LARKIN v. GRENDEL'S DEN, INC. (1982)

459 U.S. 116

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

FOURTEENTH AMENDMENT

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TWENTY-FIRST AMENDMENT

The eighteenth article of amendment to the Constitution is hereby repealed. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

FACTS: Section 16C of Chapter 138 of the Massachusetts General Laws provides: "Premises . . . located within a radius of five hundred feet of a church or school shall not be licensed for the sale of alcoholic beverages if the governing body of such church or school files written objection thereto."

Appellee Grendel's Den operates a restaurant located in the Harvard Square area of Cambridge, Mass. The Holy Cross Armenian Catholic Parish is located adjacent to the restaurant; the back walls of the two buildings are 10 feet apart. In 1977, appellee applied to the Cambridge License Commission for approval of an alcoholic beverages license for the restaurant. Holy Cross Church objected to appellee's application, expressing concern over "having so many licenses so near." The License Commission voted to deny the application, citing only the objection of Holy Cross Church and noting that the church "is within 10 feet of the proposed location."

On appeal, the Massachusetts Alcoholic Beverages Control Commission upheld the License Commission's action.

Appellee then sued the License Commission and the Beverages Control Commission in United States District Court on the grounds that 16C, on its face and as applied, violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment, the Establishment Clause of the First Amendment.

Another case addressing a similar issue with 16C was already pending in the Massachusetts Supreme Judicial Court (state court) in which the Court upheld the statute against Due Process and Establishment Clause Challenges. Therefore, the District Court (federal court)

in which *Grendel's Den* was filed heard the case and held that 16C did in fact violate the Due Process and Establishment Clauses. The First Circuit Court of Appeals affirmed.

ISSUE: Does the Massachusetts statute, which vests in the governing bodies of churches and schools the power effectively to veto applications for liquor licenses within a 500-foot radius of the church or school, violates the Establishment Clause of the First Amendment or the Due Process Clause of the Fourteenth Amendment?

HELD: Yes, Section 16C violates the Establishment Clause, 8-1.

REASONING: CHIEF JUSTICE BURGER delivered the opinion of the Court.

Plainly schools and churches have a valid interest in being insulated from certain kinds of commercial establishments, including those dispensing liquor. Zoning laws have long been employed to this end, and there can be little doubt about the power of a state to regulate the environment in the vicinity of schools, churches, hospitals, and the like by exercise of reasonable zoning laws.

The zoning function is traditionally a governmental task requiring the "balancing [of] numerous competing considerations," and courts should properly "refrain from reviewing the merits of [such] decisions, absent a showing of arbitrariness or irrationality." Given the broad powers of states under the Twenty-first Amendment, judicial deference to the legislative exercise of zoning powers by a city council or other legislative zoning body is especially appropriate in the area of liquor.

However, 16C is not simply a legislative exercise of zoning power. As the Massachusetts Supreme Judicial Court concluded, 16C delegates to private, nongovernmental entities power to veto certain liquor license applications. Here, of two classes of institutions to which the legislature has delegated this important decisionmaking power, one is secular, but one is religious. Under these circumstances, the deference normally due a legislative zoning judgment is not merited.

The purposes of the First Amendment guarantees relating to religion were twofold: to foreclose state interference with the practice of religious faiths, and to foreclose the establishment of a state religion familiar in other 18th-century systems. Religion and government, each insulated from the other, could then coexist. Jefferson's idea of a "wall," was a useful figurative illustration to emphasize the concept of separateness. Here that "wall" is substantially breached by vesting discretionary governmental powers in religious bodies.

This Court has consistently held that a statute must satisfy three criteria to pass muster under the Establishment Clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster `an excessive government entanglement with religion.'" *Lemon v. Kurtzman* (1971).

Independent of the first of those criteria, the statute, by delegating a governmental power to religious institutions, inescapably implicates the Establishment Clause. The purpose of 16C, as described by the District Court, is to "protec[t] spiritual, cultural, and educational centers from the `hurly-burly' associated with liquor outlets." There can be little doubt that this embraces valid secular legislative purposes. However, these valid secular objectives can be readily accomplished by other means - either through an absolute legislative ban on liquor outlets within reasonable prescribed distances from churches, schools, hospitals, and like institutions, or by ensuring a hearing for the views of affected institutions at licensing proceedings where, without question, such views would be entitled to substantial weight.

The churches' power under the statute is standardless, calling for no reasons, findings, or reasoned conclusions. That power may therefore be used by churches to promote goals beyond insulating the church from undesirable neighbors; it could be employed for explicitly religious goals. It does not strain our prior holdings to say that the statute can be seen as having a "primary" and "principal" effect of advancing religion.

This statute enmeshes churches in the exercise of substantial governmental powers contrary to our consistent interpretation of the Establishment Clause; "[t]he objective is to prevent, as far as possible, the intrusion of either [Church or State] into the precincts of the other." *Lemon v. Kurtzman* (1971). We went on in that case to state:

"Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn."

The challenged statute thus enmeshes churches in the processes of government and creates the danger of "[p]olitical fragmentation and divisiveness on religious lines," Lemon v. Kurtzman, supra, at 623. Ordinary human experience and a long line of cases teach that few entanglements could be more offensive to the spirit of the Constitution.

The judgment of the Court of Appeals is affirmed.

So ordered.

JUSTICE REHNQUIST, dissenting.

In its original form, 16C imposed a flat ban on the grant of an alcoholic beverages license to any establishment located within 500 feet of a church or a school. This statute represented a legislative determination that worship and liquor sales are generally not compatible uses of land. The majority concedes, as I believe it must, that "an absolute legislative ban on liquor outlets within reasonable prescribed distances from churches, schools, hospitals, and like institutions," would be valid. *California v. LaRue* (1972).

Over time, the legislature found that it could meet its goal of protecting people engaged in religious activities from liquor-related disruption with a less absolute prohibition. Thus, under the present version of 16C, a liquor outlet within 500 feet of a church or school can be licensed unless the affected institution objects. The flat ban, which the majority concedes is valid, is more protective of churches and more restrictive of liquor sales than the present 16C.

The evolving treatment of the grant of liquor licenses to outlets located within 500 feet of a church or a school seems to me to be the sort of legislative refinement that we should encourage, not forbid in the name of the First Amendment.

Section 16C does not sponsor or subsidize any religious group or activity. It does not encourage, much less compel, anyone to participate in religious activities or to support religious institutions. To say that it "advances" religion is to strain at the meaning of that word.

The Court is apparently concerned for fear that churches might object to the issuance of a license for "explicitly religious" reasons, such as "favoring liquor licenses for members of that congregation or adherents of that faith." If a church were to seek to advance the interests of its members in this way, there would be an occasion to determine whether it had violated any right of an unsuccessful applicant for a liquor license. But our ability to discern a risk of such abuse does not render 16C violative of the Establishment Clause. The State can constitutionally protect churches from liquor for the same reasons it can protect them from fire and other harm.

I would reverse the judgment of the Court of Appeals.