

Locke v. Davey
542 U.S. ____ (2004)

In 2004, the Supreme Court decided an important Free Exercise Clause case with implications for a variety of state statutes that exclude from state scholarship and voucher programs certain types of religious study.

The state of Washington established a Promise Scholarship Program to assist academically gifted students with their college expenses. In accordance with both the Washington state constitution and the state statute establishing the scholarship program, students were prohibited from using the scholarship to pursue a degree in theology that is “devotional in nature or designed to induce religious faith.” Joshua Davey, a Promise Scholarship recipient, sought to use his scholarship at a private Christian college to pursue a double major in pastoral ministries and business management. Because of his desire to study pastoral ministries, Davey was denied a Promise Scholarship.

Davey filed suit, claiming that the denial of his scholarship violated the Free Exercise Clause. A federal district court rejected Davey’s claim, but the United States Court of Appeals for the Ninth Circuit reversed, finding that in fact the State of Washington had singled out religion for unfavorable treatment under the Promise Scholarship program and that under the Supreme Court’s decision in *Church of Lukumi Babalu Aye, Inc. v. Hialeah* (1993), the State’s exclusion of theology majors from the scholarship program must “be narrowly tailored to achieve a compelling state interest.” The Ninth Circuit then found that the State’s “antiestablishment concerns” were not compelling and hence found the exclusion of Davey from the scholarship program violative of the Free Exercise Clause.

The Supreme Court reversed the Ninth Circuit in a 7-2 opinion written by Chief Justice Rehnquist. Rehnquist concluded that under the Court’s decision in *Zelman v. Simmons-Harris* (2002), the state of Washington could, if it wanted, permit scholarship recipients to pursue a degree in devotional theology without infringing the Establishment Clause. The question, however, was whether Washington could exclude devotional theology students from its scholarship program without unconstitutionally discriminating against religious exercise. The Court concluded that there are “some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause.” The Court noted that at the time of the founding, many states expressly prohibited the use of tax funds to train clergy and that “we have found nothing to indicate ... that these provisions would not have applied so long as the State equally supported other professions.... That early state constitutions saw no problem in explicitly excluding *only* ministry from receiving state dollars reinforces our conclusion that religious instruction is of a different ilk.”

Justices Scalia and Thomas dissented, finding that the denial of scholarship benefits to those studying devotional theology constituted discrimination against religious exercise that did violate the Free Exercise Clause.