CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Edwards v. Aguillard, 482 U.S. 578 (1987)

Syllabus

Louisiana's "Creationism Act" forbids the teaching of the theory of evolution in public elementary and secondary schools unless accompanied by instruction in the theory of "creation science." The Act does not require the teaching of either theory unless the other is taught. It defines the theories as "the scientific evidences for [creation or evolution] and inferences from those scientific evidences." Appellees, who include Louisiana parents, teachers, and religious leaders, challenged the Act's constitutionality in Federal District Court, seeking an injunction and declaratory relief. The District Court granted summary judgment to appellees, holding that the Act violated the Establishment Clause of the First Amendment. The Court of Appeals affirmed.

Held:

1. The Act is facially invalid as violative of the Establishment Clause of the First Amendment, **because it lacks a clear secular purpose.** Pp. 482 U. S. 585-594.

(a) The Act does not further its stated secular purpose of "protecting academic freedom." It does not enhance the freedom of teachers to teach what they choose, and fails to further the goal of "teaching all of the evidence." Forbidding the teaching of evolution when creation science is not also taught undermines the provision of a comprehensive scientific education. Moreover, requiring the teaching of creation science with evolution does not give schoolteachers a flexibility that they did not already possess to supplant the present science curriculum with the presentation of theories, besides evolution, about the origin of life. Furthermore, the contention that the Act furthers a "basic concept of fairness" by requiring the teaching of all of the evidence on the subject is without merit. Indeed, the Act evinces a discriminatory preference for the teaching of creation science and against the teaching of evolution by requiring that curriculum guides be developed and resource services supplied for teaching creationism, but not for teaching evolution, by limiting membership on the resource services panel to "creation scientists," and by forbidding school boards to discriminate

against anyone who "chooses to be a creation scientist" or to teach creation science, while failing to protect those who choose to teach other theories or who refuse

to teach creation science. A law intended to maximize the comprehensiveness and effectiveness of science instruction would encourage the teaching of all scientific theories about human origins. Instead, this Act has the distinctly different purpose of discrediting evolution by counterbalancing its teaching at every turn with the teaching of creationism. Pp. 482 U. S. 586-589.

(b) The Act impermissibly endorses religion by advancing the religious belief that a supernatural being created humankind. The legislative history demonstrates that the term "creation science," as contemplated by the state legislature, embraces this religious teaching. The Act's primary purpose was to change the public school science curriculum to provide persuasive advantage to a particular religious doctrine that rejects the factual basis of evolution in its entirety. Thus, the Act is designed either to promote the theory of creation science that embodies a particular religious tenet or to prohibit the teaching of a scientific theory disfavored by certain religious sects. In either case, the Act violates the First Amendment. Pp. 482 U. S. 589-594.

The court held that there can be no valid secular reason for prohibiting the teaching of evolution, a theory historically opposed by some religious denominations. The court further concluded that

"the teaching of 'creation-science' and 'creationism,' as contemplated by the statute, involves teaching 'tailored to the principles' of a particular religious sect or group of sects."

Id. at 427 (citing Epperson v. Arkansas, 393 U. S. 97, 393 U. S. 106 (1968)). The District Court therefore held that the Creationism Act violated the Establishment Clause either because it prohibited the teaching of evolution or because it required the teaching of creation science with the purpose of advancing a particular religious doctrine.

The Establishment Clause forbids the enactment of any law "respecting an establishment of religion." [Footnote 3] The Court

has applied a three-pronged test to determine whether legislation comports with the Establishment Clause. First, the legislature must have adopted the law with a secular purpose. Second, the statute's principal or primary effect must be one that neither advances nor inhibits religion. Third, the statute must not result in an excessive entanglement of government with religion. Lemon v. Kurtzman, 403 U. S. 602, 403 U. S. 612-613 (1971). [Footnote 4] State action violates the Establishment Clause if it fails to satisfy any of these prongs.

In this case, the Court must determine whether the Establishment Clause was violated in the special context of the public elementary and secondary school system. States and local school boards are

generally afforded considerable discretion in operating public schools. See Bethel School Dist. No. 403 v. Fraser, 478 U. S. 675, 478 U. S. 683 (1986); id. at 478 U. S. 687 (BRENNAN, J., concurring in judgment); Tinker v. Des Moines Independent Community School Dist., 393 U. S. 503, 393 U. S. 507 (1969).

"At the same time . . . we have necessarily recognized that the discretion of the States and local school boards in matters of education must be exercised in a manner that comports with the transcendent imperatives of the First Amendment."

Board of Education, Island Trees Union Free School Dist. No. 26 v. Pico, 457 U. S. 853, 457 U. S. 864 (1982).

Consequently, the Court has been required often to invalidate statutes which advance religion in public elementary and secondary schools. See, e.g., Grand Rapids School Dist. v. Ball, supra, (school district's use of religious school teachers in public schools); Wallace v. Jaffree, supra, (Alabama statute authorizing moment of silence for school prayer); Stone v.

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Graham, 449 U. S. 39 (1980) (posting copy of Ten Commandments on public classroom wall); Epperson v. Arkansas, 393 U. S. 97 (1968) (statute forbidding teaching of evolution); Abington School Dist. v. Schempp, supra, (daily reading of Bible); Engel v. Vitale, 370 U. S. 421, 370 U. S. 430 (1962) (recitation of "denominationally neutral" prayer).

