction of church and state in the administration of that aid.

The principle that the state should not become too closely entangled with the church in the administration of assistance is rooted in two concerns. When the state becomes too closely enmeshed with a given denomination in matters of religious significance, the freedom of religious belief of those who are not adherents of that denomination suffers, even when the governmental purpose underlying the involvement is largely secular. In addition, the freedom of even the adherents of the denomination is limited by the governmental intrusion into sacred matters. "[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere." McCollum v. Board of Education, 333 U. S. 203, 212 (1948).

In Lemon v. Kurtzman, 403 U. S. 602 (1971), the Court held that the supervision necessary to ensure that teachers in parochial schools were not conveying religious messages to their students would constitute the excessive entanglement of church and state:

"A comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions are obeyed and the First Amendment otherwise respected. Unlike a book, a teacher cannot be inspected once so as to determine the extent and intent of his or her personal beliefs and subjective acceptance of the limitations imposed by the First Amendment. These prophylactic contacts will involve excessive and enduring entanglement between state and church." 403 U. S., at 619.
Similarly, in *Meek v. Pittenger*, 421 U. S. 349 (1975), we invalidated a state program that offered, *inter alia*, guidance, testing, remedial and therapeutic services performed by public employees on the premises of the parochial schools. *Id.*, at 352–353. As in *Lemon*, we observed that though a comprehensive system of supervision might conceivably prevent teachers from having the primary effect of advancing religion, such a system would inevitably lead to an unconstitutional administrative entanglement between church and state.

"The prophylactic contacts required to ensure that teachers play a strictly nonideological role, the Court held [in *Lemon*], necessarily give rise to a constitutionally intolerable degree of entanglement between church and state. *Ibid.*, at 619. The same excessive entanglement would be required for Pennsylvania to be ‘certain,’ as it must be, that . . . personnel do not advance the religious mission of the church-related schools in which they serve. *Public Funds for Public Schools v. Marburger*, 358 F. Supp. 29, 40–41, aff’d, 417 U. S. 961." 421 U. S., at 370.

In *Roemer v. Maryland Public Works Board*, 426 U. S. 736 (1976), the Court sustained state programs of aid to religiously affiliated institutions of higher learning. The state allowed the grants to be used for any nonsectarian purpose. The Court upheld the grants on the ground that the institutions were not "pervasively sectarian," *id.*, at 758–759, and therefore a system of supervision was unnecessary to ensure that the grants were not being used to effect a religious end. In so holding, the Court identified "what is crucial to nonentangling aid programs: the ability of the State to identify and subsidize separate secular functions carried out at the school, without on-the-site inspections being necessary to prevent diversion of the funds to sectarian purposes." 426 U. S., at 765. Similarly, in *Tilton v. Richardson*, 403 U. S. 672 (1971), the Court upheld one-time grants to sectarian
institutions because ongoing supervision was not required. See also Hunt v. McNair, 413 U. S. 734 (1973).

As the Court of Appeals recognized, the elementary and secondary schools here are far different from the colleges at issue in Roemer, Hunt, and Tilton. 739 F. 2d, at 66-70. Unlike the colleges, which were found not to be "pervasively sectarian," many of the schools involved in this case are the same sectarian schools which had "as a substantial purpose the inculcation of religious values" in Committee for Public Education v. Nyquist, 413 U. S. 756, 768 (1973). Moreover, our holding in Meek invalidating instructional services much like those at issue in this case rested on the ground that the publicly funded teachers "were performing educational services in schools in which education is an integral part of the dominant sectarian mission and in which an atmosphere dedicated to the advancement of religious belief is constantly maintained," Meek, supra, at 371. The court below found that the schools involved in this case were "well within this characterization." 739 F. 2d, at 70. Unlike the schools in Roemer, many of the schools here receive funds and report back to their affiliated church, require attendance at church religious exercises, begin the school day or class period with prayer, and grant preference in admission to members of the sponsoring denominations. Id., at 70. In addition, the

