

SUPREME COURT OF THE UNITED STATES

Syllabus

AGOSTINI et al. v. FELTON et al.

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

No. 96-552. Argued April 15, 1997 -- Decided June 23, 1997

[\[n.*\]](#)

In *Aguilar v. Felton*, [473 U.S. 402](#), 413, this Court held that New York City's program that sent public school teachers into parochial schools to provide remedial education to disadvantaged children pursuant to Title I of the Elementary and Secondary Education Act of 1965 necessitated an excessive entanglement of church and state and violated the [First Amendment](#)'s Establishment Clause. On remand, the District Court entered a permanent injunction reflecting that ruling. Some 10 years later, petitioners--the parties bound by the injunction--filed motions in the same court seeking relief from the injunction's operation under Federal Rule of Civil Procedure 60(b)(5). They emphasized the significant costs of complying with *Aguilar* and the assertions of five Justices in *Board of Ed. of Kiryas Joel Village School Dist. v. Grumet*, [512 U.S. 687](#), that *Aguilar* should be reconsidered, and argued that relief was proper under Rule 60(b)(5) and *Rufo v. Inmates of Suffolk County Jail*, [502 U.S. 367](#), 388, because *Aguilar* cannot be squared with this Court's intervening Establishment Clause jurisprudence and is no longer good law. The District Court denied the motion on the merits, declaring that *Aguilar's* demise has "not yet occurred." The Second Circuit agreed and affirmed.

Held:

1. A federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the Establishment Clause when such instruction is given on the premises of sectarian schools by government employees under a program containing safeguards such as those present in New York City's Title I program. Accordingly, *Aguilar*, as well as that portion of its companion case, *School Dist. of Grand Rapids v. Ball*, [473 U.S. 373](#), addressing a "Shared Time" program, are no longer good law. Pp. 8-31.

(a) Under *Rufo, supra*, at 384, Rule 60(b)(5)--which states that, "upon such terms as are just, the court may relieve a party . . . from a final judgment . . . [when] it is no longer equitable that the judgment should have prospective application"--authorizes relief from an injunction if the moving party shows a significant change either in factual conditions or in law. Since the exorbitant costs of complying with the injunction were known at the time *Aguilar* was decided, see, e.g., 473 U. S., at 430-431 (O'Connor, J., dissenting), they do not constitute a change in factual conditions sufficient to warrant relief, accord, *Rufo, supra*, at 385. Also unavailing is the fact that five Justices in *Kiryas Joel* expressed the view that *Aguilar* should be reconsidered or overruled. Because the question of *Aguilar*'s propriety was not before the Court in that case, those Justices' views cannot be said to have effected a change in Establishment Clause law. Thus, petitioners' ability to satisfy Rule 60(b)(5)'s prerequisites hinges on whether the Court's later Establishment Clause cases have so undermined *Aguilar* that it is no longer good law. Pp. 8-11.

(b) To answer that question, it is necessary to understand the rationale upon which *Aguilar* and *Ball* rested. One of the programs evaluated in *Ball* was the Grand Rapids, Michigan, "Shared Time" program, which is analogous to New York City's Title I program. Applying the three part *Lemon v. Kurtzman*, [403 U.S. 602](#), 612-613, test, the *Ball* Court acknowledged that the "Shared Time" program satisfied the test's first element in that it served a purely secular purpose, 473 U. S., at 383, but ultimately concluded that it had the impermissible effect of advancing religion, in violation of the test's second element, *id.*, at 385. That conclusion rested on three assumptions: (i) any public employee who works on a religious school's premises is presumed to inculcate religion in her work, see *id.*, at 385-389; (ii) the presence of public employees on private school premises creates an impermissible symbolic union between church and state, see *id.*, at 389, 391; and (iii) any public aid that directly aids the educational function of religious schools impermissibly finances religious indoctrination, even if the aid reaches such schools as a consequence of private decisionmaking, see *id.*, at 385, 393, 395-397. Additionally, *Aguilar* set forth a fourth assumption: that New York City's Title I program necessitates an excessive government entanglement with religion, in violation of the *Lemon* test's third element, because public employees who teach on religious school premises must be closely monitored to ensure that they do not inculcate religion. See 473 U. S., at 409, 412-414. Pp. 11-16.

(c) The Court's more recent cases have undermined the assumptions upon which *Ball* and *Aguilar* relied. Contrary to *Aguilar's* conclusion, placing full time government employees on parochial school campuses does not as a matter of law have the impermissible effect of advancing religion through indoctrination. Subsequent cases have modified in two significant respects the approach the Court uses to assess whether the government has impermissibly advanced religion by inculcating religious beliefs. First, the Court has abandoned *Ball's* presumption that public employees placed on parochial school grounds will inevitably inculcate religion or that their presence constitutes a symbolic union between government and religion. *Zobrest v. Catalina Foothills School Dist.*, [509 U.S. 1](#), 12-13. No evidence has ever shown that any New York City instructor teaching on parochial school premises attempted to inculcate religion in students. Second, the Court has departed from *Ball's* rule that all government aid that directly aids the educational function of religious schools is invalid. *Witters v. Washington Dept. of Servs. for Blind*, [474 U.S. 481](#), 487; *Zobrest, supra*, at 10, 12. In all relevant respects, the provision of the instructional services here at issue is indistinguishable from the provision of a sign language interpreter in *Zobrest*. *Zobrest* and *Witters* make clear that, under current law, the "Shared Time" program in *Ball* and New York City's Title I program will not, as a matter of law, be deemed to have the effect of advancing religion through indoctrination. Thus, both this Court's precedent and its experience require rejection of the premises upon which *Ball* relied. Pp. 16-24.