Lemon's first prong focuses on the purpose that animated adoption of the Act. "The purpose prong of the Lemon test asks whether government's actual purpose is to endorse or disapprove of religion." Lynch v. Donnelly, 465 U. S. 668, 465 U. S. 690 (1984) (O'CONNOR, J., concurring). A governmental intention to promote religion is clear when the State enacts a law to serve a religious purpose. This intention may be evidenced by promotion of religion in general, see Wallace v. Jaffree, supra, at 472 U. S. 52-53 (Establishment Clause protects individual freedom of conscience "to select any religious faith or none at all"), or by advancement of a particular religious belief, e.g., Stone v. Graham, supra, at 449 U. S. 41 (invalidating requirement to post Ten Commandments, which are "undeniably a sacred text in the Jewish and Christian faiths") (footnote omitted); Epperson v. Arkansas, supra, at 393 U. S. 106 (holding that banning the teaching of evolution in public schools violates the First Amendment, since "teaching and learning" must not "be tailored to the principles or prohibitions of any religious sect or dogma"). If the law was enacted for the purpose of endorsing religion, "no consideration of the second or third criteria [of Lemon] is necessary." Wallace v. Jaffree, supra, at 472 U. S. 56. In this case, appellants have identified no clear secular purpose for the Louisiana Act.

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True, the Act's stated purpose is to protect academic freedom. La.Rev.Stat.Ann. § 17:286.2 (West 1982). This phrase might, in common parlance, be understood as referring to enhancing the freedom of teachers to teach what they will. The Court of Appeals, however, correctly concluded that the Act was not designed to further that goal. [Footnote 6] We find no merit in the State's argument that the

"legislature may not [have] use[d] the terms 'academic freedom' in the correct legal sense. They might have [had] in mind, instead, a basic concept of fairness; teaching all of the evidence."

Tr. of Oral Arg. 60. Even if "academic freedom" is read to mean "teaching all of the evidence" with respect to the origin of human beings, the Act does not further this purpose. The goal of providing a more comprehensive science curriculum is not furthered either by outlawing the teaching of evolution or by requiring the teaching of creation science.

While the Court is normally deferential to a State's articulation of a secular purpose, it is required that the statement

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of such purpose be sincere, and not a sham. See Wallace v. Jaffree, 472 U.S. at 472 U. S. 64 (POWELL, J., concurring); id. at 472 U. S. 75 (O'CONNOR, J., concurring in judgment); Stone v. Graham, supra, at 449 U. S. 41; Abington School Dist. v. Schempp, 374 U.S. at 374 U. S. 223-224. As JUSTICE O'CONNOR stated in Wallace:

"It is not a trivial matter, however, to require that the legislature manifest a secular purpose and omit all sectarian endorsements from its laws. That requirement is precisely tailored to the Establishment Clause's purpose of assuring that Government not intentionally endorse religion or a religious practice."

472 U.S. at 472 U. S. 75 (concurring in judgment).

The Louisiana Creationism Act advances a religious doctrine by requiring either the banishment of the theory of evolution from public school classrooms or the presentation of a religious viewpoint that rejects evolution in its entirety.

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The Act violates the Establishment Clause of the First Amendment because it seeks to employ the symbolic and financial support of government to achieve a religious purpose. The judgment of the Court of Appeals therefore is

Affirmed.

[Footnote 3]

The First Amendment states: "Congress shall make no law respecting an establishment of religion. . . ." Under the Fourteenth Amendment, this "fundamental concept of liberty" applies to the States. Cantwell v. Connecticut, 310 U. S. 296, 310 U. S. 303 (1940).

[Footnote 4]

The Lemon test has been applied in all cases since its adoption in 1971, except in Marsh v. Chambers, 463 U. S. 783 (1983), where the Court held that the Nebraska Legislature's practice of opening a session with a prayer by a chaplain paid by the State did not violate the Establishment

Clause. The Court based its conclusion in that case on the historical acceptance of the practice. Such a historical approach is not useful in determining the proper roles of church and state in public schools, since free public education was virtually nonexistent at the time the Constitution was adopted. See Wallace v. Jaffree, 472 U. S. 38, 472 U. S. 80 (1985) (O'CONNOR, J., concurring in judgment) (citing Abington School Dist. v. Schempp, 374 U. S. 203, 374 U. S. 238, and n. 7 (1963) (BRENNAN, J., concurring)).

[Footnote 6]

The Court of Appeals stated that

"[a]cademic freedom embodies the principle that individual instructors are at liberty to teach that which they deem to be appropriate in the exercise of their professional judgment."

765 F.2d at 1257. But, in the State of Louisiana, courses in public schools are prescribed by the State Board of Education, and teachers are not free, absent permission, to teach courses different from what is required. Tr. of Oral Arg. 44-46. "Academic freedom," at least as it is commonly understood, is not a relevant concept in this context. Moreover, as the Court of Appeals explained, the Act

"requires, presumably upon risk of sanction or dismissal for failure to comply, the teaching of creation science whenever evolution is taught. Although states may prescribe public school curriculum concerning science instruction under ordinary circumstances, the compulsion inherent in the Balanced Treatment Act is, on its face, inconsistent with the idea of academic freedom as it is universally understood."

765 F.2d at 1257 (emphasis in original). The Act actually serves to diminish academic freedom by removing the flexibility to teach evolution without also teaching creation science, even if teachers determine that such curriculum results in less effective and comprehensive science instruction.