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## **TEACHERS' RIGHTS IN PUBLIC SCHOOLS**

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### **A. The Battleground**

Teachers play a critical role in America. Aside from parents, teachers form the link between our past and future. Aristotle understood the importance of teaching when he stated, "All who have meditated on the art of governing mankind are convinced that the fate of empires depends on the education of youth." Martin Luther once stated that he was "afraid that schools will prove to be great gates of hell unless they diligently labor in explaining the Holy Scriptures, engraving them in the hearts of youth." Secular humanist John Dunphy stated that the "classroom must and will become an arena of conflict" between Christianity and Humanism.<sup>i</sup>

Though schools were originally founded for the purpose of inculcating Judeo-Christian values, particularly to teach people how to read the scriptures, John Dewey, the so-called father of modern education, attempted to replace faith-based education and doctrine with a man-centered "religious faith that shall not be confined to sect, class, or race."<sup>ii</sup> Over the years since John Dewey, public schools have become secularized. Many teachers have the mistaken view that Christianity and other theocentric faiths are forbidden on public school campuses.

### **B. Teacher as Individual and State Agent**

Public school teachers are both individual citizens and agents of the state. The Supreme Court correctly pointed out that "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."<sup>iii</sup> The Court also stated that, "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the

teachers concerned... The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."<sup>iv</sup>

The Supreme Court has interpreted the Establishment Clause of the First Amendment to essentially mean that government must remain neutral in matters of religion. In other words, government may neither actively promote, nor affirmatively oppose, religion. In the context of a public school teacher, to be neutral is to be objective. To be objective, a teacher must present all facets of a subject, both secular and religious. So long as a teacher presents both secular and religious aspects of a subject matter in an objective manner, the teacher may bring religion into any topic. For example, while a student may actively advocate another student to have a saving faith in Jesus Christ, a public school teacher would be prohibited from doing so during class time. However, a public school teacher may objectively teach the Bible and discuss the life of Jesus during history, literature, geography, sociology, or other similar class curriculum.

### **C. Religion and the Curriculum**

While a teacher may not use the classroom to indoctrinate students, a teacher may disseminate information in an objective manner so long as the information is reasonably related to the curriculum. Indeed, no subject can be thoroughly taught without some discussion of religion.

The Supreme Court recognized that the study of the Bible or religion when presented objectively as part of a secular program of education is consistent with the First Amendment.<sup>v</sup> For example, a teacher may objectively teach the Bible in a history of religions class or study the Bible as part of a literature course.<sup>vi</sup> The Bible is an excellent literary source. The Bible contains acrostic poems,<sup>vii</sup> parallelisms,<sup>viii</sup> meter,<sup>ix</sup> prose and comedy.<sup>x</sup> When discussing evolution, the teacher may also objectively overview competing viewpoints such as creation science or abrupt appearance.<sup>xi</sup> The teacher may also overview various religious viewpoints regarding the origin of the universe. To ignore one viewpoint to the exclusion of the other is pure censorship and disserves the student.

Similarly, when studying art or music, a teacher may objectively discuss, perform, critique, and overview religious music, composition, and history.<sup>xii</sup> Geography, sociology, mathematics, physics, science, English, spelling, history, and any other topic cannot be adequately discussed without also objectively overviewing religion and religious influences.

### **D. Holidays, Symbols, Music, Art, Drama, and Literature**

The constitutional principle regarding religious holidays, symbols, music, art, drama, or literature is simple -- mix the secular and the sacred. In other words, if a public school teacher displays or presents a secular aspect along with the religious holiday, symbol, music, art, drama, or literature, then the display or the presentation is constitutional. A teacher may display a nativity scene during the Christmas season so long as within the same context of the religious symbol is a secular symbol of the holiday, such as Santa Claus. Adding the secular aspect to the religious aspect is considered an objective presentation and consequently places the state in a neutral position.

