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The Alabama School Prayer Case: Chandler v. Siegelman

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Abstract. In *Chandler v. James*, a federal district court in Alabama held a statute authorizing "non-sectarian, non-proselytizing, student-initiated voluntary prayer" at all public school events to violate the establishment of religion clause of the First Amendment. Subsequently, an injunction was issued barring the enforcement of the statute and enjoining school officials from fostering and engaging in a variety of evangelical activities in the schools. That decision and injunction have become the subject of intense political controversy in Alabama and elsewhere. The decision was been appealed to the U.S. Court of Appeals and the Governor of Alabama has filed a petition in the U.S. Supreme Court asking for a writ of mandamus to dismiss the case and to vacate the injunction. But on July 13, 1999, the appellate court affirmed this part of the district court's judgment, the Eleventh Circuit agreeing that the injunction's prohibition barring school officials from permitting any vocal prayer or devotional speech in its schools violated the free speech and free exercise of religion rights of the students.

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Summary

In *Chandler v. James* in 1997 a federal district court in Alabama held a statute authorizing "non-sectarian, non-proselytizing, student-initiated voluntary prayer" at all public school events to violate the establishment of religion clause of the First Amendment. To enforce that ruling, Judge DeMent issued an injunction barring the enforcement of the statute and enjoining school officials in DeKalb County, Alabama, from fostering and engaging in a variety of evangelical activities in the schools. That decision and injunction became the subject of intense political controversy in Alabama and elsewhere. Governor James pursued appeals to both the Supreme Court and the Eleventh Circuit contending that the decision and the injunction ought to be vacated on the grounds the establishment clause has no applicability to the states. Both courts denied the Governor's petition. But in a separate appeal by the state Attorney General, the Eleventh Circuit agreed that the injunction's prohibition barring school officials from permitting any student-initiated vocal prayer or devotional speech at school sponsored events violated the students' free speech and free exercise of religion rights. The appellate court upheld, however, the district court's appointment of a monitor to oversee implementation of the injunction. Nonetheless, the court vacated the district court's injunction and remanded it for rewriting in light of the appellate decision. The Supreme Court subsequently vacated this decision for reconsideration in light of its ruling in *Santa Fe Independent School District v. Doe*. But in *Chandler v. Siegelman* the Eleventh Circuit reaffirmed its previous decision; and on June 18, 2001, the Supreme Court refused to review that reaffirmation. This report will no longer be updated.

Background. The statute and most of the practices at issue in *Chandler v. James* echo earlier efforts in Alabama to encourage religious activities in the public schools. In 1978 the Alabama legislature enacted a statute authorizing a one-minute period of silence in all public elementary schools "for meditation."¹ In 1981, during Fob James' first term as Governor, it enacted a second statute authorizing a one-minute period of silence in all

¹ Alabama Code § 16-1-20 (1995).

public schools "for meditation or voluntary prayer,"² and in 1982 it enacted a third statute authorizing teachers to lead "willing students" in a prayer of the teacher's own devise or in one specified in the statute.³ Upon suit challenging the constitutionality of the latter two statutes, the state argued that the establishment of religion clause of the First Amendment does not apply to the states and Alabama could establish a state religion if it chose, and that argument proved successful in the trial court.⁴ But that decision was promptly overturned by the U.S. Court of Appeals for the Eleventh Circuit,⁵ and in separate decisions in 1984 and 1985 the U.S. Supreme Court upheld the appellate court's rulings.⁶ In the latter decision the Court specifically reaffirmed "the proposition that the several States have no greater power to restrain the individual freedoms protected by the First Amendment than does the Congress of the United States," terming the trial court's ruling to the contrary "remarkable."⁷

In 1993 the Alabama legislature enacted a fourth statute, this one providing for student-initiated prayer at public school events. In its operative section the statute stated:

On public school, other public, or other property, non-sectarian, non-proselytizing student-initiated voluntary prayer, invocations and/or benedictions, shall be permitted during compulsory or non-compulsory school-related student assemblies, school-related student sporting events, school-related graduation or commencement ceremonies, and other school-related events.

Ala. Code § 16-1-20.3(b) (1995).

