Cases



Civil Rights

Biblical References – Government Contractors

Andrew and Glenda Grosjean were "advocates" under a State unemployment agency program that provided no-cost information, consultation, and representation to unemployed workers involved in unemployment benefits appeals. Advocates were independent contractors, not state employees, and had to be selected by a worker. The unemployment agency published a list of biographies of the available advocates to help workers in making their selections. Those wishing to be advocates signed a "Personal Service Contract" in which they agreed to submit biographical information ("Advocate Profile Information," or API). The contract limited the information to be included to relevant personal information, like educational background, experience, and any special qualifications. The contract specifically stated that APIs could be edited by program staff, although prior to 2006, the APIs went largely unedited. The advocates included short narrative statements about themselves and other messages (e.g., "Screwed over By Your Employer? Don't Settle for an Ambulance Chaser"). The Grosjeans' APIs included short Biblical passages, and they were hired by clients because of these references. Starting in 2005, agency staff removed these references because they were not biographical, and adopted a new format. The Grosjeans' newly revised APIs retained a reference to their "Biblical perspective" and a Bible verse reference, without including the actual text. When the agency staff deleted these references, the Grosjeans brought a Section 1983 suit, claiming the agency and its staff violated their First Amendment rights to free speech and free exercise, their right to equal protection, and the First Amendment's Establishment Clause. The district court granted summary judgment in favor of the defendants, ruling that the list amounted to a nonpublic forum and, as such, the agency could engage in content-based discrimination of the advocates' speech as long as the restrictions were reasonable, taking into account the purposes and objectives of the program. On appeal, the U.S. Court of Appeals for the Sixth Circuit affirmed.

The advocates did not have a First Amendment right to have religious messages included as part of their biographies with the state agency. The list of APIs was government speech, and not the private speech of the individual advocates. More specifically, under the new template, the "overarching message" of the list was "clearly focused on presenting the professional, objective biographical information of advocates relevant to unemployment insurance." While it was a "closer question" with the APIs under the old template, the court held that, under existing First Amendment principles, the agency could impose reasonable, content-based regulations on this speech in a nonpublic forum. The agency's prior practice of not enforcing the "relevant speech" restriction did not indicate a governmental intent to create at least a limited public forum, as access to the list was consistently selective, not general, and the purpose of the list was to carry information one way, rather than to create "a multi-avenue 'free and open dialogue.'" The relevancy restriction was reasonable in light of the list's informational purpose, and the restriction was not qualified by the viewpoint of the speaker. The agency did not violate the Grosjeans' free speech and free exercise rights by excising their Biblical references. For similar reasons, the agency did not violate the Grosjeans' right to equal protection. *Grosjean v. Bommarito*, 302 Fed. Appx. 430 (6th Cir. 2008).

RLUIPA and Tarot Cards

The Arkansas Department of Corrections (ADC) had a policy which required all inmates to check out tarot cards from a chaplain, and prohibited the inmates from keeping such cards in their cells. Singson, an inmate, used tarot cards as part of his religion and sued, alleging violations of his First Amendment and Religious Land Use and Institutionalized Persons Act (RLUIPA) rights, and claiming that ADC's policy prohibited him from the spontaneous practice of his religion. At trial, ADC's expert witness testified that the card policy was necessary for many reasons: to prevent gambling, trafficking, psychological control (some inmates believed that tarot cards held special powers), and to prevent inmates from imprinting gang symbols on cards. The district court ruled in favor of ADC, noting that prison officials never rejected Singson's requests to check-out cards, and that Singson was allowed to keep other religious items in his cell. The court found that even if Singson's religious beliefs had been burdened, ADC had instituted the least restrictive policy while promoting prison safety.

The U.S. Court of Appeals for the Eighth Circuit agreed and affirmed. RLUIPA prohibited governments from imposing "a substantial burden on the religious exercise of a person residing in or confined to an institution ... unless the government demonstrates that imposition of the burden ... is in furtherance of a compelling governmental interest ... and is the least restrictive means of furthering that compelling governmental interest." The court found that prison safety and security were compelling governmental interests. Quoting *Carter v. Wilkinson*, 544 U.S. 709, 722 (2005), the Eighth Circuit stated that "[w]hen enacting RLUIPA, Congress was 'mindful of the urgency of discipline, order, safety, and security in penal institutions.'" In addition, Congress "anticipated that courts would apply the Act's standard with due deference to the experience and expertise of prison and jail administrators in establishing necessary regulations and procedures to maintain good order, security and discipline, consistent with considerations of costs and limited resources. *Singson v. Norris*, 553 F. 3d 660 (8th Cir. 2009).

Due Process – School Sports Practice

The plaintiffs sued a public school district, the State of Georgia, and several high