A concert in public school during the Christmas holiday season containing only Christian music would be considered unconstitutional, but Christian Christmas songs such as “Silent Night, Holy Night” may be sung so long as secular songs of the holiday are also sung, like “Rudolph the Red Nosed Reindeer.” A school Christmas program may include Christian and Jewish songs so long as they are presented “in a prudent and objective manner and as a traditional part of the cultural and religious heritage of the particular holiday.”<sup>xiii</sup> There is no magical formula between the balance of the secular versus the religious song. The main issue is that secular songs must be within the context of the Christian songs just like a secular symbol must be in the context of a Christian symbol. Likewise, in art class, the teacher can overview religious art so long as secular art is also overviewed. Religious literature can be read and studied so long as it is objective and combined with other secular aspects of literature. The Supreme Court has long ago acknowledged that “[m]usic without sacred music, architecture minus the cathedral, or painting without the Scriptural themes would be eccentric and incomplete, even from a secular view.”<sup>xiv</sup>

### **E. Outside Speakers**

Teachers may invite outside speakers to present their views on a particular topic. The teacher may even utilize a debate format to present both sides of an issue. Outside speakers avoid the problem of the school endorsing the speaker and provide an opportunity for experts in various areas to present information to students. Teachers should avoid a regular pattern of inviting only those speakers who present a Christian viewpoint. However, teachers may indeed invite a presenter to discuss a religious viewpoint, or may utilize a debate format with opposing and contrasting views.

### **F. Use of School Facilities**

Some schools allow teachers to utilize a classroom or a lounge to meet with other teachers. If the school allows teachers to use school facilities for secular meetings, then the school should also allow teachers to use school facilities for religious meetings. The school may restrict the use of its facilities by teachers for only class-related meetings or topics. For example, a school may limit use of its facilities to teachers for the sole purpose of planning curriculum. In that case other teachers should be able to use the school facilities to discuss curriculum as it relates to teaching religion in the curriculum. If the school allows teachers to use its facilities for non-curriculum related matters such as socialization and entertainment, then teachers should also be able to use the same facilities for Bible study and prayer. In this case only teachers should be in the meeting, not students.

### **G. Clothing and Jewelry**

Like the students in *Tinker v. Des Moines Independent School District*,<sup>xv</sup> a federal appeals court permitted teachers to wear black armbands as a symbolic protest to the Vietnam War.<sup>xvi</sup> However, as it relates to wearing religious clothing or jewelry, a teacher has some restrictions imposed by the Establishment Clause. If the content of the message is not religious, a teacher probably has greater latitude to wear clothing with an inscribed message. However, the First Amendment Establishment Clause places certain

restrictions on a teacher with respect to promoting religion. The more objective the writing without promoting a religious view, the more likely the teacher is able to wear the article of clothing or jewelry.

If the school allows teachers to wear clothing with secular words or symbols or secular jewelry, then the school probably cannot prohibit a teacher from wearing clothing with religious words or jewelry with religious connotations. For example, if a school permits teachers to wear t-shirts on a particular day supporting the various student clubs, then the school must also allow teachers to wear t-shirts supporting Christian clubs with Christian words and insignia. However, unlike a student who may consistently wear a t-shirt with the message, “Jesus died for you,” a school could probably prohibit a teacher from consistently displaying the same message except in specific circumstances.

## **H. Student Club Sponsors**

According to the Equal Access Act, schools may require student-initiated clubs to have a teacher sponsor. Schools may require a sponsor of religious clubs only if the same requirements are imposed on secular clubs. According to the Equal Access Act, the provision of a school sponsor, whether an employee, agent, or otherwise, does not mean that the school endorses the club.<sup>xvii</sup> A teacher or other school employee as the agent of the school may be present at a religious meeting in a non-participatory or supervisory capacity.<sup>xviii</sup> This “non-participatory” attendance means that the teacher or school employee should not actively lead or direct the group. The club must be student-initiated and student-led.

## **I. Expression Outside School Hours and Social Media Use**

Teachers may express political and religious views on their own time, using various forms of media, and in various public fora. Traditional forms of expression include leafletting; witnessing on public streets, parks and sidewalks; letters to the editor; preaching in church or teaching Sunday school; or speaking before legislative bodies. Social media and the internet provide an additional, powerful, medium of expression. Teachers may engage in expression on social media on their own time, using their own technological resources. Teachers should make sure that it is clear that they are acting or speaking in their private capacity. Unless a work-related matter is a matter of public concern, it is wise to avoid posting about work related-matters.