This statute was a response, in part, to the Supreme Court's decision in *Lee v. Weisman*⁸ in 1992 in which the Court held unconstitutional a public secondary school's inclusion of clergy-led prayers at its graduation ceremony. Soon after that decision the U.S. Court of Appeals for the Fifth Circuit differentiated a Texas school district's policy of allowing the graduating class to select students to give non-proselytizing, non-sectarian prayers at their graduation ceremonies and held it to be constitutional.⁹ After the Supreme Court chose not to review the Fifth Circuit's decision, efforts to replicate that approach to school prayer began to mushroom. The 1993 Alabama statute was one result of those efforts.

² *Id.* § 16-1-20.1 (1995).

³ *Id.* § 16-1-20.2 (1995). The prayer in the statute had been composed by one of the Governor's sons.

⁴ *Jaffree v. Board of School Commissioners of Mobile County, Alabama*, 554 F.Supp. 1104 (S.D. Ala. 1983).

⁵ *Jaffree v. Wallace*, 705 F.2d 1526 (11th Cir. 1983).

⁶ *See Wallace v. Jaffree*, 466 U.S. 924 (1984), *aff'g mem.*, 705 F.2d 1526 (11th Cir. 1983) (summarily affirming the appellate court's ruling holding the third statute unconstitutional) and *Wallace v. Jaffree*, 472 U.S. 38 (1985) (upholding in a 6-3 ruling the appellate court's ruling holding the second statute unconstitutional).

⁷ *Wallace v. Jaffree*, 472 U.S. 38,48-49 (1985).

⁸ 505 U.S. 577 (1992).

⁹ *Jones v. Clear Creek Independent School District*, 977 F.2d 963 (5th Cir. 1992), *cert. den.*, 508 U.S. 967 (1993).

The Federal District Court's Decision on Constitutionality

In 1996 the ACLU of Alabama instituted suit challenging the constitutionality of the statute both on its face and as implemented on behalf of a vice-principal of a school in DeKalb County and a student in one of the County's schools.¹⁰ On March 12, 1997, a federal district court held the statute to be unconstitutional.¹¹ Judge Ira DeMent, (appointed by President Bush in 1992) held in part that the statute infringed on students' free speech and prayer rights in violation of the free exercise and freedom of speech clauses of the First Amendment. Students, the court said, have the constitutional right to engage in sectarian, proselytizing religious speech at times in the public schools; and the Alabama statute defined their rights in this respect "too narrowly."

The court further held the statute to violate the establishment of religion clause. Analyzing its constitutionality under several tests, the court said the statute had the non-secular purpose of restoring prayer to the public schools, had a primary effect of endorsing religious speech and giving it preference at school events over non-religious speech, coerced students into participating in religious activity, and precipitated excessive entanglement by requiring school officials to monitor the student prayers in order to ensure they were nonsectarian and nonproselytizing.

On June 23, 1997, Governor James sent Judge DeMent a 34-page letter contending that the religion clauses of the First Amendment do not apply to the states and asking the judge to dismiss the case "for lack of a federal question."

The Federal District Court's Injunction. On October 29, 1997, the federal district court issued an injunction to implement its ruling.¹² The injunction barred state officials and school officials of DeKalb County from enforcing the statute and from permitting "school organized or officially sanctioned religious activity in the classrooms of DeKalb County schools" With respect to the latter, the injunction specifically prohibited school officials:

- from directing or permitting prayers and devotional messages at public school graduation exercises (other than a brief personal religious expression by a speaker);
- from organizing or sponsoring or advertising baccalaureate services, encouraging student attendance at such services, and from conditioning participation in commencement exercises on attendance at such services;
- from using the public-address system, or allowing it to be used, for religious addresses (other than announcements of meetings of non-curricular student religious clubs);
- from having religious devotionals or other presentations or activities of a religious nature at school-sponsored or school-initiated assemblies and events, including sporting events;
- from distributing, or allowing non-school persons to distribute, Gideon Bibles or other religious tracts on school property during the school day or on school buses; and

¹⁰ The suit initially included a claim against the Talladega County public schools, but that complaint was resolved through a consent decree.

