

## Table of Contents

How to Use this Book	i
Tables of Cases	
A. by Party	iii
B. by Jurisdiction	xii
I. Adult Entertainment	1
II. Allocation of Authority	24
III. Annexation	42
IV. Contracts and Bidding	48
V. Employment	58
VI. Health, Safety, and Quality of Life	66
VII. Licensing and Permits	108
VIII. Preemption	117
IX. Property Rights	129
X. Religion	150
XI. Taxation and Fees	172
XII. Zoning and Land Use	190
<b>Subject Matter Index</b>	<b>201</b>

# Tables of Cases



Tables of Cases listed by parties and by jurisdiction are included to guide you to particular cases. Each listing references the page number on which the case appears in the book.

A. **Table of Cases, by Parties** lists each case in alphabetical order by both the first and second party listed. Where the case is properly styled, i.e. the first party in the name of the case is listed first, the entry for the case is **bold**. Where the second, or opposing, party is listed first, the entry for the case is not bold.

B. **Table of Cases, by Jurisdiction** lists each case by the court jurisdiction in which the case was decided. First listed are all of the federal appellate courts, i.e. the U.S. Supreme Court and the federal circuit courts. Next listed are the states' appellate court and the federal district courts for each of the states.

# **Table of Cases**

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**A**

by Party

## Table of Cases, by Party

- 11126 Baltimore Blvd. Inc., Prince George's County, Md. v. 7  
**152 Valparaiso Assoc. v. Cotati, City of** 142  
 17 Vista Assocs., New York, City of v. 130  
**2300 Inc. v. Arlington, City of** 3  
 2354 Inc., Colorado Springs, City of v. 4  
**3570 E. Foothill Blvd. Inc. v. Pasadena, City of** 19  
**440 Co. v. Fort Lee, N.J.** 144  
 Abbs, Syracuse, Town of v. 147  
 Acker, Jefferson County v. 174  
 Acker, Jefferson County v. 177  
 Acker, Jefferson County v. 179  
 Acker, Jefferson County v. 185  
**Ackerley Communications of Mass. Inc. v. Cambridge, City of** 84  
**Ackerley Communications of the N.W. Inc. v. Krochalis** 92  
 Acton, Vernonia Sch. Dist. 47J v. 66  
 Acton, Vernonia Sch. Dist. 47J v. 71  
 Acuna, People ex rel. Gallo v. 92  
 Adams, Alachua County v. 178  
 Agoura Hills, City of, Denny's Inc. v. 97  
**Airmont, N.Y. v. LeBlanc-Sternberg** 158  
**Airmont, N.Y. v. LeBlanc-Sternberg** 163  
 Akron, Ohio, City of, Triplett Grille v. 1  
**Alachua County v. Adams** 178  
 Alachua County, Sch. Bd. of, Guyer v. 150  
 Albany, City of, Homier Distrib. Co. v. 183  
**Albuquerque, N.M. v. Church on the Rock** 160  
 Alderman, Strickland v. 133  
**Allegheny County v. Moon Tp Mun. Auth.** 31  
**Alvarado v. San Jose, City of** 161  
 Am. Civil Liberties Union of N.J., Schundler v. 164  
**Am. Jewish Congress v. Beverly Hills, City of** 153  
**Am. Jewish Congress v. Beverly Hills, City of** 158  
**Am. West Dev. v. Henderson, City of** 133  
**Ammons v. Okeechobee County** 199  
 Anderson, Hendriks v. 108  
 Anderson, Snohomish County v. 129  
**Anheuser-Busch Inc. v. Schmoke** 76  
**Anheuser-Busch Inc. v. Schmoke** 82  
**Anheuser-Busch Inc. v. Schmoke** 89  
**Anheuser-Busch Inc. v. Schmoke** 91  
**Annapolis Rd. Ltd. v. Anne Arundel County** 12  
 Anniston, City of, Ranch House Inc. v. 10  
**Anoka, County of v. Blaine Bldg. Corp.** 143  
 Antwerp, Village of, Diehl v. 166  
**Arcadia Dev. Corp. v. Bloomington, City of** 136  
 Arlington, City of, 2300 Inc. v. 3  
