

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
VIRGINIA, RICHMOND DIVISION

Forest Hills Early Learning Center, Inc. v. Lukhard

661 F. Supp. 300 (E.D. Va. 1987) · No. Civ. A. No. 80-0116-R · Decided May 15, 1987

SUMMARY

The court held that Virginia Code § 63.1-196.3, which exempted religiously affiliated child care centers from general state licensing requirements, violated the Establishment Clause of the First Amendment. The court concluded that operating child care centers was a secular activity and that the exemption was not justified as an accommodation of free exercise rights. The action followed multiple appeals and remands concerning standing, class certification, and the existence of protected religious activity.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                              |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of Virginia, Richmond Division                                                                                                                                                                         |
| WRITING FOR THE COURT | Richard L. Williams                                                                                                                                                                                                                                          |
| JURISDICTION          | Virginia                                                                                                                                                                                                                                                     |
| DECIDED               | May 15, 1987                                                                                                                                                                                                                                                 |
| DOCKET                | Civ. A. No. 80-0116-R                                                                                                                                                                                                                                        |
| DISPOSITION           | other                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Following remand from the Fourth Circuit, the district court adjudicated the constitutionality of Virginia Code § 63.1-196.3 after certifying a class of sectarian child-care centers and receiving evidence concerning their asserted free-exercise rights. |
| STANDARD OF REVIEW    | Constitutional challenge resolved on the summary-judgment record; the court applied the Lemon test to the Establishment Clause claim and a compelling-interest/least-restrictive-means analysis to the asserted Free Exercise Clause claims.                 |
| PRECEDENTIAL VALUE    | Published federal district court memorandum opinion; persuasive within the district and not binding precedent outside the court's hierarchical authority.                                                                                                    |
| PARTIES               | Forest Hills Early Learning Center, Inc., Academy Day Care, Inc., Holloman Child Care Centers, Inc. v. William L. Lukhard, as Director                                                                                                                       |

## TOPICS

establishment clause   free exercise clause   first amendment   administrative law   civil rights

## PRACTICE AREAS

constitutional law   civil rights   administrative law   religious liberty   child-care regulation

## QUESTIONS PRESENTED

1. Whether Virginia Code § 63.1-196.3 violates the Establishment Clause by exempting religiously affiliated child-care centers from the general licensing requirements applicable to nonsectarian centers.
2. Whether operation of a church-affiliated child-care center is a religious activity protected by the Free Exercise Clause.
3. Whether the licensing, financial-disclosure, corporal-punishment, child-abuse-reporting, good-moral-character, and program requirements burden the defendant-intervenors' free exercise rights.
4. If any of the challenged requirements burden free exercise, whether those requirements are justified by a compelling state interest and are the least restrictive means of protecting that interest.

## HOLDINGS

1. Virginia Code § 63.1-196.3 lacks a valid secular purpose and violates the Establishment Clause because the asserted purpose of accommodating free-exercise rights is not supported by a showing that the exempted child-care activities are religiously protected.
2. The operation of a child-care center by a sectarian institution is a secular activity and is not per se entitled to Free Exercise Clause protection.
3. Requiring church-run child-care centers to obtain a license does not burden free exercise because licensing regulates a secular activity; alternatively, any burden is justified by the compelling state interest in protecting children and is the least restrictive means of doing so.
4. Requiring a church-run child-care center to disclose projected income, expenses, assets, and liabilities does not burden free exercise; alternatively, the requirement is justified by the compelling interest in ensuring that centers can safely operate and is narrowly tailored to that interest.
5. Applying the prohibition on corporal punishment to church-run child-care centers does not violate the Free Exercise Clause; any burden is justified by the compelling interest in protecting children from physical and emotional harm and by the absence of another effective preventive method.
6. The child-abuse reporting requirements do not burden the churches' free exercise rights and are independently justified by the compelling state interest in preventing further child abuse.
7. The good-moral-character and program requirements do not impermissibly burden free exercise because they do not prevent churches from applying stricter standards, hiring converted individuals, retaining

religious program content, or avoiding activities they consider religiously objectionable.

