SANTA FE INDEPENDENT SCHOOL DISTRICT
v.
JANE DOE
SUPREME COURT OF THE UNITED STATS
530 U.S. 290
June 19, 2000
[6 - 3]

OPINION: Justice Stevens…Prior to 1995, the Santa Fe High School student who occupied the school's elective office of **student council chaplain** delivered a prayer over the **public address system** before each varsity football game for the entire season. This practice, along with others, was challenged in District Court as a violation of the Establishment Clause of the First Amendment. While these proceedings were pending in the District Court, the school district adopted a different policy that permits, but does not require, prayer initiated and led by a student at all home games. The District Court entered an order modifying that policy to permit only nonsectarian, nonproselytizing prayer. The Court of Appeals held that, even as modified by the District Court, the football prayer policy was invalid. We granted the school district's petition for certiorari to review that holding.

This particular form of prayer or prayer process comes to the Supreme Court as having lost in the Court of Appeals. So, as it stands, the proponents of this prayer method are asking the Supreme court to reverse the Court of Appeals and approve of this school's policy.

I

The Santa Fe Independent School District (District) is a political subdivision of the State of Texas...Respondents are two sets of current or former students and their respective mothers. One family is Mormon and the other is Catholic...

Respondents commenced this action in April 1995 and moved for a temporary restraining order to prevent the District from violating the Establishment Clause at the imminent graduation exercises. In their complaint the Does alleged that the District had engaged in several proselytizing practices, such as promoting attendance at a Baptist revival meeting, encouraging membership in religious clubs, chastising children who held minority religious beliefs, and distributing Gideon Bibles on school premises. They also alleged that the District allowed students to read Christian invocations and benedictions from the stage at graduation ceremonies, and to deliver overtly Christian prayers over the public address system at home football games.

On May 10, 1995, the District Court entered an interim order...With respect to the impending graduation, the order provided that "non-denominational prayer" consisting of "an invocation and/or benediction" could be presented by a senior student or students selected by members of the graduating class. The text of the prayer was to be determined by the students, without scrutiny or preapproval by school officials. References to particular religious figures "such as Mohammed, Jesus, Buddha, or the like" would be permitted "as long as the general thrust of the prayer is non-proselytizing."

In response to that portion of the order, the District adopted a series of policies over several months dealing with prayer at school functions. The policies enacted in May and July for graduation ceremonies provided the format for the August and October policies for football games. The May policy provided:

> "The board has chosen to permit the graduating senior class, with the advice and counsel of the senior class principal or designee, to elect by secret ballot to choose whether an invocation and benediction shall be part of the graduation exercise. If so chosen the class shall elect by secret ballot, from a list of student volunteers, students to deliver nonsectarian, nonproselytizing invocations and benedictions for the purpose of solemnizing their graduation ceremonies."

[After this policy was adopted], "the senior class held an election to determine whether to have an invocation and benediction at the commencement [and that] class voted, by secret ballot, to include prayer at the high school graduation." In a second vote the class elected two seniors to deliver the invocation and benediction.

In July, the District enacted another policy eliminating the requirement that invocations and benedictions be "nonsectarian and nonproselytising," but also providing that if the District were to be enjoined from enforcing that policy, the May policy would automatically become effective.

The August policy, which was titled "Prayer at Football Games," was similar to the July policy for graduations. It also authorized two student elections, the first to determine whether "invocations" should be delivered, and the second to select the spokesperson to deliver them. Like the July policy, it contained two parts, an initial statement that omitted any requirement that the content of the invocation be "nonsectarian and nonproselytising," and a fallback provision that automatically added that limitation if the preferred policy should be enjoined. On August 31, 1995, ["the district's high school students voted to determine whether a student would deliver prayer at varsity football games. The students chose to allow a student to say a prayer at football games."] A week later, in a separate election, they selected a student "to deliver the prayer at varsity football games."

The final policy (October policy) is essentially the same as the August policy, though it omits the word "prayer" from its title, and refers to "messages" and "statements" as well as "invocations." **It is the validity of that policy that is before us**.

