

Amanda Scott

Prof. Hartman

Constitutional Law II

Paper Assignment #2

March 20, 2018

OPINION

The case that comes before this Court today is brought by Americans United for Separation of Church and State (hereinafter “plaintiffs”) on behalf of parents in the Bossier Parish Public Schools (hereinafter “defendants”). Plaintiffs allege that Defendants “Prayer in Schools” policy violates the Establishment Clause of the First Amendment. Plaintiffs seek a preliminary injunction to enjoin the policy from continuing in effect.

DISCUSSION

Before we can begin to address Plaintiffs’ arguments and the Defendants’ counter-arguments, we must first navigate through the tumultuous waters of Establishment Clause jurisprudence. The Establishment Clause of the First Amendment provides “Congress shall make no law respecting an establishment of religion. . . .” Amend. I. The prohibition against religious establishments is incorporated against the states and local governments through the Due Process Clause of the Fourteenth Amendment. *See Everson v. Board of Ed. of Ewing*, 330 U.S. 1 (1943).

The Supreme Court has formulated three main tests to determine whether a government action runs afoul of the Establishment Clause. The first is the three-prong *Lemon* test introduced

in *Lemon v. Kurtzman*, 493 U.S. 602 (1971) which requires that a government action must 1) have a secular legislative purpose; 2) its principal or primary effect must be one that neither advances nor inhibits religion, and 3) it must not foster an excessive government entanglement with religion. *Lemon*, 403 U.S. at 613.

The second test, closely related to the *Lemon* test, is the endorsement test from *Lynch v. Donnelly*, 465 U.S. 668 (1984), which mandates that the government must not endorse or disapprove of religion. Government endorsement “sends a message to non adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.” *Lynch*, 465 U.S. at 688 (O’Connor, J., concurring). Disapproval “sends the opposite message.” *Id.*

The third test is the coercion test from *Lee v. Weisman*, 505 U.S. 577 (1992) which demands 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.” *Lee*, 505 U.S. at 587.

The Supreme Court has been “particularly vigilant” in monitoring compliance with the Establishment Clause in public elementary and secondary schools because “students in such institutions are impressionable and their attendance is involuntary.” *See Edwards v. Aguillard*, 482 U.S. 578, 583-584 (1987). Families entrust public schools with the education of their children based on “the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards*, 482 U.S. at 584. In *Lee v. Weisman*, 505 U.S. 577 (1992), the Court struck down invocations offered by a rabbi at a public school graduation ceremony as unconstitutional.

Similarly, in *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290 (2000), the Court struck down “student-initiated” and “student-led” prayers at public school sporting events as unconstitutional. This Court finds that the rationale in *Lee* and *Santa Fe* are controlling in the present case.

I. The Lemon Test

Plaintiffs argue that the Bossier Parish Schools “explicitly and implicitly encourage[] prayer at graduation ceremonies,” which has the “primary purpose and effect of encouraging the promotion of religion” and results in an “excessive entanglement of government with religion.” The “Prayer In Schools Policy” adopted by the Bossier Parish School Board provides that no school action “shall prevent any student from calling upon a student volunteer to offer an inspirational quotation or statement, offer a voluntary prayer, or lead in silent meditation.” In addition, school officials are “prohibited from censoring for religious content the speech of a high school student invited to speak at a commencement ceremony.”

In order to survive an Establishment Clause challenge under the *Lemon* test, Bossier Parish Schools must first demonstrate that the School Board had a “secular legislative purpose” in enacting the challenged school policy. *Lemon*, 403 U.S. at 613. Bossier Parish states the school policy was enacted to ensure that the school’s “long-standing tradition of offering solemnizing invocations to lend gravity to civic/ceremonial events” complies with the Constitution. Invocations, by their very definition, are a form of prayer that invoke the assistance of a deity at the beginning of a religious service or a ceremony. The name of the policy, “Prayer In Schools Policy,” specifically refers to “prayer,” rather than a neutral term such as “student speeches.” School officials are prohibited from exercising control over “religious content” in

student speeches but not other types of content, not even content that could be considered violent, obscene or offensive. The statements and language in the school policy demonstrate that Bossier Parish School Board's purpose was to encourage students to offer prayers, specifically invocations, in order to "solemnize" and "lend gravity" to graduation ceremonies, sporting events, and other school-sponsored events. Such a purpose is impermissible under the Establishment Clause.

Bossier Parish Schools must demonstrate that the school policy does not have the "primary or principal effect of neither advanc[ing] nor inhibit[ing] religion" and does not "foster an excessive government entanglement with religion." *Lemon*, 403 U.S. at 613. Bossier Parish claims that the school policy complies the Constitution's requirement that "government officials not act as supervisors and censors of religious speech." The school board, in enacting the school policy, decided that invocations should be given to "solemnize" and "lend gravity" to graduation ceremonies, sporting events, school-sponsored events and then delegated the authority to student leaders to select a student volunteer to give them. Although the selection of the student volunteer is "attributable to the students," the decision to have invocations at all is ultimately "attributable to the State." *Lee*, 505 U.S. at 587. Bossier Parish School Board's decision impermissibly advances religion and entangles itself with religion by directing students to deliver invocations asking for divine assistance at school-sponsored events. Such a decision is impermissible under the Establishment Clause.

II. The Endorsement Test

Plaintiffs argue that Bossier Parish Schools has "created both perceived and actual endorsement of religion at graduations." Bossier Parish claims that the school policy is "neutral"

and “does not in any way discriminate against minority faiths.” Like in *Santa Fe*, the “actual or perceived endorsement of the message is established by factors beyond just the text of the policy.” 530 U.S. at 307. The school exercises a great degree of supervision and control over graduation ceremonies, sporting events, and other school-sponsored events. Once the student body has selected a student volunteer to deliver an invocation, voluntary prayer, inspirational message, or silent meditation, the message is then “broadcast over the school’s public address system” and delivered to a “large audience assembled on school property.” *Id.* In this context, members of the audience, including dissenters, must “perceive the message as a public expression of the views of the majority of the student body delivered with the approval of the school administration.” *Id.* at 308.

III. The Coercion Test

Plaintiffs argue that Bossier Parish Schools “[p]ermits religious coercion by requiring students and their families to participate in religious activities in order to participate fully in school life.” Bossier Parish claims that the prayers offered are “non-coercive” and do not “denigrate nonbelievers or religious minorities, threaten damnation, or preach conversion.” In *Lee* and *Santa Fe*, the Supreme Court recognized that there are “heightened concerns” with protecting freedom of conscience from the “subtle coercive pressure in the elementary and secondary public schools.” *Lee*, 505 U.S. at 592. While Bossier Parish Schools may not mandate students to participate in the invocation, prayer, or silent meditation, minority and dissenting students experience real psychological pressures to stand, bow their heads or remain silent to show respect to the religious beliefs of the majority at risk of being singled out. “This pressure, though subtle and indirect, can be as real as any overt compulsion.” *Id.* at 593. The Constitution

forbids schools from placing students in this position for “it is a fundamental 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.” *Id.* at 596.

CONCLUSION

For the foregoing reasons, we conclude that the Plaintiffs are likely to succeed on the merits of their claims and **GRANT** the Plaintiffs’ motion for a preliminary injunction to enjoin the school policy from continuing in effect.