 Arlington, City of, Hang On Inc. v. 5  
**Arlington, Tex., City of v. Golddust Twins Realty Corp.** 129  
 Arpaio, Freeman v. 167  
 Arrieh, Milwaukee, City of v. 142  
**Arrieh v. Milwaukee, City of** 144  
 Ashland F.O.P. No. 3, Ashland, City of v. 58  
**Ashland, City of v. Ashland F.O.P. No. 3** 58  
**Ashton v. Brown** 77  
 Assoc'd Grocers Inc., Kenai Peninsula Borough v. 172  
**Assoc. Gen. Contractors of Conn. v. New Haven, City of** 48  
**Athens-Clarke County v. Walton Elec. Membership Corp.** 172  
**Atlanta, City of v. Morgan** 63  
 Atlanta, City of, Bah v. 91  
 Atlanta, City of, Black v. 28  
 Atlanta, City of, Parking Ass'n of Ga. v. 190  
 Atlanta, City of, Secret Desires Lingerie Inc. v. 10  
 Atlanta, Parking Ass'n of Ga. Inc. v. 191  
**Atlantic City v. Cynwyd Investments** 139  
 Atlantic City, Guidi v. 82  
 Augusta, City of, Nasberg v. 29  
 Aurora, City of, Denver Publishing Co. v. 75  
 Aurora, Colo., Z.J. Gifts D-2 v. 19  
 Aurora, Colo., Z.J. Gifts D-2 v. 22  
**Austin, City of v. Quick** 138  
**Ayres v. Chicago, City of** 96  
 Babylon, N.Y., USA Recycling Inc. v. 118  
**Bah v. Atlanta, City of** 91  
**Bal Harbour Village v. N. Miami, City of** 194  
 Baldelli, Jolicoeur Furniture Co. v. 49  
 Ballwin, City of, Guidry Cablevision v. 182  
 Baltimore, Mayor & City Council of, Penn Advertising of Baltimore v. 77  
 Baltimore, Md., Neufeld v. 82  
**Bannum Inc. v. Ft. Lauderdale, Fla.** 199  
**Barnhart v. Fayetteville, City of** 175  
 Barry, Washington Legal Clinic for the Homeless v. 93  
**Baton Rouge, City of v. Ross** 75  
**Bauer v. Olathe, City of** 173  
**Bayliss v. Tulsa, Okla.** 101  
 Bd. of County Comm'rs of Mesa County, State v. 28  
**Bd. of Educ. v. St. Louis, City of** 172  
**Bd. of Pub. Util. Comm'rs v. Yankee Gas Servs. Co.** 31  
**Bd. of Supervisors of Prince William County, Va. v. United States** 131  
**Bd. of Supervisors of Prince William County, Va. v. United States** 132  
 Bd. of Supervisors, Concerned Residents of Gloucester County v. 48  
 Bd. of Trustees of San Diego Unified Sch. Dist., Cenicerros v. 154  
 Bd. of Trustees of San Diego Unified Sch. Dist., Cenicerros v. 162  
 Beacon Hill Architectural Comm'n, Globe Newspaper Co. v. 68  
 Beacon Hill Architectural Comm'n, Globe Newspaper Co. v. 81  
 Beacon Hill Architectural Comm'n, Globe Newspaper Co. v. 88  
**Beatie v. New York, City of** 98  
**Beaufort, City of v. Beaufort-Jasper County Water & Sewer Auth.** 36  
 Beaufort-Jasper County Water & Sewer Auth., Beaufort, City of v. 36  
 Begin, Langevin v. 33  
 Bellevue, Wash., Ino Ino Inc. v. 15  
 Bellevue, Wash., Ino Ino Inc. v. 18  
 Belmont, Town of, Comm'ty TV Corp. v. 51  
**Bender v. St. Ann, Mo., City of** 66  
**Benefit v. Cambridge, City of** 95  
**Bennett Bear Creek Farm Water & Sanitation Dist. v. Denver, City & County of** 34  
 Benson, Jackson v. 166  
 Benson, TransAmerican Waste Indus. Inc. v. 36  
**Berger v. Mayfield Heights, Ohio** 106  
 Berkeley, City of, First Presbyterian Church v. 145  
**Berkley v. Charleston, W. Va., City of** 60  
**Berry v. Santa Barbara, City of** 79  
 Bery, New York, City of v. 114  
**Bethania Town Lot Comm. v. Winston-Salem, City of** 45  
 Beverly Hills, City of, Am. Jewish Congress v. 153  
 Beverly Hills, City of, Am. Jewish Congress v. 158  
 Beverly Hills, City of, Friedman v. 85  
 Bishop, Wayne, Town of v. 16