To be clear, it is the football prayer policy the Court is deciding. For whatever reason, it is only the football prayer policy that is being addressed in the Supreme Court.

The District Court did enter an order precluding enforcement of the first, open-ended policy. Relying on our decision in Lee v. Weisman[1], it held that the school's "action must not coerce anyone to support or participate in a religious exercise." Applying that test, it concluded that the graduation prayers appealed "to distinctively Christian beliefs" and that delivering a prayer "over the school's public address system prior to each football and baseball game coerces student participation in religious events." Both parties appealed, the District contending that the enjoined portion of the October policy was permissible and the Does contending that both alternatives violated the Establishment Clause. The Court of Appeals majority agreed with the Does.

The decision of the Court of Appeals followed Fifth Circuit precedent that had announced two rules. In Jones v. Clear Creek Independent School Dist., that court held that student-led prayer that was approved by a vote of the students and was nonsectarian and nonproselytizing was permissible at high school graduation ceremonies. On the other hand, in later cases the Fifth Circuit made it clear that the Clear Creek rule applied only to high school graduations and that school-encouraged prayer was constitutionally impermissible at school-related sporting events. Thus, in Doe v. Duncanville Independent School Dist., it had described a high school graduation as "a significant, once in-a-lifetime event" to be contrasted with athletic events in "a setting that is far less solemn and extraordinary."

In its opinion in this case, the Court of Appeals explained:

> "The **controlling feature** here is the same as in Duncanville: The prayers are to be delivered at football games-hardly the sober type of annual event that can be appropriately solemnized with prayer. The distinction to which the District points is simply one without difference. **Regardless of whether the prayers are selected by vote or spontaneously initiated at these frequently-recurring, informal, school-sponsored events, school officials are present and have the authority to stop the prayers.** Thus, as we indicated in Duncanville, our decision in Clear Creek II hinged on the singular context and singularly serious nature of a graduation ceremony. Outside that nurturing context, a Clear Creek Prayer Policy cannot survive. We therefore reverse the district court's holding that the District's alternative Clear Creek Prayer Policy can be extended to football games, irrespective of the presence of the nonsectarian, nonproselytizing restrictions."

The dissenting judge rejected the majority's distinction between graduation ceremonies and football games. In his opinion the District's October policy created a limited public forum that had a secular purpose and provided neutral accommodation of noncoerced, private, religious speech.

We granted the District's petition for certiorari, limited to the following question: "Whether petitioner's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause." We conclude, as did the Court of Appeals, that it does.

So, the Supreme Court struck down this form of prayer in this case and is about to tell us why.

[1] Case 1A-R-089 on this website.

II

…In Lee v. Weisman we held that a prayer delivered by a rabbi at a middle school graduation ceremony violated that Clause. Although this case involves student prayer at a different type of school function, our analysis is properly guided by the principles that we endorsed in Lee.

As we held in that case:

> "The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the Establishment Clause. It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which establishes a state religion or religious faith, or tends to do so."

In this case the District first argues that this principle is inapplicable to its October policy because the messages are private student speech, not public speech. It reminds us that "there is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." Westside v. Mergens[2] (opinion of O'Connor, J.). We certainly agree with that distinction, but we are not persuaded that the pregame invocations should be regarded as "private speech."

These invocations are authorized by a government policy and take place on government property at government-sponsored school-related events. Of course, not every message delivered under such circumstances is the government's own. We have held, for example, that an individual's contribution to a government-created forum was not government speech. Rosenberger v. Rector[3]. Although the District relies heavily on Rosenberger and similar cases involving such forums, it is clear that the pregame ceremony is not the type of forum discussed in those cases. The Santa Fe school officials simply do not "evince either by policy or by practice, any intent to open the pregame ceremony to indiscriminate use,...by the student body generally." Hazelwood School Dist. v. Kuhlmeier[4]. Rather, **the school allows only one student, the same student for the entire season, to give the invocation. The statement or invocation, moreover, is subject to particular regulations that confine the content and topic of the student's message.** By comparison, in Perry we rejected a claim that the school had created a limited public forum in its school mail system despite the fact that it had allowed far more speakers to address a much broader range of topics than the policy at issue here..."Selective access does not transform government property into a public forum."