(d) New York City's Title I program does not give aid recipients any incentive to modify their religious beliefs or practices in order to obtain program services. Although *Ball* and *Aguilar* completely ignored this consideration, other Establishment Clause cases before and since have examined the criteria by which an aid program identifies its beneficiaries to determine whether the criteria themselves have the effect of advancing religion by creating a financial incentive to undertake religious indoctrination. Cf. *e.g.*, *Witters, supra*, at 488; *Zobrest, supra*, at 10. Such an incentive is not present where, as here, the aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis. Under such circumstances, the aid is less likely to have the effect of advancing religion. See *Widmar v. Vincent*, [454 U.S. 263](#), 274. New York City's Title I services are available to all

children who meet the eligibility requirements, no matter what their religious beliefs or where they go to school. Pp. 24-26.

(e) The *Aguilar* Court erred in concluding that New York City's Title I program resulted in an excessive entanglement between church and state. Regardless of whether entanglement is considered in the course of assessing if a program has an impermissible effect of advancing religion, *Walz v. Tax Comm'n of City of New York*, [397 U.S. 664](#), 674, or as a factor separate and apart from "effect," *Lemon v. Kurtzman*, 403 U. S., 612-613, the considerations used to assess its excessiveness are similar: The Court looks to the character and purposes of the benefited institutions, the nature of the aid that the State provides, and the resulting relationship between the government and religious authority. *Id.*, at 615. It is simplest to recognize why entanglement is significant and treat it--as the Court did in *Walz*--as an aspect of the inquiry into a statute's effect. The *Aguilar* Court's finding of "excessive" entanglement rested on three grounds: (i) the program would require "pervasive monitoring by public authorities" to ensure that Title I employees did not inculcate religion; (ii) the program required "administrative cooperation" between the government and parochial schools; and (iii) the program might increase the dangers of "political divisiveness." 473 U. S., at 413-414. Under the Court's current Establishment Clause understanding, the last two considerations are insufficient to create an "excessive entanglement" because they are present no matter where Title I services are offered, but no court has held that Title I services cannot be offered off campus. *E.g., Aguilar, supra*. Further, the first consideration has been undermined by *Zobrest*. Because the Court in *Zobrest* abandoned the presumption that public employees will inculcate religion simply because they happen to be in a sectarian environment, there is no longer any need to assume that *pervasive* monitoring of Title I teachers is required. There is no suggestion in the record that the system New York City has in place to monitor Title I employees is insufficient to prevent or to detect inculcation. Moreover, the Court has failed to find excessive entanglement in cases involving far more onerous burdens on religious institutions. See *Bowen v. Kendrick*, [487 U.S. 589](#), 615-617. Pp. 26-29.

(f) Thus, New York City's Title I program does not run afoul of any of three primary criteria the Court currently uses to evaluate whether government aid has the effect of advancing religion: It does not result in governmental indoctrination, define its recipients by reference to religion, or create an excessive

entanglement. Nor can this carefully constrained program reasonably be viewed as an endorsement of religion. Pp. 28-29.

(g) The *stare decisis* doctrine does not preclude this Court from recognizing the change in its law and overruling *Aguilar* and those portions of *Ball* that are inconsistent with its more recent decisions. *E.g.*, *United States v. Gaudin*, [515 U.S. 506](#), _____. Moreover, in light of the Court's conclusion that *Aguilar* would be decided differently under current Establishment Clause law, adherence to that decision would undoubtedly work a "manifest injustice," such that the law of the case doctrine does not apply. Accord, *Davis v. United States*, [417 U.S. 333](#), 342. Pp. 29-31.

2. The significant change in this Court's post-*Aguilar* Establishment Clause law entitles petitioners to relief under Rule 60(b)(5). The Court's general practice is to apply the rule of law it is announcing to the parties before it, *Rodriguez de Quijas v. Shearson/American Express, Inc.*, [490 U.S. 477](#), 485, even when it is overruling a case, *e.g.*, *Adarand Constructors, Inc. v. Peña*, [515 U.S. 200](#), _____. The Court neither acknowledges nor holds that other courts should ever conclude that its more recent cases have, by implication, overruled an earlier precedent. Rather, lower courts should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions. *Rodriguez de Quijas, supra*, at 484. Respondents' various arguments as to why relief should not be granted in this case--that a different analysis is required because the Court is here reviewing for abuse of discretion the District Court's denial of relief; that petitioners' unprecedented use of Rule 60(b)(5) as a vehicle for *effecting* changes in the law, rather than as a means of *recognizing* them, will encourage litigants to burden the federal courts with a deluge of Rule 60(b)(5) motions; that petitioners' use of Rule 60(b) in this context will erode the Court's institutional integrity; and that the Court should wait for a "better vehicle" in which to evaluate *Aguilar's* continuing vitality--are not persuasive. Pp. 31-34.

101 F. 3d 1394, reversed and remanded.

O'Connor, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Scalia, Kennedy, and Thomas, JJ., joined. Souter, J., filed a dissenting opinion, in which Stevens and Ginsburg, JJ., joined, and in which Breyer, J., joined as to Part II. Ginsburg, J., filed a dissenting opinion, in which Stevens, Souter, and Breyer, JJ., joined.

Notes

* Together with No. 96-553, *Chancellor, Board of Education of the City of New York, et al. v. Felton et al.*, also on certiorari to the same court.