# **Table of Cases**

---

**B**

by Jurisdiction

## Table of Cases, by Jurisdiction

### U.S. SUPREME COURT

440 Co. v. Fort Lee, N.J. 144  
 Airmont, N.Y. v. LeBlanc-Sternberg 158  
 Airmont, N.Y. v. LeBlanc-Sternberg 163  
 Albuquerque, N.M. v. Church on the Rock 160  
 Anheuser-Busch Inc. v. Schmoke 82  
 Anheuser-Busch Inc. v. Schmoke 91  
 Arrieh v. Milwaukee, City of 144  
 Bayliss v. Tulsa, Okla. 101  
 Bd. of Supervisors of Prince William County, Va. v. United States 132  
 Boerne, City of v. Flores 160  
 Boerne, City of v. Flores 162  
 Bronx Household of Faith v. New York City Bd. of Educ. 169  
 Burbank-Glendale-Pasadena Airport Auth. v. Burbank, City of 126  
 Buzzetti v. New York, City of 22  
 Capital Square Review & Advisory Bd. v. Pinette 152  
 Celestial Church of Christ Inc. v. Chicago, Ill. 157  
 Charleston, W. Va. v. West Virginia Pub. Serv. Comm'n 51  
 Chicago, City of v. Int'l College of Surgeons 142  
 Chicago, City of v. Int'l College of Surgeons 138  
 Chicago, City of v. Morales 100  
 CLEAN v. Spokane, City of 40  
 Columbus, Ga. v. Quetgles 3  
 Dean v. Redner 4  
 Dearborn, Mich. v. Loschiavo 69  
 Dou-Han v. St. Petersburg, Fla. 2  
 E. Brook Books v. Memphis, City of 5  
 Eddleton v. Hanover County, Va., Bd. of Supervisors 104  
 Edmond, Okla. v. Robinson 158  
 El Dorado Palm Springs Ltd. v. Rent Review Comm'n 129  
 Elewski v. Syracuse, N.Y. 167  
 Equality Found. of Greater Cincinnati Inc. v. Cincinnati, Ohio 82  
 Excalibur Group Inc. v. Minneapolis, City of 17  
 First Assembly of God of Naples, Fla. Inc. v. Collier County, Fla. 150  
 Forrester v. San Diego, Cal. 69  
 Gerijo Inc. v. Fairfield, Ohio 191  
 Gold Coast Publications v. Corrigan 76  
 Guyer v. Alachua County, Sch. Bd. of 150  
 Harford County, Md. v. Chesapeake B&M Inc. 6  
 Harris v. Joint Sch. Dist. No. 241 152  
 Hays v. Urbana, Ill. 139  
 Henderson, Nev. v. Nevada Entertainment Indus. Inc. 2  
 Hill v. Colorado 89  
 Holmberg v. Ramsey, Minn. 11  
 Honolulu, Haw. v. Small Landowners of Oahu 148  
 Hoovler v. Indiana, State of 184  
 Houston, Tex. v. Harris County Advertising Ass'n 76  
 ILQ Investments Inc. v. Rochester, N.Y. 1  
 Individuals for Responsible Gov't v. Washoe County, Nev. 124  
 Ino Ino Inc. v. Bellevue, Wash. 18  
 Interstate Indep. Corp. v. Fayette County, Ohio, Bd. of Zoning App. 22  
 Intervine Outdoor Advertising Inc. v. Gloucester City Zoning Bd. of Adjustment 89  
 Irish-American Gay, Lesbian & Bisexual Group of Boston v. Boston, City of 108  
 Ja-Ru v. New York, City of 84  
 James, In re 170  
 Jefferson County, Ala. v. Acker 179

Jolicoeur Furniture Co. v. Woonsocket, R.I. 51  
 Knights of Klu Klux Klan v. Lansing, Mayor of 101  
 La Societe Generale Immobiliere v. Minneapolis Comm'ty Dev. Agency 50  
 Ladue, Mo., Sch. Dist of City of v. Good News/Good Sports Club 152  
 Lafayette Morehouse Inc. v. Contra Costa, Cal. 195  
 Lakeland Lounge of Jackson Inc. v. Jackson, Miss. 17  
 Loder v. Glendale, City of 63  
 Long Cove Club Assocs. v. Hilton Head Island, S.C. 193  
 Los Angeles Police Dep't v. Perry 100  
 Malpass v. Boulder, Colo. 191  
 Mandanici v. Monroe, Conn. 190  
 May v. Mtn. Village, Colo. 146  
 McMillian v. Monroe County, Ala. 35  
 Monterey, Cal. v. Del Monte Dunes at Monterey Ltd. 144  
 Moore v. Ingebretsen 160  
 Movies Inc. v. Kahn 184  
 Muller v. Jefferson Lighthouse Sch. 162  
 N.E. Ohio Coalition for the Homeless v. Cleveland, City of 114  
 Nat'l Amusements Inc. v. Dedham, Mass. 72  
 Nat'l Paint & Coatings Ass'n v. Chicago, City of 72  
 Nationalist Movement v. Cumming, Ga. 86  
 Neufeld v. Baltimore, Md. 82  
 New Hampshire Motor Transport v. Plaistow, N.H. 79  
 New Orleans v. Louisiana Debating & Literary Ass'n 72  
 New York, City of v. Bery 114  
 North Ave Novelties Inc. v. Chicago, Ill. 10  
 Oklahoma Ass'n for Equitable Taxation v. Oklahoma City, Okla. 176  
 One World One Family Now v. Honolulu, Haw. 86  
 Parking Ass'n of Ga. Inc. v. Atlanta, City of 191  
 Patel v. Penman 139  
 Penn Advertising of Baltimore v. Schmoke 83  
 Penn Advertising of Baltimore v. Schmoke 91  
 Prince George's County, Md. v. 11126 Baltimore Blvd. Inc. 7  
 Richards v. Jefferson County, Ala. 176  
 Robertson v. South Gate, Cal. 140  
 Romer v. Evans 80  
 Roslyn Union Free Sch. Dist. No. 3 v. Hsu 161  
 Sabelko v. Phoenix, Ariz. 89  
 Salem Blue Collar Workers Ass'n v. Salem, N.J. 58  
 San Diego County, Cal. v. Schneider 131  
 San Francisco, Cal. v. Carpenter 162  
 Schundler v. Am. Civil Liberties Union of N.J. 164  
 Sciarrino v. Key West, Fla. 90  
 Shretta v. Marietta, Ga. 15  
 Sime v. Rohnert Park, Cal. 132  
 Small Landowners of Oahu v. Honolulu, Hawaii 148  
 Smith v. Glenolden Borough, Pa. 80  
 Southlake Property Assocs. Ltd. v. Morrow, Ga. 103  
 St. Petersburg, Fla. v. Bowen 137  
 Sullivan v. Memphis, Tenn. 11  
 Taub v. Deer Park, Tex. 190  
 Taxpayers of King County v. King County, Wash. 53  
 Texas Manuf'd Housing Ass'n v. La Porte, Tex. 124  
 Texas Manuf'd Housing Ass'n v. Nederland, Tex. 123  
 Thomason v. Prince George's County, Md. 134  
 Thompson v. San Jose, Cal., City of 76  
 Tri-County Indus. v. Mercer County, Pa. 119

