DOCUMENT RESUME

ED 313 945 HE 023 016

AUTHOR Zirkel, Perry A.
TITLE Post-1970 Supreme Court Decisions Arising in Institutions of Higher Education.
PUB DATE 89
NOTE 12p.
PUB TYPE Reference Materials - Bibliographies (131)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Annotated Bibliographies; Church Related Colleges; *College Faculty; *College Students; *Constitutional Law; *Court Litigation; *Federal Courts; *Higher Education; Institutional Characteristics; *Legal Problems; Private Colleges; Public Colleges
IDENTIFIERS *Supreme Court

ABSTRACT

An annotated bibliography lists 34 Supreme Court decisions since 1970 that have arisen in colleges and universities. They are organized according to the type of institution to which they appear to apply (public, general, private, and church-related), and according to their application to student or faculty affairs. The following decisions are included: Board of Regents v. Roth; Perry v. Sindermann; Minnesota State Board for Community Colleges v. Knight; NCAA v. Tarkanian; Healy v. James; Papish v. Board of Curators; Vlandis v. Kline; Hess v. Indiana; Board of Curators v. Horowitz; Zurcher v. Stanford Daily; Widmar v. Vincent; Toll v. Moreno; Mississippi University for Women v. Hogan; Regents v. Ewing; Board of Trustees v. Fox; Patsy v. Board of Regents; Board of Trustees v. Sweeney; Delaware State College v. Ricks; Grove City College v. Bell; Regents v. PERB; Saint Francis College v. Al-Khazraji; De Funis v. Odegaard; Nyquist v. Mauclet; Board of Regents v. Bakke; Southeastern Community College v. Davis; University of Texas v. Camenisch; Washington v. Chrisman; Selective Service System v. Minnesota Public Interest Research Group; Cannon v. University of Chicago; Carnegie-Mellon University v. Cohill; NCAA v. Board of Regents; National Labor Relations Board v. Yeshiva University; Roemer v. Board of Public Works; Hunt v. McNair; Tilton v. Richardson; Bob Jones University v. United States; Witters v. Washington Department of Services for the Blind; and Valley Forge Christian College v. Americans United for Separation of Church and State. (MSE)

POST-1970 SUPREME COURT DECISIONS ARISING IN INSTITUTIONS OF HIGHER EDUCATION

Perry A. Zirkel*
University Professsor of Education and Law
Lehigh University

[REVISED]

The following outline provides an overview of Supreme Court decisions after 1970 that have arisen in institutions of higher education (hereinafter designated as "IHE's"). Thus, the overview does not include the Court's decisions arising within this context before 1971.[1] Similarly, it does not include the Court's decisions from other contexts that are applicable to IHE's.[2] Finally, it does not include the vast body of applicable case law from lower courts.[3]

The decisions are organized in terms of the type of IHE's to which they appear to apply, regardless of which type of IHE in which they actually arose. The coverage is comprehensive within the above mentioned boundaries; decisions that are largely technical are included to show the full range of the IHE cases that have reached our highest court. For each case, the citation and a brief operational blurb is provided; readers are advised to consult the original opinion and complete analyses for decisions of interest.

1.0 PUBLIC IHE'S ONLY

1.1 Faculty

Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972)

-Am. XIV (procedural due process) creates de facto tenure only if objective expectancy (legitimate entitlement) of reemployment under state law or severe stigmatization to reputation

-nontenured faculty member's nonrenewal may be for no reason but not for reason of Am. I (expression)

Minnesota State Board for Community Colleges v. Knight, 465 U.S. 271 (1984)

-state statute limiting the employing IHE to officially "meet" and confer" with only the exclusive bargaining agent does not violate Am. I (expression) or Am. XIV (equal protection)

NCAA v. Tarkanian, 109 S. Ct. 454 (1988)

-public IHE's imposition of disciplinary sanctions in compliance with NCAA rules and recommendations did not turn NCAA's otherwise private conduct into state action under Sec. 1983

1.2 Students

Healy v. James, 408 U.S. 169 (1972)

-denial of recognition of controversial student group violates Am. I (ass'n.) unless compelling justification (substantial disruption), but reasonable time, place, manner regulations are allowed

Papish v. Board of Curators, 410 U.S. 667 (1973)

