United States Cases 2000-2005

VAN ORDEN V. PERRY (03-1500) 545 U.S. 677 (2005)

Summary

Background
Among the 21 historical markers and 17 monuments surrounding the Texas State Capitol is a 6-foot-high monolith inscribed with the Ten Commandments. Petitioner, an Austin resident, brought this suit seeking a declaration that the monument's placement violates the First Amendment's Establishment Clause and an injunction requiring its removal.

Decision
Holding that the monument did not contravene the Clause, the District Court found that the State had a valid secular purpose in recognizing and commending the Eagles for their efforts to reduce juvenile delinquency, and that a reasonable observer, mindful of history, purpose, and context, would not conclude that this passive monument conveyed the message that the State endorsed religion. The Fifth Circuit affirmed.

Held: The judgment is affirmed.

MCCREARY COUNTY V. AMERICAN CIVIL LIBERTIESUNION OF KY. (03-1693) 545 U.S. 844 (2005)

Summary
Background

Two counties in Kentucky posted the Ten Commandments in their courthouses. (Also on display were smaller historical documents with religious references). The American Civil Liberties Union of Kentucky (ACLU) sued the counties because they believed this action violated the First amendment. The two counties argued that the Ten Commandments are Kentucky's "precedent legal goal." They also argued that state legislature acknowledges Christ as the "Prince of Ethics." The Lemon v. Lurtzmen case was used as precedent to decide whether or not the Ten Commandments have secular purpose.

Decision

The 6th circuit appeal court ruled that the fundamental values of the Ten Commandments are religious and not secular. The use of the Ten Commandments is permissible if secularized. However, in this context that is not so, and thus not permissible. Its use was not educational and thus lacks secular objective. The Supreme Court upheld this decision.

CUTTER V. WILKINSON (03-9877) 544 U.S. 709 (2005)

Summary

Background
Section 3 of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) says that: "No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution," unless the burden furthers "a compelling governmental interest," and does so by "the least restrictive means." Petitioners from Ohio state institutions, allege that respondent prison officials violated §3 by failing to accommodate petitioners' exercise of their "nonmainstream" religions in a variety of ways.

Decision
Respondents moved to dismiss that claim, arguing that §3, on its face, improperly advances religion in violation of the First Amendment's Establishment Clause. Rejecting that argument, the District Court stated that RLUIPA permits safety and security–undisputedly compelling state interests–to outweigh an inmate's claim to a religious accommodation. On the thin record before it, the court could not find that enforcement of RLUIPA, inevitably, would compromise prison security. The judgment of the United States Court of Appeals for the Sixth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion. (Reversing on interlocutory appeal, the Sixth Circuit held that §3 impermissibly advances religion by giving greater protection to religious rights than to other constitutionally protected rights, and suggested that affording religious prisoners superior rights might encourage prisoners to become religious).

Held: Section 3 of RLUIPA, on its face, qualifies as a permissible accommodation that is not barred by the Establishment Clause. Pp. 8—16.

ELK GROVE UNIFIED SCHOOL DIST. V. NEWDOW (02-1624) 542 U.S. 1 (2004)

Summary

Background
The discussed elementary school is required to recite daily the Pledge of Allegiance. Respondent Newdow's daughter participates. Newdow, an atheist, filed suit alleging that, because the Pledge contains the words "under God," it constitutes religious indoctrination of his child in violation of the Establishment and Free Exercise Clauses. He also alleged that he had standing to sue on his own behalf and on behalf of his daughter as "next friend."

Interestingly, the said child was in full custody of the mother. The mother had contradicting religious views. She also felt that it was in the best interest of her child to not be made involved in Newdow's suit.