**Religion**

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**X**

17 MLR 207 - NOV 97

**No constitutional problem in city's alleged failure to enforce ordinances against church.**

**Diehl v. Village of Antwerp**, 964 F. Supp. 646 (N.D.N.Y. 1997)

A complaint that local officials failed to enforce noise and disorderly conduct ordinances against a church was insufficient to allege equal protection violations because it did not claim the officials would have enforced the ordinances at the request of someone other than the plaintiffs. The district court held it also did not state a cause of action under the Establishment Clause because it did not set forth the nature of the violation. Moreover, there was no jurisdiction over the claim brought under 28 U.S.C. § 1343(a)(4) because the plaintiffs did not specify what civil rights were in issue. Distressing as the church's lengthy loud music broadcasts were, "unneighborly behavior is not necessarily unconstitutional behavior."

17 MLR 213 - DEC 97

**State law allowing separate sectarian school district is again invalidated.**

**Grumet v. Cuomo**, 681 N.E.2d 340 (N.Y. 1997)

Revisiting a previously addressed issue in the wake of further legislative action, New York's highest court decided a statute authorizing municipalities to form their own school districts violated the Establishment Clause because it applied only to one religious community.

The residents of the village of Kiryas Joel were all members of a Hasidic Jewish sect. The village's disabled children received educational services from the local public school district until 1985, when that practice was discontinued as a result of Supreme Court decisions. Subsequently, the children attended secular schools, but the "difficulties" they encountered caused them to withdraw.

The New York legislature enacted a statute in 1989 creating a school district coterminous with the boundaries of the village, and certain citizen taxpayers successfully challenged that statute in court. In *Board of Educ. of Kiryas Joel Vil. Sch. Dist. v. Grumet* [see 14 **Mun.Lit.Rep.** 145, Aug. 1994], Justice O'Connor's concurring opinion suggested a means for school districting laws that might pass constitutional muster.

Four days after the Supreme Court decision, the state legislature passed the statutes in issue, which provided mechanisms whereby municipalities meeting stated criteria could form their own school districts, with approval from the districts in which they were located and local voters. In practice, the measure applied only to the village, however. The village reestablished a school district, and the plaintiffs returned to court.

The trial judge upheld the school district, but the intermediate appellate court reversed, and the matter proceeded to the state supreme court. The defendants contended the legislature had enacted the sort of law Justice O'Connor indicated

could be upheld. They suggested the law did not apply to only one religious community because other municipalities might meet the criteria in the future. They also argued the district should be upheld as an accommodation to the villagers' free exercise of religion.

The court of appeals applied the familiar benchmark test of *Lemon v. Kurtzman*, 403 U.S. 602 (1986), which it noted had been criticized by certain Justices but remained the controlling authority in "this labyrinthine realm of the law." Under the Establishment Clause jurisprudence of *Lemon*, official actions that target religious activities for disparate treatment, whether favorable or unfavorable, are not rescued by facial neutrality.

General availability of a benefit provided a religious group might aid in passing the *Lemon* test, the court observed. In this case, however, the statutes covered only municipalities in existence at the date of enactment, future eligibility thus depended on profound population or wealth shifts. Such a limitation made it highly unlikely that any other municipality would ever qualify. Thus the actual effect was to single out the village for special treatment. The context in which the legislature so hastily acted could also be taken into account.

The court of appeals also rejected the free exercise argument. Not only were they fatally inconsistent with defendants' position that the laws were neutral ones of general applicability, but they were precluded by the Supreme Court's previous ruling. The court thus affirmed the decision below.

17 MLR 219 - DEC 97

**School choice program which includes sectarian schools is unconstitutional.**

**Jackson v. Benson**, No. 97-0270 (Wis. Ct. App. 1997)

The legislative expansion of a voucher-based "school choice" program for poor students to include institutions run by religious groups was ruled unconstitutional in a recent decision by a Wisconsin court of appeals.

The original Milwaukee Parental Choice Program, enacted in 1989, permitted a percentage of eligible poor Milwaukee students to attend nonsectarian private schools without charge. Participating schools were required to certify compliance with anti-discrimination, health and safety laws. No school could have more than a stated proportion of students from the program. A system of monitoring and evaluation was established, and payment was by way of direct subsidy, originally about \$2,500 per student per year.

In 1995, the legislature significantly amended the law so that the restriction to nonsectarian schools was removed and the limit of program students per school was repealed. In addition, the method of payment was changed, and the evaluation system was cut. Under the amended program, a student could "opt out" of religious activities.