-expulsion of a student based on indecent, but not obscene, contents of newspaper that she distributed on campus violates Am. I (expression)

Vlandis v. Kline, 412 U.S. 441 (1973)

-irrebuttably higher tuition and fees for students applying from out of state violates Am. XIV (substantive due process)

Hess v. Indiana, 414 U.S. 105 (1973)

-arrest under disorderly conduct statute of student who, after campus demonstration moved to public street, used foul language in indefinite threat to take the street later violates Am. I (expression)

Board of Curators v. Horowitz, 435 U.S. 78 (1978)

-Am. XIV (procedural due process) requires only notice and careful, reviewed decision for a student's academic dismissal, including those based on clinical grounds

Zurcher v. Stanford Daily, 436 U.S. 547 (1978)

-search, pursuant to a warrant, of the offices of a student newspaper, which itself was not suspected of a crime, does not violate Am. I (expression/press) or IV (search and seizure)

Widmar v. Vincent, 454 U.S. 263 (1981)

-refusal, based on establishment-clause rationale, to allow a student religious group to hold its meetings in campus facilities that are generally open to a wide variety of student groups is a violation of Am. I (expression)

Toll v. Moreno, 458 U.S. 1 (1982); cf. Elkins v. Moreno, 435 U.S. 647 (1978)

-state university's policy of denying in-state tuition status to domiciled nonimmigrant aliens holding G-4 visas violates Art. IV (supremacy clause)

Mississippi University for Women v. Hogan, 458 U.S. 718 (1982)

-exclusion of males, based on gender, from enrolling in professional nursing program violates Am. XIV (equal protection)

Regents v. Ewing, 474 U.S. 214 (1985)

-academic dismissal of student does not violate Am. XIV (substantive due process) unless it is "such a substantial departure from academic norms as to demonstrate that the

person or committee responsible did not actually exercise professional judgment"

Board of Trustees v. Fox, 109 S. Ct. 3028 (1989)

-regulations prohibiting commercial solicitation in residence halls need, under Am. I (expression), to be narrowly tailored but not necessarily the least restrictive means to achieve the legitimate governmental objective

1.3 Both Faculty and Students

Patsy v. Board of Regents, 457 U.S. 496 (1982)

-exhaustion of state administrative remedies is not a prerequisite to bringing a Sec. 1983 civil rights suit

2.0 IHE'S GENERALLY

2.1 Faculty

Board of Trustees v. Sweeney, 439 U.S. 24 (1978)

-in Title VII employment discrimination cases, the employing IHE need only articulate some legitimate, nondiscriminatory reason; it need not prove absence of discriminatory motive

Delaware State College v. Ricks, 449 U.S. 250 (1980)

-in a tenure case, the filing deadlines of Title VII and Sec.

1981 commence at the the denial-of-tenure decision and notification, which is the time of the challenged discriminatory act(s), not when the employment ends, which the time the consequences of the decision culminate

Grove City College v. Bell, 465 U.S. 555 (1984)

-Title IX applies only to the specific program(s) receiving federal funds, not to the entire IHE [N.B. This decision was overruled by the Civil Rights Restoration Act of 1986.]

Regents v. PERB, 108 S. Ct. 1404 (1988)

-IHE's delivery, via its internal mail system, of unstamped letters from a labor union, which in this case was not the employees' recognized representative, violates the federal Private Express Statutes

Saint Francis College v. Al-Khazraji, 481 U.S. 604 (1987)

-Sec. 1981 protects identifiable classes of persons (e.g., Arabs) who are subjected to intentional discrimination because of their ethnic characteristics or background

2.2 Students

De Funis v. Odegaard, 416 U.S. 312 (1974)

-where a student is allowed to enter and complete his schooling while challenging his denied admittance, there is no active

controversy and thus the case is not subject to a decision on the merits

Nyquist v. Mauclet, 432 U.S. 1 (1977)

-state statute that restricts the mresident aliens' receipt of state financial assistance for higher education to those who have either applied for U.S. citizenship or filed a statement of intent to apply when eligible violates Am. XIV (equal protection)

Board of Regents v. Bakke, 438 U.S. 265 (1978)

