Santa Fe Independent School District v. Doe

Argued: March 29, 2000 Decided: June 19, 2000

Facts

The First Amendment’s Establishment Clause prohibits the government from making any law respecting an establishment of religion. It is the basis for the separation of church and state, and prevents the government, including public school districts, from promoting specific religions. This case, *Santa Fe Independent School District v. Doe*, is about whether a school district would violate the Establishment Clause by allowing student-led prayers before a school football game.

In 1995, the Santa Fe Independent School District established a policy that would allow students to give pre-game prayers over the public address system at high school football games. These prayers, which were not required, would be delivered as "invocations" or "benedictions" for the events. As part of the policy, two student elections would be held: the first one would determine whether the students wanted a prayer before games and the second one would determine which student would deliver the prayer. During the pre-game ceremonies, the school district would maintain complete control over the programs and facilities, including the ability to cut off the microphone.

Before the school implemented the policy, two families sued the school district, claiming that the policy violated the First Amendment’s Establishment Clause. The families won at both the trial court and Court of Appeals. The school district appealed to the U.S. Supreme Court.

Issue

Does a public school policy permitting student-led, student-initiated prayers at football games violate the Establishment Clause of the First Amendment?

Constitutional Amendments and Precedents

* **First Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

* **Lemon v. Kurtzman (1971)**

In 1968, Pennsylvania passed a law allowing the state to reimburse nonpublic, mostly Catholic schools for teachers’ salaries, textbooks, and other instructional materials. Taxpayers sued the state, claiming that the law violated the Establishment Clause.

The Court ruled in favor of the taxpayers. In doing so, it outlined the “Lemon Test,” a three-prong test for determining whether there is an Establishment Clause violation. First, the government’s action must have a secular (non-religious) purpose. Second, the government's action must not have the primary effect of either advancing or inhibiting religion. And, third, the government's action must not result in an "excessive government entanglement" with religion. Pennsylvania violated the third prong – that is, the state was excessively entangled with religion – because the state would have to monitor that the teachers receiving public money were not advancing religion.

* **Lee v. Weisman (1992)**

Deborah Weisman’s principal invited a rabbi to deliver a prayer at Weisman’s middle-school graduation in 1989. The principal advised the rabbi that the invocation and benediction should be nonsectarian. But the rabbi’s prayer at graduation repeatedly thanked “God” and concluded as follows: “[w]e give thanks to You, Lord, for keeping us alive, sustaining us and allowing us to reach this special, happy occasion.” Weisman’s father sued based on the Establishment Clause.

The Court ruled for Weisman: a prayer delivered by a rabbi at a middle school graduation ceremony violates the Establishment Clause. According to the Court, the school’s involvement in the religious exercise at graduation was 'pervasive'. Also, the school’s control over the ceremonies places both public and peer pressure on students to stand as a group or remain silent during the prayer. Although a person might stand for the prayer merely as a sign of respect for others, such an action could properly be construed as accepting the message. In other words, “[t]here can be no doubt that for many, if not most, of the students at the graduation, the act of standing or remaining silent was an expression of participation in the Rabbi's prayer” and a school cannot “persuade or compel a student to participate in a religious exercise.”

Arguments for Santa Fe Independent School District

* Santa Fe’s prayer policy does not violate the First Amendment’s Establishment Clause because it is a neutral policy that allows for either secular or religious speech.
* The students, not the school, would make independent decisions about the school prayer. Students would choose to have a speaker, vote for the volunteer student speaker, and choose what message to deliver.
* The school’s policy passes the three-part test under *Lemon v. Kurtzman*: First, the purpose of the policy was to solemnize (formally observe) the sporting event, promote sportsmanship, and establish an appropriate setting for athletic competition. Second, the primary effect of the policy would not advance or inhibit religion because the students would know that other students controlled the messages. Third, there would be no excessive government entanglement with religion because the school district had a “hands-off approach” in order to avoid being involved in any form of monitoring or censoring of the student-led speech.
* Unlike in *Lee v. Weisman*, Santa Fe’s football policy would not be school-directed. The school would simply provide a neutral opportunity for religious and secular speech, at the discretion and choice of the individual students. It would exercise no control over the content of the message.

Arguments for Doe

* The school district’s prayer policy is government speech in disguise, with the purpose of endorsing religion and continuing the school’s long commitment to and tradition for prayers at school-sponsored events.
* The school district’s “hands-off approach” is unrealistic. They would be responsible for the religious speech because they would schedule the school-sponsored events, control the pre-game ceremonies, and provide the public address system.
* The policy does not pass the *Lemon* test. Including prayer at an official, school-sponsored event would have the primary effect of coercing all students to participate in the religious exercise. The students would feel pressured to participate. Also, many of these students, such as cheerleaders and band members, are compelled to attend football games because it is part of a mandatory school policy.
* It also fails the *Lemon* test because giving students’ choices does not relieve the school from excessive entanglement with religion. The elections would be “conducted upon advice and direction” of the high-school principal, and the student council’s actions would be subject to the veto of their faculty advisors.

Decision

Justice Stevens wrote the opinion of the Court, which Justices Breyer, Ginsburg, Kennedy, O’Connor, and Souter joined. Chief Justice Rehnquist filed a dissenting opinion. He was joined by Justices Scalia and Thomas.

Majority

In 6-3 decision, the Court ruled in favor of the families, declaring that Santa Fe’s policy violated the Establishment Clause. The Court emphasized that, if the policy were to be carried out, the prayer would be government speech, not student speech, because the school would be extensively involved. Specifically, the prayer would take place during a school-sponsored event, over the school’s speaker system, and according to school policies. The Court also concluded that the district's supposed secular purpose was a "sham" and a clear violation of the "purpose" prong of the *Lemon* test. The Court focused on the policy’s language, especially its intent to "solemnize" the event via the sharing of an "invocation," both terms that imply religious observations. Finally, the Court based its decision on its precedent in *Lee v. Weisman*. A pre-game prayer forced on those in “voluntary” attendance, the Court said, would have the effect of coercing them into an act of religious worship. Schools cannot compel students to make the difficult choice between whether to attend these games or to risk facing a personally offensive religious ceremony.

Dissent

The dissent argued the Court’s opinion “bristles with hostility to all things religious in public life” and that the school’s stated purposes – to solemnize the event, promote good sportsmanship, and set the appropriate environment for the event – should be given deference. It also said that the constitutional challenge to the school policy was premature because the policy was never put into practice. If, and when, an elected student leads a prayer at a football game, the Court would have a record to decide whether or not the school violated the Establishment Clause.