A group of clergy, parents and taxpayers sued the Superintendent of Public Instruction and the Department of Public Instruction, alleging the amended program violated the First

Amendment and provisions of the Wisconsin Constitution, including a prohibition of expenditures for the benefit of religious groups or schools. The trial court entered a preliminary injunction and later granted summary judgment in the plaintiffs' favor invalidating the amended program.

The appeals court granted expedited review, and in its opinion addressed only some of the many arguments presented. The appeals court majority declined to be bound by First Amendment jurisprudence, finding it would be unnecessary and inappropriate to do so. It was apparent, the majority observed, that the authors of the state constitution intended much more stringent limitations on state interactions with religion than those of the Bill of Rights.

The amended program violated the state constitution's expenditures prohibition by increasing religious schools' enrollment and providing them funds to spend for any purpose. Moreover, even if the federal constitutional test of *Lemon v. Kurtzman*, 403 U.S. 602 (1986) were adopted, the program had the "primary effect" of advancing religion. It was not necessary to decide, as the trial judge had, that the program also violated a state constitutional prohibition upon compelled support of religious institutions. However, that prohibition bolstered the majority's conclusions.

The majority also rejected the notion that the addition of access to sectarian schools was necessary to the right of free exercise of religion and declined to decide federal equal protection and other Establishment Clause issues. It thus affirmed the judgment below.

One judge wrote dissented, arguing that Establishment Clause jurisprudence, especially as developed by the Supreme Court in recent years, warranted sustaining the amended program. The dissenter urged that the program was religion-neutral and merely promoted greater learning opportunities for those facing greatest difficulty. A narrowing construction could be used to address most state constitutional concerns, and the fact that participation in religious activities could not be compelled countered the remainder.

18 MLR 7 - JAN 98

### **A county jail's denial of access to Muslim services warrants prisoner claims.**

**Freeman v. Arpaio**, No. 96-15551 (9th Cir. 1997)

The Ninth U.S. Circuit Court of Appeals ruled issues of fact were presented on the part of a jail prisoner who maintained he was prevented from attending Muslim religious services in violation of his constitutional rights.

Benjamin Freeman, incarcerated in the Maricopa County jail in Arizona, brought suit against jail officials under the Free Exercise and Equal Protection clauses. He alleged the defendants denied him access to weekly Islamic services and burdened the practice of his faith by shackling him while he was being transported, failing to give him adequate notice so he could observe pre-service cleansing rituals, requiring sign-up sheets at Islamic services, and directing abusive language at his religion. Freeman also alleged that only Muslims were thus treated.

The defendants moved for summary judgment, on grounds that the jail's shackling policy was properly applied and that services were not held due to the absence of the imam who was to conduct them. In opposition, Freeman submitted some affidavits and prison records. The district court ruled in the defendants' favor. Freeman appealed, and counsel was appointed for him.

The court of appeals observed first that the district judge had decided the case using the compelling governmental interest standard of the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb et. seq., but the Supreme Court ruled RFRA unconstitutional in *City of Boerne v. P.F. Flores*, [see 17 **Mun.Lit.Rep.** 122, June 1997]. It was therefore unnecessary to pass upon the conclusions reached below, and the court of appeals would instead apply the pre-RFRA reasonableness standard. Thereunder, in order to establish a free exercise violation, Freeman must show the practice of his religion was burdened without justification related to legitimate penological interests.

There was a genuine issue as to whether Freeman was unreasonably denied access to services. However, his claims with respect to shackling, failure to give notice, sign-up sheets, and abusive language did not rise to the level of constitutional infringements. While he may have been inconvenienced thereby, he was not prevented from observing the dictates of his faith.

In regard to equal protection, issues existed as to whether Freeman was given a reasonable opportunity to observe his religion compared to other inmates, including the denial of access and the use of shackles. However, his additional claims were again constitutionally insufficient. In particular, the lack of advance notice was offset by the fact that, according to Freeman, services were held the same day and time each week. In addition, the allegedly abusive language was not a constitutional violation even though it might be evidence of discrimination.

The court of appeals thus affirmed in part and reversed in part.

18 MLR 52 - APR 98

### **Supreme Court declines to review ruling permitting nativity scene in city park.**

**Elewski v. Syracuse, N.Y.**, No. 97-1103 (U.S. Mar. 9, 1998)

The Supreme Court declined to review a Second U.S. Circuit Court of Appeals' ruling that an exhibit of a city-owned nativity scene in a downtown public park area during the winter holiday season was permissible under the First Amendment. In the context of other decorations in the park, including a privately sponsored menorah and secular items, the crèche did not endorse religion but celebrated diversity to promote downtown businesses [123 F.3d 51 (2d Cir. 1997), see 17 **Mun.Lit.Rep.** 200, Nov. 1997].

18 MLR 56 - APR 98

### School district can refuse access to auditorium for religious worship.

**Bronx Household of Faith v. Community Sch. Dist. No. 10**, No. 96-9633 (2d Cir. 1997)

The Second U.S. Circuit Court of Appeals held a school district was not required to make a middle school auditorium available to a religious organization for weekly religious services.

