



GIVE TODAY

## Charting a New Course in American History

### Supreme Court overturns activist decisions of the 1970s

In the 14 months between May 2, 2022, and June 29, 2023, the U.S. Supreme Court charted a new course in American history by overturning four landmark decisions from the 1970s. The 1970s activist [Burger Court](#) left an unconstitutional legacy marked by misinterpreting the First Amendment Establishment Clause, protecting the right to abortion at the federal level, narrowing religious protections for employees under Title VII, and imposing affirmative action for admission to colleges and universities.

How did today's Supreme Court change the nation's judicial trajectory in so little time? The answer is found in understanding that the majority of Justices currently on the Court subscribe to constitutional originalism, a legal philosophy that espouses adherence to the Constitution's original meaning at the time it was ratified and that its original public meaning is authoritative.

Through the lens of originalism, the Supreme Court made historic decisions that will result in increased protections for religious liberty, free speech, and equality for all under the law for generations to come. Here's a closer look at how the tide turned:

#### **Shurtleff (2022) and Kennedy (2022) Cases Bury the Lemon Test**

One of the outcomes of *Lemon v. Kurtzman* (1971) was a three-part test for evaluating whether government actions might violate the Establishment Clause. The Establishment Clause maintains

separation of church and state and forbids government from favoring one religious group over another. The "Lemon Test" had been the binding authority for 51 years and was cited thousands of times in court opinions and administrative law decisions. Since 1971, courts have used *Lemon* to remove religious symbols and displays — such as the Ten Commandments, crosses, and nativity scenes — from public places nationwide. The "Lemon Test" was also used to distort the Free Exercise Clause and the Free Speech Clause.

On May 2, 2022, the Court rejected the use of the "Lemon Test" in *Shurtleff v. City of Boston* and ultimately buried it in *Kennedy v. Bremerton School District*, decided on June 27, 2022. The Court unanimously ruled 9-0 that the City of Boston violated the First Amendment Free Speech Clause by censoring a private flag in a public forum open to "all applicants" just because the word "Christian" was used to describe the flag on the application. Once again, the government relied upon the "Lemon Test" to make its decision to censor the Christian flag, but in this case, the High Court rightly ruled that such censorship was viewpoint discrimination.

The *Shurtleff* case set up the *Kennedy* decision. Like Boston, the Bremerton School District also relied on the "Lemon Test" to argue it must censor Coach Joseph Kennedy's silent prayer along the sidelines after school football games.

SCOTUS reversed course from

*continued>>*

## Understanding Central Bank Digital Currency

### Part 1 with Economic Warfare Expert Kevin Freeman

Imagine the government controlling every transaction you make.

In March 2022, the Biden administration issued an executive order that would take control of the global monetary system using Central Bank Digital Currency, known as CBDC. If implemented, CBDC will usher in an entirely new system of programmable money that can be used to favor certain people groups while punishing others.

Liberty Counsel Founder and Chairman Mat Staver sat down with Kevin Freeman, a global expert on economic warfare and financial terrorism, to help unpack CBDC and why it poses an imminent danger to our constitutional freedoms should it become a reality.

**Mat:** When people think of economics, they don't necessarily put "war" alongside that term. But your website is "economicwarroom.com." How can economics be used as warfare?

**Kevin:** Economics has been a big part of warfare throughout history. We used to have a Bureau of Economic Warfare under FDR during World War II. But when the Berlin Wall fell, the Clinton administration separated [economics and warfare] and said, hey, let's be as strong economically as possible and then build the greatest military machine. When we did that, our enemies, like Osama bin Laden, said, "No, the way to cripple America is to attack the economy." So, a few box cutters on an airplane resulted in \$21 trillion that we've spent in the war on terror.

Additionally, we won the Cold War with economics. President Reagan used economics and free market capitalism to show that the Soviets could not compete. And when they didn't compete, their government fell.

**Mat:** Before we go into CBDC in more detail, let's talk about the biblical use of money as a foundation.

**Kevin:** You start at the beginning of Genesis and go all the way to Revelation. You will always find that money was gold and silver, sometimes copper. I point that out because what we're producing in the United States that we call "money" are Federal Reserve notes — pieces of paper — not backed by anything and printed at will by the government. This is an "unjust weight and measure." God's use of money is always with honesty, integrity, and based on something that has real value. Our current monetary system in the United States, while *legal*, is *unbiblical*.

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**Mat:** In light of this, let's look at Biden's 2022 executive order regarding CBDCs. What is a Central Bank Digital Currency? And how is it different from what we have now or the biblical understanding of money?

**Kevin:** Central Bank Digital Currency is how "shekels" become "shackles," to coin a phrase. *Central Bank Digital Currency would be like Bitcoin run by the government with zero privacy, unlimited production levels, and the ability to line-item veto anything you want to spend.* So, if the government says, "Hey, you're trying to buy a gas burner stove? We don't like that," and now your money won't buy that. But it can buy the electric version. It is literally complete control of money, *owned by the government*, and allowed for you to use it when they think it's appropriate for you to use it.

Instead of having paper bills that you go and buy things with, you have electronic money that shows up in your account. But it's all numbered and they can turn it on or off or make it higher or lower at a whim.

**Mat:** What do you say to the person who uses very little cash now? How is CBDC different from using credit cards?

**Kevin:** Someone might say, "Well, Kevin, I've already operated my daily life in a so-called cashless society because I don't carry around or use dollar bills very often.



