

prescribed in the State of New York and therefore, the State action was actually invalid.

But keep in mind the test they established. That is, what is the primary purpose and effect of the statute.

Now if the primary purpose of the Federal Government is to achieve excellence in education and if the means utilized to achieve the congressional purpose is indeed secular, then there should be no barrier in the Federal Constitution to the Congress achieving in a secular way its permissible public purpose of encouraging education.

Now, additionally, the Supreme Court said in the *McGowan* case since our study, a case involving the question of the validity of the Sunday closing statutes—now, obviously sabbatarians were disadvantaged by State laws which said there must be a compulsory day of rest and that day of rest was ordained by most all of the States as Sunday.

Now, Sunday as a day of rest and Sunday as a particularly important day in the Christian calendar happened to coincide.

It was challenged on the grounds that this then was aid to a particular religion. But the Supreme Court in validating the Sunday closing statutes again announced the test of what is the primary purpose and effect. It also concluded that to the extent that the public purpose of the Government is a valid one and to the extent that the means that it utilizes to achieve what is purely secular, that the mere fact that there may be an incidental, unavoidable, and minimal aid to some particular religion becomes irrelevant in a constitutional sense.

I say this because to suggest when considering the constitutional aspects that somehow or another, if you aid the children, if in a church-related institution there are Federal funds utilized to improve the educational processes or the education of the children, somehow there is a collateral benefit to the institution.

At the college level this becomes clearly irrational because at the college level or at the hospital level for example, whenever we get a Federal grant for a secular facility, we must match it with funds of our own so the mere participation in and with the Government in accomplishing its purposes in the educational field and in the health field, we derive no benefits.

As a matter of fact, we incur disadvantages but it is our cooperation with the Government that prompts us to do these things.

In sum I did not believe and I did not agree with the HEW brief. In 1961 we answered it I thought very adequately and I will be glad to provide copies of our answer to the committee. I think since we made that rebuttal the Supreme Court in several decisions has added to the strength of our argument in announcing the test—

Chairman PERKINS. I hate to interrupt you but Mr. Pucinski has to leave.

Mr. QUIE. May I ask unanimous consent that Mr. Consedine's answer to the HEW brief together with their answer be placed in the record at this point.

I know some of our colleagues may feel they didn't want to know that much but I appreciate having this lengthy statement in the record.

Chairman PERKINS. It is so ordered.
(The statement follows:)