New York state law permits local school governing bodies to adopt regulations allowing the use of buildings and grounds for numerous listed public purposes, which do not include religious worship. The New York City Board of Education established a conforming written policy, including SOP 5.9 which prohibited religious services or instruction but permitted outside groups to use the premises after school for discussions on religious materials or subjects. The Bronx Household of Faith previously rented District 10's middle school auditorium for sports programs and a banquet, but the school district denied its request to use the facility for church services.

The church brought suit against the school district, alleging claims under the Equal Access Act and Religious Freedom Restoration Act, 42 U.S.C. §§ 167, 4071 & 2000bb et. seq. and under 42 U.S.C. § 1983 for violations of freedom of speech, free exercise of religion, equal protection and state law. The district court granted summary judgment for the school district, and the church appealed. It contended the auditorium was an open public forum, citing *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, [see 13 **Mun.Lit.Rep.** 95, June 1993]. The church also argued the school district violated the Establishment, Free Exercise and Equal Protection Clauses, as well as the federal statutes.

The court of appeals agreed with the district court that the school auditorium was a limited public forum, noting SOP 5.9 would have allowed the activity at issue in *Lamb's Chapel*. In addition, the parties stipulated the school district had never allowed the auditorium's use for religious instruction or services. The Equal Access Act was not relevant because it concerned student group extracurricular activities.

The school district's position was also reasonable, the court continued, to avoid identifying the school with a religious organization and creating confusion in the minds of middle school students. It is a proper state function to decide the extent to which public schools should be kept separate from churches. Furthermore it was not unreasonable to assume that services could be conducted elsewhere. Moreover, the school district had apparently drafted the viewpoint-neutral regulations carefully to comply with Supreme Court pronouncements, including *Lamb's Chapel*.

Free exercise was not infringed because no religious practice was barred, the court added, and there was no fundamental right to use of a properly limited public forum. Finally, the denial of use of public property for services would not substantially burden the exercise of religion, and in any event the Religious Freedom Restoration Act was ruled unconstitu-

tional in *City of Boerne v. Flores*, [see 17 **Mun.Lit.Rep.** 122, June 1997].

Therefore, with one panel member dissenting in part in a separate opinion, the court affirmed the summary judgment below.

18 MLR 57 - APR 98

### Citizen can sue over display of Ten Commandments in courthouse.

**Suhre v. Haywood County**, No. 97-1457 (4th Cir. 1997)

The Fourth U.S. Circuit Court of Appeals decided citizen standing allowed a plaintiff to bring suit challenging a county courtroom's display of the Ten Commandments.

Behind the judge's bench in the main courtroom of the Haywood County, N.C., courthouse was a display of Lady Justice flanked by two marble tablets depicting the Ten Commandments. In addition to being the site of two state courts, the courtroom was the forum for numerous public meetings. Richard Suhre, an avowed atheist of litigious bent, had brought a number of civil suits, had been prosecuted and convicted for misdemeanor violations in the courtroom, and had attended several meetings there. Suhre maintained he was offended and distressed by the display and that its presence could improperly influence juries. In particular, he allegedly feared criminal conviction by reason of his refusal to acknowledge a supreme being when sworn in as a witness.

After the county rebuffed his request to remove the display, Suhre brought suit against the county for declaratory and injunctive relief under 42 U.S.C. § 1983 and the Establishment Clause. The district judge granted the county's summary judgment motion on standing grounds, and Suhre appealed. The county contended Suhre did not state the requisite injury-in-fact because he did not claim to have altered his own conduct by reason of the display and that there was insufficient likelihood of future injury to enable him to seek an injunction.

The court of appeals observed injury-in-fact in Establishment Clause cases is often difficult to ascertain, so the court's determination of standing may rely on a plaintiff's non-economic or intangible harm. A mere generalized or abstract grievance is not adequate, but unwelcome direct contact with a religious portrayal apparently sponsored by the state has supported standing since the landmark *School District of Abingdon v. Schempp*, 374 U.S. 203 (1963). Moreover, the affront is magnified when a display is located in a public place because of the appearance of state endorsement and its potential to interfere with use of the public facility by those who are offended.

A plaintiff has never been required, in order to have standing, to take steps to avoid contact with a challenged display or to modify his conduct because of it. Such conditions would lead to unnecessary contrivance, the court of appeals added. Moreover, Suhre had to enter the courtroom as a plaintiff and defendant and to participate in local governmental affairs, and there was reason to expect he would do so in the future.

The court of appeals found it unnecessary to consider the issue of taxpayer standing and admonished it was expressing no opinion on the merits of Suhre's claims. It thus reversed and remanded.

18 MLR 65 - APR 98

### **School cannot ban use of rosary as necklace.**

**Chalifoux v. New Caney Indep. Sch. Dist.**, 976 F. Supp. 659 (S.D. Tex. 1997)

An injunction was granted against enforcement of a school dress code prohibiting wearing rosaries as necklaces. Wearing rosaries was a protected religious expression, and the prohibition was not supported by sufficient evidence of actual disruption or reason to anticipate it. A provision banning "gang-related apparel" was void for vagueness, and the district court found the students were sincere in their beliefs and that their rights to free exercise were violated. The students were not awarded damages, however.

