CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"
Capitol Square Review and Advisory Bd. v. Pinette 515 U.S. 753 (1995)

A federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the Establishment Clause when such instruction is given on the premises of sectarian schools by government employees under a program containing safeguards such as those present in New York City's Title I program. Accordingly, Aguilar, as well as that portion of its companion case, School Dist. of Grand Rapids v. Ball, 473 U. S. 373, addressing a "Shared Time" program, are no longer good law. Pp. 215-236.

The Court looks to the character and purposes of the benefited institutions, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority. Id., at 615. It is simplest to recognize why entanglement is significant and treat it-as the Court did in Walz-as an aspect of the inquiry into a statute's effect. The Aguilar Court's finding of "excessive" entanglement rested on three grounds: (i) the program would require "pervasive monitoring by public authorities" to ensure that Title I employees did not inculcate religion; (ii) the program required "administrative cooperation" between the government and parochial schools; and (iii) the program might increase the dangers of "political divisiveness." 473 U. S., at 413-414. Under the Court's current Establishment Clause understanding, the last two considerations are insufficient to create an "excessive entanglement" because they are present no matter where Title I services are offered, but no court has held that Title I services cannot be offered off campus. E. g., Aguilar, supra. Further, the first consideration has been undermined by Zobrest. Because the Court in Zobrest abandoned the presumption that public employees will inculcate religion simply because they happen to be in a sectarian environment, there is no longer

any need to assume that pervasive monitoring of Title I teachers is required. There is no suggestion in the record that the system New York City has in place to monitor Title I employees is insufficient to prevent or to detect inculcation. Moreover, the Court has failed to find excessive entanglement in cases involving far more onerous burdens on religious institutions. See Bowen v. Kendrick, 487 U. S. 589, 615-617. Pp. 232-235.

(f) Thus, New York City's Title I program does not run afoul of any of three primary criteria the Court currently uses to evaluate whether government aid has the effect of advancing religion: It does not result in governmental indoctrination, define its recipients by reference to religion, or create an excessive entanglement. Nor can this carefully constrained program reasonably be viewed as an endorsement of religion. pp. 234-235.

(g) The stare decisis doctrine does not preclude this Court from recognizing the change in its law and overruling Aguilar and those portions of Ball that are inconsistent with its more recent decisions. E. g., United States v. Gaudin, 515 U. S. 506, 521. Moreover, in light of the Court's conclusion that Aguilar would be decided differently under current Establishment Clause law, adherence to that decision would undoubtedly work a "manifest injustice," such that the law of the case doctrine does not apply. Accord, Davis v. United States, 417 U. S. 333, 342. Pp. 235-236.

In light of these conclusions, petitioners' ability to satisfy the prerequisites of Rule 60(b)(5) hinges on whether our later Establishment Clause cases have so undermined

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Aguilar that it is no longer good law. We now turn to that inquiry.

In order to evaluate whether Aguilar has been eroded by our subsequent Establishment Clause cases, it is necessary to understand the rationale upon which Aguilar, as well as its companion case, School Dist. of Grand Rapids v. Ball, 473 U. S. 373 (1985), rested.

JUSTICE SOUTER contends that Zobrest did not undermine the "presumption of inculcation" erected in Ball and Aguilar, and that our conclusion to the contrary rests on a "mistaken reading" of Zobrest. Post, at 248 (dissenting opinion). In his view, Zobrest held that the Establishment Clause tolerates the presence of public employees in sectarian schools "only ... in ... limited circumstances"-i. e., when the employee "simply translates for one student the material presented to the class for the benefit of all students." Post, at 249. The sign-language interpreter in Zobrest is unlike the remedial instructors in Ball and Aguilar because signing, JUSTICE SOUTER explains, "[cannot] be understood as an opportunity to inject religious content in what [is] supposed to be secular instruction." Post, at 248-249. He is thus able to conclude that Zobrest is distinguishable

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from-and therefore perfectly consistent with-Ball and Aguilar.

The doctrine of stare decisis does not preclude us from recognizing the change in our law and overruling Aguilar and those portions of Ball inconsistent with our more recent decisions. As we have often noted, "[s]tare decisis is not an inexorable command," Payne v. Tennessee, 501 U. S. 808, 828 (1991), but instead reflects a policy judgment that "in most matters it is more important that the applicable rule of law be settled than that it be settled right," Burnet v. Coronado Oil & Gas Co., 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting). That policy is at its weakest when we interpret the Constitution because our interpretation can be altered only by constitutional amendment or by overruling our prior decisions. Seminole Tribe of Fla. v. Florida, 517 U. S. 44, 63 (1996); Payne, supra, at 828; St. Joseph Stock Yards Co. v. United States, 298 U. S. 38, 94 (1936) (Stone and Cardozo, JJ., concurring in result) ("The doctrine of stare decisis ... has only a limited application in the field of constitutional law"). Thus, we have held in several cases that stare decisis does not prevent us from overruling a previous decision where

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there has been a significant change in, or subsequent development of, our constitutional law. United States v. Gaudin, 515 U. S. 506, 521 (1995) (stare decisis may yield where a prior decision's "underpinnings [have been] eroded, by subsequent decisions of this Court"); Alabama v. Smith, 490 U. S. 794, 803 (1989) (noting that a "later development of ... constitutional law" is a basis for overruling a decision); Planned Parenthood of Southeastern Pa. v. Casey, 505 U. S. 833, 857 (1992) (observing that a decision is properly overruled where "development of constitutional law since the case was decided has implicitly or explicitly left [it] behind as a mere survivor of obsolete constitutional thinking"). As discussed above, our Establishment Clause jurisprudence has changed significantly since we decided Ball and Aguilar, so our decision to overturn those cases rests on far more than "a present doctrinal disposition to come out differently from the Court of [1985]." Casey, supra, at 864. We therefore overrule Ball and Aguilar to the extent those decisions are inconsistent with our current understanding of the Establishment Clause.

Nor does the "law of the case" doctrine place any additional constraints on our ability to overturn Aguilar. Under this doctrine, a court should not reopen issues decided in earlier stages of the same litigation. Messenger v. Anderson, 225 U. S. 436, 444 (1912). The doctrine does not apply if the court is "convinced that [its prior decision] is clearly erroneous and would work a manifest injustice." Arizona v. California, 460 U. S. 605, 618, n. 8 (1983). In light of our conclusion that Aguilar would be decided differently under our current Establishment Clause law, we think adherence to that decision would undoubtedly work a "manifest injustice," such that the law of the case doctrine does not apply. Accord, Davis v. United States, 417 U. S. 333, 342 (1974) (Court of Appeals erred in adhering to law of the case doctrine despite intervening Supreme Court precedent).

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