Decision
The Magistrate Judge concluded that the Pledge is constitutional. The District Court agreed. The complaint was dismissed. The Ninth Circuit reversed this decision because Newton as a parent has the right to direct his daughter's religious education. The mother of the child filed a motion to intervene or dismiss the reversal, saying she had full legal custody and that she did not want her child involved in these legal proceedings. The Ninth Circuit held that Newdow has the right to seek redress for injury to his parental interests regardless of who has full custody of the child.

However, California law does not stand for the proposition that Newdow has a right to reach outside the private parent-child sphere to dictate to others what they may and may not say to his child respecting religion. A next friend surely could exercise such a right, but the family court's order has deprived Newdow of that status.

Locke v. Davey (02-1315) 540 U.S. 712 (2004) 299 F.3d 748, reversed.

Summary

Background
Washington State established its Promise Scholarship Program to assist academically gifted students with postsecondary education expenses. In accordance with the State Constitution, students may not use such a scholarship to pursue a devotional theology degree. Respondent Davey was awarded a Promise Scholarship and chose to attend Northwest College, a private, church-affiliated institution that is eligible under the program. When he enrolled, Davey chose a double major in pastoral ministries and business management/administration. It is undisputed that the pastoral ministries degree is devotional. After learning that he could not use his scholarship to pursue that degree, Davey brought this action under 42 U.S. C. §1983 for an injunction and damages, arguing that the denial of his scholarship violated the First Amendment's Free Exercise and Establishment Clauses.

Decision
The District Court rejected Davey's constitutional claims and granted the State summary judgment. The Ninth Circuit reversed, concluding that, because the State had singled out religion e treatment, its exclusion of theology majors had to be narrowly tailored to achieve a compelling state interest under *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah,* 508 U.S. 520. Finding that the State's antiestablishment concerns were not compelling, the court declared the program unconstitutional.

Held: Washington's exclusion of the pursuit of a devotional theology degree from its otherwise-inclusive scholarship aid program does not violate the Free Exercise Clause. This case involves the "play in the joints" between the Establishment and Free Exercise Clauses. *Walz* v. *Tax Comm'n of City of New York,* 397 U.S. 664, 669. That is, it concerns state action that is permitted by the former but not required by the latter. The Court rejects Davey's contention that, under *Lukumi, supra,* the program is presumptively unconstitutional because it is not facially neutral with respect to religion. The State has

merely chosen not to fund a distinct category of instruction (ie. devotional studies). The State's antiestablishment interests come into play. Since this country's founding, there have been popular uprisings against procuring taxpayer funds to support church leaders. That early state constitutions saw no problem in explicitly excluding *only* the ministry from receiving state dollars reinforces the conclusion that religious instruction is of a different ilk from other professions. Moreover, the entirety of the Promise Scholarship Program goes a long way toward including religion in its benefits, since it permits students to attend pervasively religious schools so long as they are accredited, and students are still eligible to take devotional theology courses under the program's current guidelines. Nothing in the Washington Constitution's history or text or in the program's operation suggests animus towards religion. Given the historic and substantial state interest at issue, it cannot be concluded that the denial of funding for vocational religious instruction alone is inherently constitutionally suspect. Without a presumption of unconstitutionality, Davey's claim must fail.

MITCHELL V. HELMS (98-1648) 530 U.S. 793 (2000)

Summary

Background
Chapter 2 of the Education Consolidation and Improvement Act of 1981 funds local educational agencies (LEA's) through state educational agencies (SEA's). This funding is meant to finance educational materials for public and private elementary and secondary schools. However these educational tools must be "secular, neutral, and nonideological." Each year (on average), about 30% of the Chapter 2 funds are spent in Jefferson Parish, Lousiana; most financed schools are Catholic or have a religious affiliation.

Respondents filing suit assert that Chapter 2 being applied in the parish violates the First Ammendment.

Decision
The Chief Judge of the District Court ordered that sectarian schools within the parish could no longer receive Chapter 2 funding. He retired. Another judge reversed the order and this judgment is held. (Two precedents in which funding for challenged students in religious schools within the public district was called upon).