COMMENTARY CONT.

Why the Supreme Court's Football Decision Is a Game-changer on School Prayer

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The U.S. Supreme Court has consistently banned school-sponsored prayer in public schools. At the same time, lower courts have generally forbidden public school employees from openly praying in the workplace, even if no students are involved.

Yet on June 27, 2022, the Supreme Court effectively gave individual employees' prayer the thumbs up – potentially ushering in more religious activities in public schools.

In Kennedy v. Bremerton School District – the Supreme Court's first case directly addressing the question – the court ruled that a school board in Washington state violated a coach's rights by not renewing his contract after he ignored district officials' directive to stop kneeling in silent prayer on the field's 50-yard line after games. He claimed that the board violated his First Amendment rights to freedom of speech and freedom of religion, and the Supreme Court's majority agreed 6-3.

From my perspective as a specialist in education law, the case is noteworthy because the court has now decided that public school employees can pray when supervising students. It also helps close out a Supreme Court term when the current justices' increasing interest in claims of religious discrimination was on full display, with another "church-state" case decided in religious plaintiffs' favor just last week. And on June 24, 2022, the court overturned Roe v. Wade. The debate over abortion is often framed in terms of religion, even though the court's holding focused on other constitutional grounds.

Facts of the case

In 2008, Kennedy, a self-described Christian, worked as head coach of the junior varsity football team and assistant coach of the varsity team at Bremerton High School. He began to kneel on the 50-yard line after games, regardless of the outcome, offering a brief, quiet prayer of thanks.

While Kennedy first prayed alone, eventually most of the players on his team, and then members of opposing squads, joined in. He later added inspirational speeches, causing some parents and school employees to voice concerns that players would feel compelled to participate.

School officials directed Kennedy to stop praying on the field because they feared that his actions could put the board at risk of violating the First Amendment. The government is prohibited from making laws "respecting an establishment of religion, or prohibiting the free exercise thereof" – language known as the establishment clause, which is often understood as meaning public officials cannot promote particular faiths over others.

In September 2015, school officials notified the coach that he could continue delivering his inspirational speeches after games, but they had to remain secular. Although students could pray, he could not. Even so, a month later, Kennedy resumed his on-field prayers. He had publicized his plans to do so and was joined by players, coaches and parents, while reporters watched.

Bremerton's school board offered Kennedy accommodations to allow him to pray more privately on the field after the stadium emptied out, which he rejected. At the end of October, officials placed him on paid leave for violating their directive and eventually chose not to renew his one-year contract. Kennedy filed suit in August 2016.

Two complicated clauses

Kennedy raised two major claims: that the school board violated his rights to freedom of speech and also to the free practice of his religion. However, the Ninth Circuit twice rejected these claims because it concluded that when he prayed, he did so as a public employee whose actions could have been viewed as having the board's approval. Moreover, the Ninth Circuit agreed with the school board that the district had a compelling interest to avoid violating the establishment clause.

During oral arguments at the Supreme Court, though, it was clear that the majority of justices were sympathetic to Kennedy's claims of religious discrimination and more concerned with his rights to religious freedom than the board's concern about violating the establishment clause.

Writing for the court, Justice Neil Gorsuch noted that "a proper understanding of the Amendment's Establishment Clause [does not] require the government to single out private religious speech for special disfavor. The Constitution and the best of our traditions counsel mutual respect and tolerance, not censorship and suppression, for religious and nonreligious views alike."

One aspect of Kennedy with potentially far-reaching consequences is that it largely repudiates the three major tests the court has long applied in cases involving religion.

The first, Lemon v. Kurtzman, was a 1971 dispute about aid to faith-based schools in Pennsylvania. The Supreme Court's decision required that interactions between the government and religion must pass a three-pronged test in order to avoid violating the establishment clause. First, an action must have a secular legislative purpose. In addition, its principle or primary effect must neither advance nor inhibit religion, and it cannot result in excessive entanglement between the government and religion. Regardless of whether one supported or opposed the "Lemon test," it was often unwieldy.

Joe Kennedy poses in front of the U.S. Supreme Court building after his legal case, Kennedy vs. Bremerton School District, was argued before the court on April 25, 2022. Win McNamee/Getty Images News via Getty Images

A decade later, in Lynch v. Donnelly – a case about a Christmas display on public property in Rhode Island – the court determined that governmental actions cannot appear to endorse a particular religion.

Finally, in 1992's Lee v. Weisman, a dispute from Rhode Island about graduation prayer, the court wrote that subjecting students to prayer was a form of coercion.

The Supreme Court has backed away from the Lemon test for years. In 1993, Justice Antonin Scalia caustically described it as "some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried, […stalking] our Establishment Clause jurisprudence."

Kennedy may have put the final nail in Lemon's coffin, with Gorsuch writing that the court should instead interpret the establishment clause in light of "historical practices and understandings." He went on to remark that "this Court has long recognized as well that 'secondary school students are mature enough'" to understand that their schools allowing someone freedom of speech, in order to avoid discrimination, does not mean officials are endorsing that view, let alone forcing students to participate.

Moving forward

In a lengthy dissent almost as long as the opinion of the court, Justice Sonia Sotomayor, joined by Justices Stephen Breyer and Elena Kagan, expressed their serious reservations about the outcome. Setting the tone at the outset, Sotomayor chided the court for "paying almost exclusive attention to the Free Exercise Clause's protection for individual religious exercise while giving short shrift to the Establishment Clause's prohibition on state establishment of religion."