¹¹ *Chandler v. James*, 958 F.Supp. 1550 (M.D. Ala. 1997).

¹² *Chandler v. James*, 985 F.Supp. 1062 (M.D. Ala. 1997).

- from retaliating against the plaintiffs or other persons known to have supported the lawsuit or to have opposed school-sponsored religious activity.

The injunction further directed school officials to distribute the injunction to all principals and PTAs, to publicize it to all teachers and students, and to conduct in-service training sessions for all faculty and administrators on the legal standards governing religion in the public schools. The injunction further provided for the appointment of a monitor to ensure compliance with the injunction. Finally, the injunction set forth a number of ways in which religious expression would be constitutional in the schools. The court said:

- religious texts can be used in classrooms "to the extent that material so used is presented in an objective and academic manner";
- students can express their religious beliefs in homework and other school assignments "as academically appropriate";
- students can wear religious symbols and clothing bearing religious messages on the same basis as non-religious expressive symbols and apparel;
- students can meet for religious purposes during non-curricular time under the Equal Access Act; and
- students can distribute religious materials to classmates during noninstructional time on the same basis as non-religious materials can be distributed.

On November 4, 1997, Governor James issued a statement condemning the injunction as a ruling that "cuts at the heart of all that is good in America and brings shame on our nation." He said he would "resist Judge DeMent's order by every legal and political means with every ounce of strength I possess."

Subsequent Rulings by the District Court. In subsequent opinions the district court held the implementation of the statute in the DeKalb County schools to be unconstitutional and elaborated on the reasons it deemed a sweeping injunction to be necessary. In a November 12, 1997, opinion¹³ the court detailed a history of noncompliance by DeKalb County with previous judicial rulings and voluntary agreements concerning religious activities in the public schools. The court found that school-sponsored religious activity in violation of the First Amendment and previous court rulings was "pervasive and recurrent" in the County's schools. The evidence showed, it said, that teacher-led prayer and devotional exercises commonly occurred in the classrooms in violation of *Engel v. Vitale*¹⁴ and *Abington School District v. Schempp*¹⁵; that clergy- and student-led prayer frequently occurred at graduation exercises in violation of *Lee v. Weisman*¹⁶; and that prayer over the public address systems often occurred at sports events in violation of the 11th Circuit decision in *Jager v. Douglas County School District*.¹⁷ Moreover, the court noted that the County Board of Education had specifically adopted the position that prayer and devotionals over the intercom, classroom prayer, prayer at high school graduations, and prayer at student assemblies were authorized by the

¹³ *Chandler v. James*, 985 F.Supp. 1068 (M.D. Ala. 1997).

¹⁴ 370 U.S. 421 (1962).

¹⁵ 374 U.S. 203 (1963).

¹⁶ 505 U.S. 577 (1992).

¹⁷ 862 F.2d 824 (1989), *cert. den.*, 490 U.S. 1090 (1989).

1993 Alabama statute and that the Board had continued to encourage such practices even after entering into a voluntary agreement with the plaintiffs to cease the challenged conduct during the pendency of the suit. The court further found that the County had continued to engage in such activities after the court's March 12, 1997, ruling holding the Alabama statute unconstitutional and that school officials had failed to take action to stop harassment based on religion against a plaintiff's son. All of that, the court stated, confirmed "the depth of resistance toward ceasing unconstitutional practices on the part of the DeKalb County School Board" and showed that "unconstitutional conduct will not be willingly stopped by elected public officials." Thus, it asserted, an injunction was necessary, including the provisions for a monitor and for in-service training; "simple declaratory relief would, in DeKalb County," it said, "be no relief at all."