Appellants suggest that the degree of sectarianism differs from school to school. This has little bearing on our analysis. As Judge Friendly, writing for the court below, noted: "It may well be that the degree of sectarianism in Catholic schools in, for example, black neighborhoods, with considerable proportions of non-Catholic pupils and teachers, is relatively low; by the same token, in other schools it may be relatively high. Yet . . . enforcement of the Establishment Clause does not rest on means or medians. If any significant number of the Title I schools create the risks described in Meek, Meek applies. It would be simply incredible, and the affidavits do not aver, that all, or almost all, New York City's parochial schools receiving Title I aid have . . . abandoned 'the religious mission that is the only reason for the schools' existence.'" 729 F. 2d, at 70 (quoting Lemon v. Kurtzman, 403 U. S., at 650 (opinion of BRENNAN, J.).
Catholic schools at issue here, which constitute the vast majority of the aided schools, are under the general supervision and control of the local parish. *Ibid.*

The critical elements of the entanglement proscribed in *Lemon* and *Meek* are thus present in this case. (First, as noted above, the aid is provided in a pervasively sectarian environment. Second, because assistance is provided in the form of teachers, ongoing inspection is required to ensure the absence of a religious message. *Compare Lemon*, *supra*, at 619, with *Tilton*, *supra*, at 668, and *Roemer*, *supra*, at 765. In short, the scope and duration of New York's Title I program would require a permanent and pervasive State presence in the sectarian schools receiving aid.

This pervasive monitoring by public authorities in the sectarian schools infringes precisely those Establishment Clause values at the root of the prohibition of excessive entanglement. Agents of the State must visit and inspect the religious school regularly, alert for the subtle or overt presence of religious matter in Title I classes. *Cf. Lemon v. Kurtzman*, 403 U. S., at 619 (“What would appear to some to be essential to good citizenship might well for others border on or constitute instruction in religion”). In addition, the religious school must obey these same agents when they make determinations as to what is and what is not a “religious symbol,” and thus off limits in a Title I classroom. In short, the religious school, which has as a primary purpose the advancement and preservation of a particular religion must endure the ongoing presence of State personnel whose primary purpose is to monitor teachers and students in an attempt to guard against the infiltration of religious thought.

The administrative cooperation that is required to maintain the educational program at issue here entangles Church and State in another way that infringes interests at the heart of the Establishment Clause. Administrative personnel of the public and parochial school systems must work together in resolving matters related to schedules, classroom assign-
ments, problems that arise in the implementation of the program, requests for additional services, and the dissemination of information regarding the program. Furthermore, the program necessitates “frequent contacts between the regular and the remedial teachers (or other professionals), in which each side reports on individual student needs, problems encountered, and results achieved.” 739 F. 2d, at 65.

We have long recognized that underlying the Establishment Clause is “the objective...to prevent, as far as possible, the intrusion of either [Church or State] into the precincts of the other.” Lemon v. Kurtzman, supra, at 614. See also McCollum v. Board of Education, 333 U. S. 203, 212 (1948). Although “[s]eparation in this context cannot mean absence of all contact,” Walz v. Tax Commission, 397 U. S. 664, 676 (1970), the detailed monitoring and close administrative contact required to maintain New York’s Title I program can only produce “a kind of continuing day-to-day relationship which the policy of neutrality seeks to minimize.” Id., at 674. The numerous judgments that must be made by agents of the state concern matters that may be subtle and controversial, yet may be of deep religious significance to the controlling denominations. As government agents must make these judgments, the dangers of political divisiveness along religious lines increase. At the same time, “[t]he picture of state inspectors prowling the halls of parochial schools and auditing classroom instruction surely raises more than an imagined specter of governmental ‘secularization of a creed.’” Lemon v. Kurtzman, 403 U. S. 602, 650 (1971) (opinion of BRENNAN, J.).

III

Despite the well-intentioned efforts taken by the City of New York, the program remains constitutionally flawed owing to the nature of the aid, to the institution receiving the aid, and to the constitutional principles that they implicate—that neither the state nor federal government shall promote
or hinder a particular faith or faith generally through the advancement of benefits or through the excessive entanglement of church and state in the administration of those benefits.

Affirmed.
Re: No. 84-237 - Aguilar v. Felton  
No. 84-238 - Sec. of Education v. Felton  
No. 84-239 - Chancellor of Bd. of Education  
of N.Y. v. Felton

Dear Bill:

Please join me.

