

RELIGIOUS FREEDOM CONSTITUTIONAL CHALLENGE TO SPORTS PROGRAM RULE

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The focus of the first edition of *Legal Issues in Recreation Administration (LIRA)* is "First Amendment Free Speech Rights in Public Parks." The case reports in this inaugural LIRA review constitutional challenges to various public park ordinances and park permit procedures. In addition to protecting free speech rights, the First Amendment also guarantees the free exercise of religion without undue governmental interference. As illustrated by the *Keller* decision described herein, the free exercise of religion guarantee of the First Amendment may provide a basis for an individual to challenge rules governing public recreation and sports programs. In determining the constitutionality of such rules, the federal courts will balance the burden these regulations place on one's free exercise of religion against the government's interest in effectively administering sports and recreation programs.

Balance Individual & Government Burdens

The case of *Keller v. Gardner Community Consolidated Grade School District 72C*, 552 F.Supp. 512 (N.D.Ill. 1982), presented a constitutional "conflict between a public grade school coach's policy requiring attendance at basketball practice and a student's desire to attend religion classes during the time designated for team practice." The facts of the case were as follows:

The eleven year old plaintiff, Joseph Keller, a resident of Gardner, Illinois, and a member of the Gardner Grade School basketball team, represented by his parents, challenges the constitutionality of a rule of the school's basketball coach which authorized absences from basketball practice in only two situations: because of the player's illness or because of a death in the player's family. The penalty imposed for an unexcused absence is that the student player would not be allowed to "suit up" for the next scheduled game.

Keller attends catechism class once each week at a Catholic church located outside of the limits of the Gardner School District, in Dwight, Illinois. The catechism class is scheduled by the church for the same time period during which the regularly scheduled practice of the basketball team is held. The basketball program was instituted after Joseph had started catechism classes, but oblivious of the schedule of the church. The coach would not make an exception in his rule for Joseph.

Keller argued that the rule violated "his right to freedom of religion." In considering "whether the coach's rule violates the plaintiff's right to freedom of religion," the federal district court noted that "first amendment rights are not absolute, and this includes particularly the right to the free exercise of religion."

As described by the court, the following "balancing approach" would be applied "in cases where a free exercise of religion claim is based on the denial of a government benefit."

This entails comparing the burden on the individual who is denied the benefit because of

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religious practice, with the burden that would be imposed on the government if it extended the benefit to someone who because of their religious practice failed to meet a generally imposed requirement for the benefit.

In applying this "balancing approach" to the facts of the case, the court first considered "the sincerity of the religious claim being advanced by Keller and the degree to which the challenged regulation interferes with religious belief or a vital religious practice based upon a belief." In this particular instance, the court found that the challenged regulation interfered more with Keller's "selection of a church" in which to pursue his religion, rather than "his free exercise of religion."

Keller admits that catechism classes are conducted by another Catholic church in the vicinity of the Gardner School District, which do not differ materially from the catechism classes offered in Dwight, and which do not pose scheduling conflicts with the school's basketball program. His conduct in attending catechism classes only in Dwight is a matter of personal preference stemming from his familiarity with a particular catechism class and its teachers. It cannot be said that the plaintiff has been denied the opportunity to participate in scheduled games because of the conduct mandated by religious belief or necessity.... At the most, he has established only an excusable and de minimus burden upon his religious practice...

It is common knowledge that a catechism class such as the plaintiff attends is a program of religious instruction, the purpose of which is to teach Catholic children the fundamental principles of their religion. Although an integral part of a Catholic's practices may be to learn the laws and rituals of the Catholic faith, and during certain stages of a practitioner's life the church may require a particular degree of knowledge of the religion, it is not mandatory that a fifth grade child attend a formal catechism class. It would be sufficient for the student to learn the tenets of the Catholic faith directly from a priest or from some other member of the church community. Further, the actual teaching of the religious doctrine, while subject to variance among different diocese, is substantially the same.

Having found that the challenged regulation did not place an undue burden on Keller's practice of religion, the federal district court then considered "the other side of the balance, the importance to the school of the secular values underlying the coach's rule."

Since the beginning of public elementary education in the United States, it has been recognized that participation in athletics plays an important role in the development of the child. Athletics train the body as well as the mind and are as important in the child's development as regular classroom work... The school has a significant interest in administering these programs effectively. The primary importance of the rule to the school program is that the rule promotes attendance at practice and as a result instills in young athletic participants a sense of teamwork and an appreciation of the individual's responsibility to the group. Promoting these qualities in each individual should be part of every elementary school education.

In balancing the competing interests of the athlete and the public program provider, the federal district

court also considered "the impact on the basketball program of an alternative to the current school policy."

An alternative scheduling arrangement would not be appropriate because the school could not successfully pre-arrange a practice schedule that would accommodate the religious education class of each of the many participants in the athletic program. And it would be unfair to allow a special exemption to the attendance rule for the benefit of those students who opt to observe their special religious classes, while disallowing similar exemptions for attending other activities to students who may not be adherents to a particular religious organization. Either alternative would be unworkable and ultimately would defeat the athletic program. Clearly the burden imposed on the school if it were forced to change its rule to accommodate Keller is considerable.

The federal district court acknowledged further that "under certain circumstances exemptions must be permitted to all members of a particular religious sect in order to preserve freedom of religious belief."

The boundary is a narrow one between an exemption from a universal requirement in deference to a particular basic religious belief on the one hand and on the other hand a special preference given because of a discretionary religious practice. The latter is not favored... The difference between the two concepts as they have developed in our history is easily seen in reviewing the language of the more fully worded religious freedom provision of the Illinois Constitution, which states, "nor shall any preference be given by law to any religious denomination or mode of worship."... The concept enunciated seeks to effect a complete but accommodable separation of church and state.

Applying these principles to the facts of the case, the federal district court found that granting an exemption to Keller from the challenged rule would be "closer to the granting of a preference to a discretionary religious practice, as differing from a religious belief, and would tend to be violative of the letter and the spirit of the first amendment."

The plaintiff has failed to establish the uniqueness of the catechism program in Dwight, Illinois and as a result he is unable to show that the burden of his free exercise of religion, if there is an interference at all, outweighs the burden that would be imposed upon the school were it to change its policy regarding unexcused absences. Balancing the interests involved, it appears unreasonable for the school to have to accommodate its basketball program to Keller's personal schedule or preference.

The federal district court, therefore, concluded that "the policy of the grade school regarding unexcused absences survives the free exercise challenge of Keller. As a result, the court granted summary judgment to the defendant school district.

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