18 MLR 68 - MAY 98

### **Supreme Court will not review decision upholding school's policy against permitting religious group access to auditorium.**

**Bronx Household of Faith v. New York City Bd. of Educ.**, No. 97-1361 (U.S. Apr. 20, 1998)

The Supreme Court decided not to review a Second U.S. Circuit Court of Appeals' holding that a school district was not required to make its middle school auditorium available to a religious organization for weekly services. The school board's policy banning religious services or instruction in any of the public school buildings was reasonable, viewpoint neutral, and consistently applied; thus, there was no violation of the First Amendment or the Equal Protection Clause [*formerly Bronx Household of Faith v. Community Sch. Dist. No. 10*, 127 F.3d 207 (2d Cir. 1997), see 18 **Mun.Lit.Rep.** 56, Apr. 1998].

18 MLR 73 - MAY 98

### **County's denial of religious display on courthouse lawn gives rise to claims.**

**Summum v. Callaghan**, No. 96-4191 (10th Cir. 1997)

The Tenth U.S. Circuit Court of Appeals held a church group's allegations that its First Amendment rights were abridged when it was denied the opportunity to erect a religious display on a county courthouse lawn stated causes of action and were wrongly dismissed.

A stone monolith, nearly five feet high and containing the Ten Commandments had stood on the Salt Lake County Courthouse lawn since 1971. It was placed there by a private fraternal organization with county consent. Summum, a

church founded in 1975, sought by letter requests to the county commission to erect its own monolith. The commission denied permission on the ground that there were plans to use the site for development of additional facilities.

Eventually, Summum filed two federal court lawsuits against the county and the individual commissioners, grounded in slightly different legal theories. Summum contended the lawn was a "limited public forum" and the county's denial violated the Free Exercise clause and freedom of speech. The actions were consolidated, and the district judge dismissed both for failure to state claims. The instant appeal followed.

The court of appeals discussed the contours of First Amendment law concerning private religious expression on government property, as it has evolved with respect to various classifications of fora. The primary focus was on the varieties denominated "designated" and "limited." A designated public forum is one in which property has been opened for expressive public activity and in which regulation must be narrowly drawn to effect compelling state interests. Within that category is the limited public forum subset, a designated public forum for a limited purpose. Regulation of this forum must be viewpoint neutral and reasonable in view of the purpose served by the forum.

When a government allows selective access to some speakers or types of speech but does not open property enough for it to become a designated public forum, it establishes a limited public forum.

The district judge here did not address whether a limited public forum had been created or consider the applicable reasonableness standard. Instead the judge erroneously assumed the only way Summum could prevail was to show the existence of a designated public forum. In light of its history, the courthouse lawn could not be regarded as a nonpublic forum reserved for official uses, and Summum's complaints sufficiently alleged a limited public forum and viewpoint-based discrimination by the county. Moreover, regardless of forum, the distinctions relied on by the county in refusing the request would have to be reasonable. Summum alleged unbridled discretion on the part of the county commissioners, further elevating the specter of viewpoint censorship. Summum therefore stated claims for free speech violations.

The court of appeals also rejected the county's argument that allowing Summum to erect its monolith would amount to state endorsement of its religion. In the limited public forum setting, it noted, other courts have consistently rejected such assertions. The Establishment Clause requires only that governments be neutral. Further, since the court of appeals had previously held the Ten Commandments display was "primarily secular," allowing Summum's monolith could amount to extending benefits to diverse viewpoints including religious ones, as the Supreme Court has mandated.

The court of appeals thus reversed and remanded.

# **Subject Matter Index**

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## Subject Matter Index

### ABORTION

- Arrest pain-compliance methods 69
- Ordinances and restrictions
  - Protester clinic distance 78, 89, 96
  - Residential picketing ban 68, 71, 72

### ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

- Housing
  - HIV and AIDS treated similarly 74, 87

### ADMINISTRATIVE LAW

- Annexation, competing claims 44
- Zoning 191
  - Adult entertainment 16

### ADULT ENTERTAINMENT

- Alcohol restrictions 5, 10, 11
  - Constitutional law/rights 6, 15, 21
  - Home-rule 13
  - Injunction 18
- Arcade 7
  - Licensing 12
  - Zoning 22
    - Injunction 12
- Board of health 7
- Bookstores
  - Licensing 6
  - Nuisance 2, 15
  - Ordinances and restrictions 7
    - Constitutional law/rights 8
    - Injunction 10
  - Zoning 1, 11, 15, 16
    - Injunction 22
- Civil procedure, zoning 21
- Constitutional law/rights
  - Injunction 10, 14
  - Licensing 3, 4, 5, 15, 18
  - Ordinances and restrictions 3, 4, 5, 7, 8, 13
    - Alcohol 6, 15, 21
    - Bookstores 7, 8, 10
    - Female-only 10, 17, 20
    - Injunction 8, 14
    - Location 4
    - Massage parlor 10, 19
    - Modeling 10, 18
    - Nudity 1, 2
    - Publication “blinder” requirement 79
    - Signs 14, 17
    - “Sunday sales” 11
    - “Touching” 5
  - Zoning 1, 2, 3, 5, 6, 9, 16, 17, 18, 19, 22
    - Arcade 12
    - Secondary effects 13, 22