I usually use a debit card or credit card." So how is CBDC different from the way people are operating today? It's the same notion of electronic money but put on steroids with the government having

complete insights into where every dollar goes. CBDC adds the ability to line-item veto. So, if you give to a church and the church has said something that [the government has] declared to be "hate speech," then the government could literally stop the transaction at that level. *CBDC gives the government complete draconian control over every aspect of our giving, spending, and investing.*

**Mat:** Explain more about the "central bank" part of CBDC.

**Kevin:** A central bank is not your bank. It's a government bank. It's a centralized bank and it's not under the control of a private company; it's under the control of the federal government. It's going through a central federal banking system, and that government entity — the banking entity — can know everything about your accounts, your savings, your spending, your balances, when you transact, how you transact, how much you transact. All of that would be in the hands of a government system.

(Stay tuned for Part Two with Kevin Freeman next month. He'll focus on how CBDC can be leveraged to implement a global agenda in the name of "equity" and "climate change.")

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its 1971 precedent and buried the Court-made "Lemon Test." Justice Neil Gorsuch wrote, "In time, this Court came to recognize these problems, abandoned *Lemon*, and returned to a more humble jurisprudence centered on the Constitution's original meaning."

### **Dobbs (2022) Reverses Roe v. Wade (1973)**

In the 7-2 *Roe* decision, SCOTUS struck down a Texas abortion law finding a so-called "right" to abortion, even though the Court could point to no specific provision to justify its ruling. According to the National Right to Life Committee, since the 1973 ruling, [more](#) than 63 million babies have been aborted.

On June 24, 2022, the Court overturned *Roe*, as well as the 1992 *Planned Parenthood v. Casey* decision that upheld it. The High Court in *Dobbs v. Jackson Women's Health Organization* ruled 5-4 there was no right to an abortion in the Constitution. Justice Samuel Alito authored the majority opinion in which he wrote, "The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision ... *Roe* was egregiously wrong from the start. ... It is time to heed the Constitution and return the issue of abortion to the people's elected representatives."

States anticipating the overturn of *Roe* enacted trigger laws banning abortion, which took effect shortly after the *Dobbs* decision. An estimated [60,000](#) lives have been saved in the last year as a result of these laws, according to Susan B. Anthony Pro-life America.

### **Groff (2023) Scraps "De Minimis" Standard**

In 1977's *Trans World Airlines v. Hardison*, the High Court ruled 7-2 in favor of Trans World Airlines, stating that TWA could fire employees for not working on their Sabbath. Further, the Court concluded that employees were not entitled to Equal Employment Opportunity religious protection under Title VII.

Essentially, employers must make "reasonable" accommodation for religious employees unless the accommodation presents an "undue hardship" on the employer. The Court interpreted "undue hardship" to mean an employer suffers hardship when "more than a de minimis cost" is incurred when accommodating an employee's religious exercise. This ruling distorted the meaning of Title VII and weakened protections for employees regarding religious discrimination in the workplace.

On June 29, 2023, the High Court unanimously scrapped the de minimis standard in *Groff v. Dejoy* as an improper understanding of "undue hardship" in Title VII and ruled in favor of Gerald Groff, a postal carrier who was forced to quit his job at the U.S. Postal Service for not working on his "Sabbath" day.

Justice Alito wrote the opinion stating that the de minimis standard clearly imposed unique and unlawful burdens on religious discrimination claimants. The Court wrote that "an employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." The ruling puts a greater burden on employers to show a hardship prior to denying religious accommodations that will help employees from having to choose between their faith and their job.

### **Affirmative Action Abandoned**

In *Regents of the University of California v. Bakke* (1978), the Supreme Court evaluated affirmative action by deliberating whether giving preferential treatment to minorities in university admissions violated the Constitution. Ultimately, the Justices reached a 5-4 decision upholding affirmative action, which allowed race to factor into college admission policies, but the Justices' opinions in the case were mixed. Six of the nine Justices wrote opinions where they both concurred and dissented on different facets of the case.

That all changed on June 29, 2023, when the Court voted 6-3 in *Students for Fair Admissions, Inc. v. University of North Carolina* (2023) that racially discriminatory processes in college admissions violate the Equal Protection Clause of the 14th Amendment and Title VI of the Civil Rights Act of 1964. The ruling states, "In the years that followed our 'fractured decision in *Bakke*,' lower courts 'struggled to discern whether Justice Powell's' opinion constituted 'binding precedent.'"

The Court stated that *Bakke* and other affirmative action cases temporarily but willingly dispensed "with the Constitution's unambiguous guarantee of equal protection." The ruling determined, as Chief Justice John Roberts wrote, "Many universities have ... concluded, wrongly, that the touchstone of an individual's identity is not challenges bested, skills built, or lessons learned but the color of their skin. Our constitutional history does not tolerate that choice."

In conclusion, "The U.S. Supreme Court has begun to re-tether itself to the U.S. Constitution," said Liberty Counsel's Founder and Chairman Mat Staver. "These decisions overturn decades of bad precedent and reflect a return to interpreting the U.S. Constitution to mean what it says. The last two terms of the Supreme Court have strengthened religious liberty, the sanctity of life, and equal protection under the law. The original and historical protections under Title VII, Free Speech, and the Free Exercise and Establishment Clauses are returning to the American people."