Granting only one student access to the stage at a time does not, of course, necessarily preclude a finding that a school has created a limited public forum. Here, however, Santa Fe's student

[2] Case 1A-R-088 on this website.

[3] Case 1A-R-095 on this website.

[4] Case 1A-S-36 on this website.

election system ensures that only those messages deemed "appropriate" under the District's policy may be delivered. That is, **the majoritarian process implemented by the District guarantees, by definition, that minority candidates will never prevail and that their views will be effectively silenced.**

Recently, in Regents v. Southworth[5], we explained why student elections that determine, by majority vote, which expressive activities shall receive or not receive school benefits are constitutionally problematic:

> "To the extent the referendum substitutes majority determinations for viewpoint neutrality it would undermine the constitutional protection the program requires. The whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views. Access to a public forum, for instance, does not depend upon majoritarian consent. That principle is controlling here."

Like the student referendum for funding in Southworth, this student election does nothing to protect minority views but rather places the students who hold such views at the mercy of the majority. Because "fundamental rights may not be submitted to vote; they depend on the outcome of no elections," West Virginia Bd. of Ed. v. Barnette[6], the District's elections are insufficient safeguards of diverse student speech.

In Lee, the school district made the related argument that its policy of endorsing only "civic or nonsectarian" prayer was acceptable because it minimized the intrusion on the audience as a whole. We rejected that claim by explaining that such a majoritarian policy "does not lessen the offense or isolation to the objectors. At best it narrows their number, at worst increases their sense of isolation and affront." Similarly, while Santa Fe's majoritarian election might ensure that most of the students are represented, it does nothing to protect the minority; indeed, it likely serves to intensify their offense.

Moreover, **the District has failed to divorce itself from the religious content in the invocations. It has not succeeded in doing so, either by claiming that its policy is "one of neutrality rather than endorsement" or by characterizing the individual student as the "circuit-breaker" in the process.** Contrary to the District's repeated assertions that it has adopted a "hands-off" approach to the pregame invocation, the realities of the situation plainly reveal that **its policy involves both perceived and actual endorsement of religion.** In this case, as we found in Lee, **the "degree of school involvement" makes it clear that the pregame prayers bear "the imprint of the State and thus put school-age children who objected in an untenable position."**

Personally, I just do not have a problem with this outcome. Consider the potential for a Muslim student being so popular that he gains the vote of the majority. Would you be ok with his form of prayer for your public school student?

[5] Case 1A-R-098 on this website.

[6] Case 1A-S-9 on this website.

Are you willing to permit your children to be subjected to the beliefs of the majority of high school students? Really? Or, are you against this result only because the students preferred a Christian prayer? Can anyone give me one example where Christ sought the support of secular government? Just wondering! And, Muslims, how are you with this outcome?

The District has attempted to disentangle itself from the religious messages by developing the two-step student election process. The text of the October policy, however, exposes the extent of the school's entanglement. **The elections take place at all only because the school "board has chosen to permit students to deliver a brief invocation and/or message."** The elections thus "shall" be conducted "by the high school student council" and **"upon advice and direction of the high school principal."** The decision whether to deliver a message is first made by majority vote of the entire student body, followed by a choice of the speaker in a separate, similar majority election. Even though the particular words used by the speaker are not determined by those votes, the policy mandates that the "statement or invocation" be "consistent with the goals and purposes of this policy," which are "to solemnize the event, to promote good sportsmanship and student safety, and to establish the appropriate environment for the competition."

In addition to involving the school in the selection of the speaker, the policy, by its terms, invites and encourages religious messages. The policy itself states that the purpose of the message is "to solemnize the event." A religious message is the most obvious method of solemnizing an event. Moreover, the requirements that the message "promote good citizenship" and "establish the appropriate environment for competition" further narrow the types of message deemed appropriate, suggesting that a solemn, yet nonreligious, message, such as commentary on United States foreign policy, would be prohibited. Indeed, the only type of message that is expressly endorsed in the text is an "invocation"-a term that primarily describes an appeal for divine assistance. In fact, as used in the past at Santa Fe High School, an "invocation" has always entailed a focused religious message. Thus, the expressed purposes of the policy encourage the selection of a religious message, and that is precisely how the students understand the policy. The results of the elections described in the parties' stipulation make it clear that the students understood that the central question before them was whether prayer should be a part of the pregame ceremony. We recognize the important role that public worship plays in many communities, as well as the sincere desire to include public prayer as a part of various occasions so as to mark those occasions' significance. But such religious activity in public schools, as elsewhere, must comport with the First Amendment.