- Video store 17
- Evidence, zoning 19
- Home-rule 2
  - Alcohol restrictions 13
- Injunction
  - Ordinances and restrictions 8, 11, 14
    - Alcohol 18
    - Bookstores 10
  - Zoning 1
    - Arcade 12
    - Bookstores 22
- Licensing
  - Alcohol 11
  - Arcade 12
  - Bookstores 6
  - Constitutional law/rights 3, 4, 5, 15, 18
  - Managers 15, 18
  - “Sunday sales” 11
- Manager licensing 15, 18
- Massage parlor restrictions 10, 19
- Modeling restrictions 10, 18
- Nuisance 7
  - Bookstores 2, 15
- Ordinances and restrictions
  - see also* Zoning *infra*
  - Alcohol 5, 10, 11
    - Constitutional law/rights 6, 15, 21
    - Home-rule 13
    - Injunction 18
  - Bookstores 6, 7, 8
    - Injunction 10
  - Constitutional law/rights 3, 4, 5, 7, 8, 13, 14, 19, 79
    - Alcohol 6, 15, 21
    - Female-only 10, 17
    - Modeling 18
    - Signs 17
  - Female-only 10, 17, 20
  - Home-rule 2, 13
  - Injunction 8, 10, 11, 14, 18
  - Location 4
  - Massage parlors 10, 19
  - Modeling 10, 18
  - Nudity 1, 2
  - Publication “blinder” requirement 79
  - Sexual performances 2
  - Signs 14, 17, 20
  - “Sunday sales” 11
  - “Touching” 5
- Permits 9
- Preemption, zoning 20
- Public health 7
- Sign restrictions 14, 17, 20
- “Sunday sales” 11

Video store 7  
     Nuisance 2  
     Zoning 2, 17  
 Zoning 9, 10, 19  
     *see also* Ordinances and restrictions *supra*  
     Arcade 12, 22  
     as Ban 15  
     Bookstores 1, 11, 15, 16  
         Injunction 22  
     Civil procedure 21  
     Constitutional law/rights 1, 2, 3, 5, 6, 9, 17, 18, 19, 22  
         Secondary effects 22  
     Expansion 19  
     Injunction 1, 12, 22  
     Interim 18  
     Nuisance 15  
     Preemption 20  
     Secondary effects 13, 19, 22  
     Variance 2, 17  
     Video store 2, 17

**ADVERTISING**

*see also* BILLBOARDS AND SIGNS, FIRST AMENDMENT  
 Alcohol restrictions 76, 82, 89, 91  
 “Barker” permits 83, 90  
 Constitutional law/rights  
     Tobacco restrictions 77, 83, 91  
 Off-premises solicitation 83, 90  
 Tobacco restriction preemption 77, 83, 91

**AFFIRMATIVE ACTION**

Consent decree  
     Police 62  
 Contracts  
     Constitutional law/rights 48

**AIRPORTS**

Authority  
     Parking lot use tax 126  
     Standing to sue 125, 126  
 Constitutional law/rights 126  
 Expansion 125, 126  
 Newsrack ban injunction 99  
 Parking lot use tax 126  
 Religious leafleting 151  
 Standing to sue 125, 126  
 Zoning exemption 132

**ALCOHOL**

Adult entertainment restrictions 5, 10, 11  
     Constitutional law/rights 6, 15, 21  
     Home-rule 13  
     Injunction 18  
 Advertising restrictions  
     Billboards and signs 76, 82, 89, 91  
 Constitutional law/rights

Adult entertainment restrictions 6, 15, 21  
     Licensing 110  
 Licensing 108, 109  
     Adult entertainment 11  
     Constitutional law/rights 110  
     Moratorium 109  
 Nuisance  
     Fees as tax 111  
 Open container ordinance 95  
 Vendors  
     Nuisance fees as tax 111

**ANIMALS**

Manure management ordinance preemption 122

**ANNEXATION**

Administrative law 44  
 Competing claims 44, 45  
 Constitutional law/rights 45  
     Water and sewer link, voting rights 43  
 Evidence 42, 45  
 Incorporation limitations exceeded 44  
 Injunction 45  
 Topography not followed 44  
 “Town island” barred 43  
 Utilities, condemnation of cooperative 119  
 Water and sewer link 42, 45  
     Voting rights 43

**ARREST *see* POLICE****ASSAULT WEAPONS *see* FIREARMS****ATTORNEYS**

*see also* OFFICERS AND EMPLOYEES  
 County counsel retention, personal interests 36

**AUTOMOBILES**

Car stereo noise ordinance 102  
 Constitutional law/rights  
     Parking ticket system 120, 122  
     Vehicle towing from property 129, 131  
 Contracts, parking ticket services 54  
 Fees  
     Overweight truck 39  
     Traffic impact 172  
 Noise ordinance 102  
 Nuisance  
     Vehicle towing from property 129, 131  
 Overweight truck fines 39  
 Parking  
     Privileges to residents only 85  
     Ticket system 54, 120, 122  
     Zoning 198  
 Police vehicle checkpoint 90  
 Taking, truck traffic regulation 134