## KEY QUOTATIONS

*“Therefore, the operation of such centers is not entitled per se to free exercise protection.”* (at 309)

*“The Court concludes that the statute, Va.Code § 63.1-196.3, lacks a secular purpose and therefore violates the establishment clause of the First Amendment to the United States Constitution.”* (at 316)

*“The Court enjoins the Commissioner of the Department of Social Services of the Commonwealth of Virginia from enforcing Va.Code § 63.1-196.3 and orders general application of the child care licensing provisions to all child care centers.”* (at 316)

## FACTUAL BACKGROUND

Virginia required child-care centers to comply with extensive licensing standards addressing facilities, health and safety, staffing, finances, administration, programming, and inspections. In 1979, the legislature enacted Virginia Code § 63.1-196.3, exempting child-care centers operated under the auspices of religious institutions from ordinary licensure while subjecting them only to limited disclosure, certification, and local health-and-safety requirements. Nonsectarian centers remained subject to comprehensive state licensing and enforcement. The plaintiffs, nonsectarian operators, alleged that the exemption disadvantaged them and impermissibly favored religiously affiliated centers.

## PROCEDURAL HISTORY

The plaintiffs initially brought suit in 1979 and 1980, but the district court dismissed both actions for lack of standing. The Fourth Circuit reversed the standing dismissal and remanded. On remand, the district court denied dismissal but granted summary judgment for the Commonwealth, holding that the exemption had a secular purpose and did not violate the Establishment or Equal Protection Clauses. The Fourth Circuit affirmed in part, vacated in part, and remanded, holding that Virginia had not established free-exercise rights justifying the exemption and suggesting intervention by sectarian institutions. After further proceedings, including an attempted class certification and another appeal, the case returned to the district court for determination of the sectarian centers' free-exercise claims. The district court entered judgment for the plaintiffs, enjoined enforcement of the exemption, and ordered general application of the licensing provisions.

## DISPOSITION

other

## CASES CITED

- Forest Hills Early Learning Center, Inc. v. Lukhard, 480 F. Supp. 636 (E.D. Va. 1979)
- Forest Hills Early Learning Center, Inc. v. Lukhard, 487 F. Supp. 1378 (E.D. Va. 1980)
- Forest Hills Early Learning Center, Inc. v. Lukhard, 728 F.2d 230 (4th Cir. 1984)
- Forest Hills Early Learning Center, Inc. v. Lukhard, 789 F.2d 295 (4th Cir. 1986)
- Lemon v. Kurtzman, 403 U.S. 602 (1971)

- Wallace v. Jaffree, 472 U.S. 38 (1985)
- Lynch v. Donnelly, 465 U.S. 668 (1984)
- Warth v. Seldin, 422 U.S. 490 (1975)
- Cantwell v. Connecticut, 310 U.S. 296 (1940)
- Wisconsin v. Yoder, 406 U.S. 205 (1972)
- Walz v. Tax Commission, 397 U.S. 664 (1970)
- Murdock v. Pennsylvania, 319 U.S. 105 (1943)
- Pierce v. Society of Sisters, 268 U.S. 510 (1925)
- Kansas ex rel. Pringle v. Heritage Baptist Temple, Inc., 236 Kan. 544, 693 P.2d 1163 (1985)
- Department of Social Services v. Emmanuel Baptist Pre-School, 150 Mich. App. 254, 388 N.W.2d 326 (1986)
- North Carolina v. Fayetteville Street Christian School, 42 N.C. App. 665, 258 S.E.2d 459 (1979)
- Kansas ex rel. O'Sullivan v. Heart Ministries, Inc., 227 Kan. 244, 607 P.2d 1102 (1980)
- Texas v. Corpus Christi People's Baptist Church, Inc., 683 S.W.2d 692 (Tex. 1984)
- Roloff Evangelistic Enterprises, Inc. v. Texas, 556 S.W.2d 856 (Tex. Civ. App. 1977)
- Dimidowich v. Bell & Howell, 803 F.2d 1473 (9th Cir. 1986)
- Saviano v. Commissioner of Internal Revenue, 765 F.2d 643 (7th Cir. 1985)