The actual or perceived endorsement of the message, moreover, is established by factors beyond just the text of the policy. **Once the student speaker is selected and the message composed, the invocation is then delivered to a large audience assembled as part of a regularly scheduled, school-sponsored function conducted on school property. The message is broadcast over the school's public address system, which remains subject to the control of school officials.** It is fair to assume that the pregame ceremony is clothed in the traditional indicia of school sporting events, which generally include not just the team, but also cheerleaders and band members dressed in uniforms sporting the school name and mascot. The school's name is likely written in large print across the field and on banners and flags. The crowd will certainly include many who display the school colors and insignia on their school T-shirts, jackets, or hats and who may also be waving signs displaying the school name. It is in a setting such as this that

"the board has chosen to permit" the elected student to rise and give the "statement or invocation."

In this context the members of the listening audience must perceive the pregame message as a public expression of the views of the majority of the student body delivered with the approval of the school administration. In cases involving state participation in a religious activity, one of the relevant questions is "whether an objective observer, acquainted with the text, legislative history, and implementation of the statute, would perceive it as a state endorsement of prayer in public schools." Wallace[7]. Regardless of the listener's support for, or objection to, the message, an objective Santa Fe High School student will unquestionably perceive the inevitable pregame prayer as **stamped with her school's seal of approval**.

The text and history of this policy, moreover, reinforce our objective student's perception that the prayer is, in actuality, encouraged by the school. When a governmental entity professes a secular purpose for an arguably religious policy, the government's characterization is, of course, entitled to some deference. But it is nonetheless the duty of the courts to "distinguish a sham secular purpose from a sincere one." Wallace.

According to the District, the secular purposes of the policy are to "foster free expression of private persons - as well as to solemnize sporting events, promote good sportsmanship and student safety, and establish an appropriate environment for competition." We note, however, that the District's approval of only one specific kind of message, an "invocation," is not necessary to further any of these purposes. Additionally, the fact that only one student is permitted to give a content-limited message suggests that this policy does little to "foster free expression." Furthermore, regardless of whether one considers a sporting event an appropriate occasion for solemnity, the use of an invocation to foster such solemnity is impermissible when, in actuality, it constitutes prayer sponsored by the school. And it is unclear what type of message would be both appropriately "solemnizing" under the District's policy and yet non-religious.

Most striking to us is the evolution of the current policy from the long-sanctioned office of "Student Chaplain" to the candidly titled "Prayer at Football Games" regulation. This history indicates that the District intended to preserve the practice of prayer before football games. The conclusion that the District viewed the October policy simply as a continuation of the previous policies is dramatically illustrated by the fact that the school did not conduct a new election, pursuant to the current policy, to replace the results of the previous election, which occurred under the former policy. Given these observations, and in light of the school's history of regular delivery of a student-led prayer at athletic events, it is reasonable to infer that the specific purpose of the policy was to preserve a popular "state-sponsored religious practice." Lee.

School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherants "that they are outsiders, not full members of the political community, and an accompanying message to adherants that they are insiders, favored members of the political community." Lynch v. Donnelly[8]. The delivery of such

[7] Case 1A-R-068 on this website.

[8] Case 1A-R-066 on this website.

a message-over the school's **public address system**, by a speaker representing the student body, **under the supervision of school faculty**, and pursuant to a school policy that explicitly and implicitly encourages public prayer-is not properly characterized as "private" speech.

III

The District next argues that its football policy is distinguishable from the graduation prayer in Lee because it does not coerce students to participate in religious observances. Its argument has two parts: first, that there is no impermissible government coercion because the pregame messages are the product of student choices; and second, that there is really no coercion at all because attendance at an extracurricular event, unlike a graduation ceremony, is voluntary.