-under Title VI, race may be used as a factor, but not the factor, in admissions decisions unless the IHE shows a compelling justification for using it as the factor

Southeastern Community College v. Davis, 442 U.S. 397 (1979); cf. University of Texas v. Camenisch, 451 U.S. 390 (1981)

-denial of admission to handicapped student does not violate Sec. 504 where student is not qualified "in spite of" his/her handicap with reasonable accommodation (not major modification or other undue financial or administrative burden) by the IHE

Washington v. Chrisman, 455 U.S. 1 (1982)

-police officer's seizure of contraband that is in plain view upon lawful entry in student's dormitory room does not violate Am. IV (search and seizure)

Selective Service System v. Minnesota Public Interest Research Group, 468 U.S. 841 (1984)

-federal statute that denies Title IV financial assistance to male students who fail to register for the draft does not violate Art. I (bill of attainder), Am. V (self-incrimination), or Am. XIV (equal protection)

2.3 Both Faculty and Students

Cannon v. University of Chicago, 441 U.S. 677 (1979)

-female faculty member (or student) has a private right to sue under Title IX

Carnegie-Mellon University v. Cohill, 108 S. Ct. 614 (1988)

-a federal district court has the discretion to remand a properly removed case to state court when all federal-law claims in the suit have been eliminated, leaving only pendent state-law claims

2.4 Other

NCAA v. Board of Regents, 468 U.S. 85 (1984)

-NCAA's television plan, which limited the total amount of televised intercollegiate football games and the number of games that any one college may televise, violates the Sherman Anti-Trust Act

3.0 PRIVATE IHE'S ONLY

3.1 Faculty

National Labor Relations Board v. Yeshiva University, 444 U.S. 672 (1980)

-faculty members at "mature" private IHE's are excluded, as managers, from collective bargaining rights under the NLRA

4.0 PAROCHIAL IHE'S ONLY

Roemer v. Board of Public Works, 426 U.S. 736 (1976); Hunt v. McNair, 413 U.S. 734 (1973); Tilton v. Richardson, 403 U.S. 672 (1971)

-state aid in the form of construction funds for secular buildings at parochial IHE's does not violate Am. I (establishment clause)

Bob Jones University v. United States, 461 U.S. 574 (1983)

-nonprofit private schools that prescribe and enforce racially discriminatory admissions standards or social policies on the basis of religious doctrine are not tax-exempt under the Internal Revenue Code

Witters v. Washington Department of Services for the Blind, 474 U.S. 481 (1986)

-government financial assistance to a student enrolled in a religious ministry program at a private Christian college does not violate Am. I (establishment clause)

Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464 (1982)

-pro-religious-neutrality organization does not have standing to challenge no-cost transfer of surplus federal property to a religious IHE unless showing a specific Congressional violation or a direct personal injury

Footnotes

* The author acknowledges with appreciation the assistance of Sheldon Steinbach, vice president and chief counsel of the American Council on Education, and Virginia Nordin, legal consultant in higher education, for their review and comments.

[1] See, e.g., Hadley v. Junior College Dist., 397 U.S. 50 (1970)(apportionment); Keyishian v. Board of Regents, 385 U.S. 589 (1967); Slochower v. Board of Higher Educ., 350 U.S. 551 (1956(loyalty oaths); Sweatt v. Painter, 339 U.S. 629 (1950) (desegregation).

[2] See, e.g., Meritor Savings Bank v. Vincent, 106 S. Ct. 2399 (1986)(sexual harassment); Connick v. Myers, 461 U.S. 138 (1983); Mount Healthy City School Dist. v. Doyle, 429 U.S. 274 (1977)(employee expression); Rendell-Baker v. Kohn, 457 U.S. 830 1982)(public-private distinction); NLRB v. Catholic Bishop, 440 U.S. 490 (1979)(private-parochial distinction). For coverage in relation to elementary/secondary education, see P. ZIRKEL & S. RICHARDSON, DIGEST OF SUPREME COURT DECISIONS AFFECTING EDUCATION (1988).

[3] See, e.g., H. EDWARDS & V. NORDIN, HIGHER EDUCATION AND THE LAW (1979, 1982-83 Supp.); W. KAPLIN, THE LAW OF HIGHER EDUCATION (1985, 1988 Supp.).