The dissent echoed some points from the June 21, 2022, dissent in Carson v. Makin, another high-profile case about religion and schools, where Sotomayor criticized the majority for dismantling "the wall of separation between church and state that the Framers fought to build."

Kennedy v. Bremerton is unlikely to end disagreements over public employees' prayer as free speech, or the tension between the free exercise and establishment clauses.

In fact, the case brings to mind the saying to be careful what one wishes for, because one's wishes may be granted. By leaving the door open to more individual prayer in schools, the court may also open a proverbial can of worms. Will supporters who rallied behind a Christian coach be as open-minded if, or when, other groups whose values differ from their own wish to display their beliefs in public?

Meanwhile, Kennedy has said that he would like his job back – so stay tuned.

Abortion Funds Are in the Spotlight With the End of Roe V. Wade – 3 Findings About What They Do

By Gretchen E. Ely
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As soon as the Supreme Court handed down its ruling that signaled the end of legal abortion in much of the country, calls for donations to abortion funds immediately rang out.

There are at least 90 of these funds – donor-funded nonprofits that are often staffed by volunteers that help people obtain abortions they can't afford by reducing the cost and assisting with travel, lodging and other services.

Before the ruling on June 24, 2022, abortion was already inaccessible in many cases because of restrictive laws in such states as Texas and Mississippi that have left many counties with no abortion clinics at all. Abortion funds generally partner with providers to help cover some out-of-pocket procedural costs on behalf of the patient, and some funds cover associated expenses such as travel, child care and lodging for overnight stays.

As a social work professor who studies reproductive health care, I have led research that reviewed thousands of case records of patients who requested assistance from abortion funds to help pay for a procedure that they could not afford.

Here are three main findings from the studies I've conducted so far:

1. Those assisted are likely to be parents

About 20% of the people aided by these funds were 11-19 years old, according to studies I led based on national data collected from 2010-2015. In contrast, only 14% of all people getting abortions are in that age group.

As is the case for all patients who have abortions, more than half of the people getting help from the abortion funds we studied were in their 20s. Only 18% of them were in their 30s, versus 25% of all patients.

My team also found that only 60% of abortion fund patients were single, compared with 86% of all patients. And we determined that 50% of them were Black, versus 36% overall.

Nearly 60% of patients aided by abortion funds have children. Around 41% have one or two children, as opposed to 46% of all people who got abortions, and 18% of abortion fund patients had three or or more children, versus 14% overall.

These findings suggest that younger parents of color were disproportionately affected by abortion barriers during this period.

2. Not all costs covered

My research team found that abortion funds didn't cover the full cost for patients, or even the entire gap between the cost and what they could afford.

Patients typically requested help to pay for a procedure they expected to cost over US$2,200, when patients could only pay an average of $535. Abortion funds, in turn, were able to pledge an average of $256 on behalf of each patient.

We also determined that abortion costs were highest for patients age 11-13, at just over an average of $4,000. Those patients had only an average of $616 to pay those bills, and they received an average pledge of $414.

I also participated in another project that analyzed more detailed data collected from 2001 to 2015 from an abortion fund operating in Florida. These patients faced an average procedural cost of almost $1,000 and received $140 in aid from the fund, on average.

When patients have trouble paying for an abortion, it can delay the procedure. That, in turn, tends to make it even more expensive.

3. Other obstacles include travel and child care

Patients seeking help from abortion funds face many obstacles besides paying medical bills that make it hard for them to get the care they were seeking. Another study I led found that the typical abortion fund patient faced two of these barriers.

Common challenges included juggling their parental responsibilities with finding the time and the means to travel long distances to a provider – including when mandatory waiting periods require multiple visits. Patients also dealt with unemployment or underemployment and unstable housing.

For full-time students, it could be hard to schedule appointments that would not interfere with their studies.

More demand for help expected

The National Network of Abortion Funds, an umbrella group, estimates that abortion funds helped about 56,000 patients in 2019, the most recent data available.

By overturning Roe v. Wade, the justices have left it up to the states to decide whether abortion will be allowed within their borders. Abortion access will likely decline, increasing costs in many places for patients who will have to travel to another state.

Abortion funds, in turn, are likely to get more requests for support. These groups say they plan to respond by helping as many people as they can.

This article was updated on June 24, 2022, following the Supreme Court's abortion ruling.(The CONVERSATION)

Statement From Senator Paul Bailey on Disruption of Unemployment Service

Please see the statement below attributable to Senate Commerce and Labor Committee Chairman Paul Bailey (R-Sparta) regarding the service outage of Jobs4tn.gov -- the Tennessee Department of Labor and Workforce Development's unemployment system and labor data exchange. (June 29, 20220

"With a recession looming, it is unacceptable that Tennesseans cannot receive the unemployment benefits they deserve. Unfortunately, this is not the first time there have been failures in the system. The Department of Labor needs a back-up plan, so they are not completely dependent on a system proven to be unreliable. It should be a priority of this Administration to ensure Tennesseans receive benefits in a timely manner, but we continue to see failure. There is absolutely no excuse anymore. The General Assembly provided funds to update the Department's antiquated system, and every measure should be taken to streamline this move. My office is in communication with the Department and are working to help resolve this issue once and for all. In the meantime, I expect the Department and this Administration to do whatever it takes to get Tennesseans their unemployment benefits now."