The reasons just discussed explaining why the alleged "circuit-breaker" mechanism of the dual elections and student speaker do not turn public speech into private speech also demonstrate why these mechanisms do not insulate the school from the coercive element of the final message. In fact, this aspect of the District's argument exposes anew the concerns that are created by the majoritarian election system. The parties' stipulation clearly states that the issue resolved in the first election was "whether a student would deliver prayer at varsity football games" and the controversy in this case demonstrates that the views of the students are not unanimous on that issue.

One of the purposes served by the Establishment Clause is to remove debate over this kind of issue from governmental supervision or control. We explained in Lee that the "preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." The two student elections authorized by the policy, coupled with the debates that presumably must precede each, impermissibly invade that private sphere. The election mechanism, when considered in light of the history in which the policy in question evolved, reflects a device the District put in place that determines whether religious messages will be delivered at home football games. The mechanism encourages divisiveness along religious lines in a public school setting, a result at odds with the Establishment Clause. Although it is true that the ultimate choice of student speaker is attributable to the students, the District's decision to hold the constitutionally problematic election is clearly "a choice attributable to the State."

The District further argues that attendance at the commencement ceremonies at issue in Lee "differs dramatically" from attendance at high school football games, which it contends "are of no more than passing interest to many students" and are "decidedly extracurricular," thus dissipating any coercion. Attendance at a high school football game, unlike showing up for class, is certainly not required in order to receive a diploma. Moreover, we may assume that the District is correct in arguing that the informal pressure to attend an athletic event is not as strong as a senior's desire to attend her own graduation ceremony.

There are some students, however, such as cheerleaders, members of the band, and, of course, the team members themselves, for whom seasonal commitments mandate their attendance, sometimes for class credit. The District also minimizes the importance to many students of attending and participating in extracurricular activities as part of a complete educational experience...To assert that high school students do not feel immense social pressure, or have a truly genuine desire, to be involved in the extracurricular event that is American high school football is "formalistic in the extreme." We stressed in Lee the obvious observation that

"adolescents are often susceptible to pressure from their peers towards conformity, and that the influence is strongest in matters of social convention." High school home football games are traditional gatherings of a school community; they bring together students and faculty as well as friends and family from years present and past to root for a common cause. Undoubtedly, the games are not important to some students, and they voluntarily choose not to attend. For many others, however, the choice between whether to attend these games or to risk facing a personally offensive religious ritual is in no practical sense an easy one.

The Constitution, moreover, demands that the school may not force this difficult choice upon these students for "it is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice."

Even if we regard every high school student's decision to attend a home football game as purely voluntary, we are nevertheless persuaded that the delivery of a pregame prayer has the improper effect of coercing those present to participate in an act of religious worship. For "the government may no more use social pressure to enforce orthodoxy than it may use more direct means." As in Lee, "what to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy." **The constitutional command will not permit the District "to exact religious conformity from a student as the price" of joining her classmates at a varsity football game.**

The Religion Clauses of the First Amendment prevent the government from making any law respecting the establishment of religion or prohibiting the free exercise thereof. By no means do these commands impose a prohibition on all religious activity in our public schools. Indeed, the common purpose of the Religion Clauses "is to secure religious liberty." Engel v. Vitale[9]. **Thus, nothing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during, or after the schoolday. But the religious liberty protected by the Constitution is abridged when the State affirmatively sponsors the particular religious practice of prayer...**

The judgment of the Court of Appeals is, accordingly, affirmed.

DISSENT: Chief Justice Rehnquist…[Not provided.]

OK. The Court struck this prayer mechanism down precisely because there was too much government intervention or entanglement. It was the government structure, public address system, etc., that brought it down. Please see the hypothetical in my book, It's OK to Say God, on pages 191-195 regarding a football game. Nothing changes with this case. Private individuals and groups can pray all they want at a football game. Surely Christianity can survive without relying on government. Please don't make the mistake of concluding that this case means our students can never pray at school.

[9] Case 1A-R-033 on this website.