Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SANTA FE INDEPENDENT SCHOOL DISTRICT *v.* DOE, INDIVIDUALLY AND AS NEXT FRIEND FOR HER MINOR CHILDREN, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 99–62. Argued March 29, 2000– Decided June 19, 2000

Prior to 1995, a student elected as Santa Fe High School's student council chaplain delivered a prayer over the public address system before each home varsity football game. Respondents, Mormon and Catholic students or alumni and their mothers, filed a suit challenging this practice and others under the Establishment Clause of the First Amendment. While the suit was pending, petitioner school district (District) adopted a different policy, which authorizes two student elections, the first to determine whether "invocations" should be delivered at games, and the second to select the spokesperson to deliver them. After the students held elections authorizing such prayers and selecting a spokesperson, the District Court entered an order modifying the policy to permit only nonsectarian, nonproselytizing prayer. The Fifth Circuit held that, even as modified by the District Court, the football prayer policy was invalid.

Held: The District's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause. Pp. 9–26.

(a) The Court's analysis is guided by the principles endorsed in *Lee* v. *Weisman*, 505 U. S. 577. There, in concluding that a prayer delivered by a rabbi at a graduation ceremony violated the Establishment Clause, the Court held that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way that establishes a state religion or religious faith, or tends to do so, *id.*, at 587. The District argues unpersuasively that these principles are inapplicable be-

cause the policy's messages are private student speech, not public speech. The delivery of a message such as the invocation here— on school property, at school-sponsored events, over the school's public address system, by a speaker representing the student body, under the supervision of school faculty, and pursuant to a school policy that explicitly and implicitly encourages public prayer— is not properly characterized as "private" speech. Although the District relies heavily on this Court's cases addressing public forums, *e.g., Rosenberger* v. *Rector and Visitors of Univ. of Va.,* 515 U. S. 819, it is clear that the District's pregame ceremony is not the type of forum discussed in such cases. The District simply does not evince an intent to open its ceremony to indiscriminate use by the student body generally, see, *e.g., Hazelwood School Dist.* v. *Kuhlmeier,* 484 U. S. 260, 270, but, rather, allows only one student, the same student for the entire season, to give the invocation, which is subject to particular regulations that confine the content and topic of the student's message. The majoritarian process implemented by the District guarantees, by definition, that minority candidates will never prevail and that their views will be effectively silenced. See *Board of Regents of Univ. of Wis. System* v. *Southworth,* 529 U. S. ___, ___. Moreover, the District has failed to divorce itself from the invocations' religious content. The policy involves both perceived and actual endorsement of religion, see *Lee,* 505 U. S., at 590, declaring that the student elections take place because the District "has chosen to permit" student-delivered invocations, that the invocation "shall" be conducted "by the high school student council" "[u]pon advice and direction of the high school principal," and that it must be consistent with the policy's goals, which include "solemniz[ing] the event." A religious message is the most obvious method of solemnizing an event. Indeed, the only type of message expressly endorsed in the policy is an "invocation," a term which primarily describes an appeal for divine assistance and, as used in the past at Santa Fe High School, has always entailed a focused religious message. A conclusion that the message is not "private speech" is also established by factors beyond the policy's text, including the official setting in which the invocation is delivered, see, *e.g., Wallace,* 472 U. S., at 73, 76, by the policy's sham secular purposes, see *id.,* at 75, and by its history, which indicates that the District intended to preserve its long-sanctioned practice of prayer before football games, see *Lee,* 505 U. S., at 596. Pp. 9–18.

(b) The Court rejects the District's argument that its policy is distinguishable from the graduation prayer in *Lee* because it does not coerce students to participate in religious observances. The first part of this argument— that there is no impermissible government coercion because the pregame messages are the product of student

choices— fails for the reasons discussed above explaining why the mechanism of the dual elections and student speaker do not turn public speech into private speech. The issue resolved in the first election was whether a student would deliver prayer at varsity football games, and the controversy in this case demonstrates that the students' views are not unanimous on that issue. One of the Establishment Clause's purposes is to remove debate over this kind of issue from governmental supervision or control. See *Lee*, 505 U. S., at 589. Although the ultimate choice of student speaker is attributable to the students, the District's decision to hold the constitutionally problematic election is clearly a choice attributable to the State, *id.*, at 587. The second part of the District's argument— that there is no coercion here because attendance at an extracurricular event, unlike a graduation ceremony, is voluntary— is unpersuasive. For some students, such as cheerleaders, members of the band, and the team members themselves, attendance at football games is mandated, sometimes for class credit. The District's argument also minimizes the immense social pressure, or truly genuine desire, felt by many students to be involved in the extracurricular event that is American high school football. *Id.*, at 593. The Constitution demands that schools not force on students the difficult choice between whether to attend these games or to risk facing a personally offensive religious ritual. See *id.*, at 596. Pp. 18–21.

(c) The Court also rejects the District's argument that respondents' facial challenge to the policy necessarily must fail because it is premature: No invocation has as yet been delivered under the policy. This argument assumes that the Court is concerned only with the serious constitutional injury that occurs when a student is forced to participate in an act of religious worship because she chooses to attend a school event. But the Constitution also requires that the Court keep in mind the myriad, subtle ways in which Establishment Clause values can be eroded, *Lynch* v. *Donnelly*, 465 U. S. 668, 694, and guard against other different, yet equally important, constitutional injuries. One is the mere passage by the District of a policy that has the purpose and perception of government establishment of religion. See, *e.g.*, *Bowen* v. *Kendrick*, 487 U. S. 589, 602; *Lemon* v. *Kurtzman*, 403 U. S. 602, 612. As discussed above, the policy's text and the circumstances surrounding its enactment reveal that it has such a purpose. Another constitutional violation warranting the Court's attention is the District's implementation of an electoral process that subjects the issue of prayer to a majoritarian vote. Through its election scheme, the District has established a governmental mechanism that turns the school into a forum for religious debate and empowers the student body majority to subject students of mi-

nority views to constitutionally improper messages. The award of that power alone is not acceptable. Cf. *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. ___. For the foregoing reasons, the policy is invalid on its face. Pp. 21–26.

168 F. 3d 806, affirmed.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. REHNQUIST, C. J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.