Sincerely,

[Signature]

T.M.

Justice Brennan

cc: The Conference
April 2, 1985

Re: 84-237, 84-238, 84-239 – Aguilar v. Felton

Dear Bill:

Please join me.

Respectfully,

Justice Brennan

Copies to the Conference
84-238, Sec'y. U.S. Dept of Education v. Felton
84-239, Chancellor, Board of Education of the City of New York v. Felton, et al.

Dear Bill,

I have a different view in these cases and will await the dissent or write separately.

Sincerely,

[Signature]

Justice Brennan

Copies to the Conference
64-237 - Aguilar v. Felton
84-238 - Secretary, U.S. Department of Education v. Felton
84-239 - Chancellor of the Board of Education of the City of New York v. Felton

Dear Bill,

I shall await other writing in these cases.

Sincerely yours,

Justice Brennan

Copies to the Conference
April 9, 1985

LLYNDAGINA-POW

MEMO TO Lynda
FROM: LFP, JR.
RE: 84-237 - 239; and 83-990 School District of Grand Rapids v. Ball

I have in mind generally a concurring opinion of perhaps half a dozen pages. In view of your more intimate familiarity with our prior cases (I have not reread any of them), and your facility in drafting, I would appreciate your undertaking this when you have given me a draft in the Securities Act cases.

Random thoughts include the following:

1. As we have discussed, I think Aguilar involves essentially the same "subsidy" rationale very well stated in Ball, pp. 18-23.

2. I also agree that "entanglement" is involved in both cases, and would quote Harlan's opinion in Waltz.

3. In several of our cases (Lemon, Nyquist, and Meek, we emphasized the risk of "political devisiveness". I do not believe that WJB has emphasized this. I consider it quite important, as one can be certain that politics will enter into decisions as to aid to parochial schools.
in states that have large sectarian population - e.g., New York.

4. Perhaps we could include a quote or two from relevant things that I said in Nyquist.

5. Your bench memo quoted in part from my separate opinion in Wolman. I would like in a footnote to repeat some of that, quoting Wolman. There is no danger in my opinion of a state religion, and so we are talking about aid to religion as such - whatever the faith may be. A high percentage of the population do not belong to any religion. I know from my own experience in education that private schools often are helpful to public schools (perhaps not so in major cities such as New York). Certainly in Virginia the Episcopal schools - with which you are familiar - provide quality education that is fully competitive, and often better, than that provided in the public schools. They provide an option for parents who can afford to use them.

6. What worries me most about these cases, as you and I have discussed, is that both Title I and the Michigan Program probably are beneficial as presently operated. There is no evidence to the contrary, though the absence of such evidence has been viewed as irrelevant
in prior cases. I do not think WJB has closed the door to possible types of state aid. I do not read his opinion as holding that Title I is facially invalid. Rather, the entanglement results are potential because of the way New York City has structured the program. I believe Judge Friendly refer to the structure of the New York program.

To the extent we can do so properly, I would like to emphasize that even-handed assistance to all schools—absent the entanglement structure in Aguilar—would present a different situation. In Nyquist I emphasized that some types of assistance are appropriate. What if Congress simply appropriated funds to supplement education for children in deprived areas and made the funds—and only the funds—available to the appropriate school authorities? The only supervision would be federal, and would see that both public and private schools used the funds properly. This would require the parochial schools to provide these programs with their own teachers and on their own premises with no participation by public school teachers or oversight by personnel of the public schools? See the Minnesota case we decided—last Term, I believe.
7. I agree that Judge Friendly's opinion is excellent. WJB has mentioned it. Perhaps we could use a quote or two.

LFP, JR.
TO:        Lynda DATE: May 2, 1985
FROM:  Lewis F. Powell, Jr.

84-237 Aguilar, et al

On a first reading, your draft of May 1 is quite close to what I suggested in my memo and we have discussed. Although I may have some further thoughts, my initial reaction and suggestions are as follows:

1. Footnote 1 should be expanded, and possibly relocated. The reader will not understand it in its present position and form. The point is that the Court's opinion is based solely on entanglement, and we suggest that in addition to entanglement – as important as that is – the effect prong of Lemon is violated where there is a government subsidy of parochial schools through the combined use of federal funding and direct public school assistance in parochial schools.