In another opinion released the same day, the court vacated part of an earlier order denying as moot all pending motions and granted the plaintiffs' motion for partial summary judgment on the constitutionality of the practices detailed in the paragraph above.¹⁸

Finally, on December 17, 1997, the district court denied most of the defendants' motion for a partial stay of the injunction.¹⁹

Governor James' Appeals. With the Alabama Attorney General disassociating himself from the action, Governor James on May 1, 1998, filed a petition in the U.S. Supreme Court asking for a writ of mandamus directing the district court to dismiss the case for lack of federal subject matter jurisdiction and to vacate its injunction. The petition contended that the courts have usurped power unconstitutionally and that the religion clauses of the First Amendment have no application to the states. On June 22 the Court rejected the petition.²⁰ The Governor made the same contention regarding the non-applicability of the establishment clause to the states in an appeal to the U.S. Court of Appeals for the Eleventh Circuit. On July 13, 1999, a three-judge panel of the appellate court upheld the district court's ruling in that regard, stating "the states are bound by the First Amendment."²¹

Appeal by the Alabama Attorney General. On a separate appeal filed by the Alabama Attorney General, however, the Eleventh Circuit did overturn one aspect of the district court's ruling and injunction. In this appeal the state chose not to contest the district court's ruling that the statute was unconstitutional, and it accepted most of the injunction issued by the district court. But the state did argue that the injunction was overbroad in prohibiting the school system from "permitting" most student-initiated vocal prayer or other devotional speech in its schools and in appointing a monitor to oversee compliance with the injunction. The appellate court agreed with the first contention but disagreed with the second.

Private religious speech, the court said, is "fully protected by both the Free Exercise and Free Speech Clauses of the Constitution." "Only when the speech is commanded by

¹⁸ *Chandler v. James*, 985 F.Supp. 1094 (M.D. Ala. 1997) (plaintiffs' motion for summary judgment granted).

¹⁹ *Chandler v. James*, 998 F.Supp. 1255 (M.D. Ala. 1997) (defendants' motion for partial stay of the injunction denied).

²⁰ *In re Fob James, Jr.*, 524 U.S. 936 (1998) (denying petition for a writ of mandamus).

²¹ *Chandler v. James*, 180 F.3d 1254 (11th Cir. 1999).

the State does it unconstitutionally coerce,” it stated (although it went on to hold that “proselytizing speech is inherently coercive and the Constitution prohibits it from the government’s pulpit”). So long as the state does not participate in or actively encourage or endorse the speech, the court averred, genuinely student-initiated religious expression must be permitted, subject only to the same time, place, and manner restrictions applicable to other student speech. On the second issue of the appointment of a monitor, however, the appellate court affirmed the district court. Given the school system’s history of unconstitutional activity with respect to religion, it held, the district court’s appointment of a monitor “was not an abuse of discretion.” Because of its first holding, the court vacated the injunction and remanded the case for appropriate revision. The Alabama ACLU then appealed this decision to the Supreme Court

On June 19, 2000, the Supreme Court in *Santa Fe Independent School District v. Doe*, 120 S.Ct. 2216 (2000) held unconstitutional a school policy allowing high school students to vote on whether to have a student deliver an invocation at all home football games; and on June 26 the Court vacated the appellate court’s decision in *Chandler* and remanded the case to it for reconsideration in light of *Santa Fe*.

On October 19, 2000, the Eleventh Circuit reinstated its previous opinion and judgment.²² *Santa Fe*, it said, “reaffirmed that the Establishment Clause of the First Amendment prohibits a school district from taking affirmative steps to create a vehicle for prayer to be delivered at a school function.” But, it stated, “only ... State-sponsored, coercive prayer is forbidden by the Constitution.” Private speech endorsing religion is protected by both the free speech and free exercise clauses of the First Amendment, the court averred. Reiterating that the district court’s injunction had “assumed that virtually any religious speech in schools is attributable to the State” and that, as a consequence, “it eliminated any possibility of *private* student religious speech under any circumstances other than silently or behind closed doors,” the court said “[t]his the Constitution neither requires nor permits.” So long as prayer “is *genuinely student-initiated* and [is] not the product of any school policy which actively or surreptitiously encourages it,” the appellate court asserted, prayer can be given “aloud or in front of others, as in the case of an audience assembled for some other purpose.” The court remanded the case once again to the district court and directed it to revise its injunction accordingly.

On June 18, 2001, the Supreme Court refused to review this decision. The district court will now revise its injunction.

²² *Chandler v. Siegelman*, 230 F.3d 1313 (11th Cir. 2000), *cert. den.*, 69 U.S.L.W. 3702 (June 18, 2001).