2. I do not understand the sentence in the middle of page 9. See my question in the margin.

3. On page 10, either in the text or in the note, I would like to try to be somewhat more specific than the present draft. I have suggested a minor change in the language of the first sentence following citation of the cases. In lieu of the next sentence, try something along the following lines:
"In the cases cited there were assistance programs that made funds available equally to public and nonpublic schools without entanglement. The constitutional defect in Title I, as indicated above, is that it provides a financial subsidy to be administered in major part by public school teachers within parochial schools - resulting almost inevitably in forbidden entanglement. If, for example, Congress could fashion an even-handed financial assistance program to both public and nonpublic schools for the laudable purposes of Title I, leaving it to each category of schools to administer the federal funds without the entanglement identified in this case, we would be presented with a different question."

4. I like the quote as to value of parochial schools beginning on page 10, but this seems misplaced at the end of the opinion. Try finding a better location for it - perhaps where you first speak of the laudable purpose of Title I.

L.F.P., Jr.

ss
MEMORANDUM

TO: Lynda
FROM: Lewis F. Powell, Jr.

DATE: May 2, 1985

84-237 Aquilar, et al

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L.P.P., Jr.
May 9, 1985

83-990 Grand Rapids v. Ball
84-237 Aguilar v. Felton

Dear Bill:

Please join me in these two cases.

I am circulating a concurring opinion in *Aguilar* that expresses additional views.

Sincerely,

Justice Brennan

lfp/ss

cc: The Conference
MEMORANDUM TO JUSTICE POWELL

From: Lynda
Re: No. 84-237 Aguilar v. Felton

Attached is a redraft of your concurrence in this case. As you will see, I have incorporated your changes and made some other minor alterations. The one suggestion with which I had some difficulty was the proposal that we be more specific in suggesting what type of program might pass Establishment Clause scrutiny. The import of your suggested language was that if Congress could fashion a program that was evenhanded and that could be administered by the parochial schools on their own, it would be valid. This is true only if the program would not constitute direct aid to the parochial schools. The Court's cases that have approved aid to parochial schools have all involved evenhanded indirect aid; it is not only because the aid is evenhanded that it is valid; it is also because the aid is indirect and needs no surveillance. If it is direct, it constitutes an impermissible subsidy that advances religion unless there is some way to be "certain," Meek v. Pittenger, 421 U.S., at 371, that the aid is not being used to foster religious goals. The only way to be certain that it is not so used, of
course, requires surveillance in most cases; surveillance, of course, leads to excessive entanglement.

In sum, I think it would be incorrect to suggest that aid would be permissible as long as it was evenhanded and structured so that entanglement would not ensue. We must be sure not to leave out the fact that the aid may not have the effect of advancing religion. Our cases have suggested, therefore, that the aid must also be indirect, such as the tax deductions in Mueller, the provision of textbooks to children in Allen, and the reimbursements for bus fare in Everson.

This all gets quite complicated to explain in capsule form, and explains why I was deliberately vague in my first draft. I have given it another shot in the new draft, but am inclined to think it is better to be vague than to give governments and schools false hopes that a certain type of program may be found constitutional in the future.

I have attached a copy of my first draft and your memo to me for reference.
Re Aquilar concurrence

It strikes me that the next to last sentence in the opinion, on p. 5, needs work. Although I think it does the job substantively, it is much too long and graceless. Following is a proposed substitute that is at least a little shorter.

If, for example, Congress could fashion a program of evenhanded financial assistance to both public and private schools that could be administered, without governmental supervision in the private schools, so as to prevent the diversion of the aid from secular purposes, we would be presented with a different question.
Re: No. 84-237) Aguilar v. Felton  
No. 84-238) Secretary, U.S. Dept. of Ed. v. Felton  
No. 84-239) Chancellor of Board of Education  
of City of New York v. Felton

Dear Bill:

Please join me.

Sincerely,

Justice Brennan

cc: The Conference