The Supreme Court has held that “when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”<sup>xix</sup> Teachers have a duty to maintain a peaceful environment in the classroom, and schools may regulate or even punish social media use where there is a significant threat of substantial disruption to the academic environment.

Schools may not punish teachers for respectfully expressing their private beliefs consistent with their faith, even on controversial political or religious issues, so long as they do so on their personal time, outside of school hours, in their private capacity, where there is no real threat of “disruption” to the academic environment.

## J. Summary of Teachers' Rights

- May exercise the right of free speech and freedom of religion.
- May be limited by the Establishment Clause from actively endorsing or promoting a religious viewpoint.
- May objectively and neutrally overview religion consistent with the topic being taught.
- May objectively study the Bible or other religious literature so long as the presentation is done objectively and is consistent with the subject matter.
- May teach creation science or abrupt appearance as part of an objective overview during a course discussing the origin of the universe.
- May celebrate religious holidays so long as the secular aspect of the same holiday is also represented.
- May display a nativity scene so long as a secular symbol of the holiday is also displayed.
- May present a Christmas pageant with Christian songs so long as other secular songs of the holiday are also sung.
- May wear religious clothing and jewelry on a similar basis to that which the school allows the wearing of secular clothing or jewelry.
- May use school facilities to meet with other teachers on the same basis and receive equal treatment to the use provided teachers for secular purposes.
- May bring in outside speakers to present a particular view or bring in more than one speaker in a debate format presenting opposing views.
- May act as a Bible club sponsor.
- May publicly express positions on controversial topics, so long as the personal expression is polite and respectful; is clearly made in a private capacity, and does not lead to a disruption of the academic environment.

## INDEX OF CITATIONS

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i. *The Humanist*, January/February 1982, p. 26.

ii. *A Common Faith* 86, 87.

iii. *Tinker v. Des Moines Indep. School. Dist.*, 393 U.S. 503, 506 (1969).

iv. *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 602 (1967).

v. *Abington Township v. Schempp*, 374 U.S. 203 (1963).

vi. Books studying the Bible as literature include *The Literature of the Bible* by Leland Ryken, *The Bible as Literature: An Introduction* by John B. Gabel, Charles B. Wheeler, and Anthony D. York, and *The Bible As/In Literature* by James S. Ackerman and Thayer S. Warshaw. *The Chronicles of Narnia* is an excellent example of religious literature.

vii. The entire book of Lamentations is an acrostic poem utilizing the 22 letters of the Hebrew alphabet. Psalm 119 is also an acrostic poem divided into 22 sections, each section containing 8 verses, and each series of 8 verses beginning with the next succeeding letter of the Hebrew alphabet.

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viii. Synonymous parallelism is found in Isaiah 1:3. The same thought is expressed in successive stichs: “The ox knows its owner, and the ass its master’s crib.” The “ox” is equivalent to “ass” and the “owner” is equivalent to “master.”

ix. The most frequent pattern is 3:3. An example may be found in Job 14:1-2. The Qinah or the Lament or dirge meter is the 3:2 pattern found in Amos 5:2. An example also includes the book of Lamentations.

x. The Book of Job is a comedy.

xi. A recommended two volume series on this topic has been published by Wendell Byrd, entitled *The Origin of the Species Revisited*.

xii. See Dept. of Educ., *Religious Expression in public Schools*, [https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html)

xiii. *Florey v. Sioux Falls Sch. Dist.* 49-5, 619 F.2d 1311, 1314 (8th Cir.), *cert denied*, 449 U.S. 987 (1980).

xiv. *McCullum v. Bd. of Educ.*, 333 U.S. 203, 206 (1948) (Jackson, J. concurring).

xv. *Tinker*, 393 U.S. at 503.

xvi. *James v. Bd. of Educ.*, 461 F.2d 566 (2nd Cir.), *cert denied*, 409 U.S. 1042 (1972), *reh’g denied*, 410 U.S. 947 (1973).

xvii. 20 U.S.C. § 4072(2).

xviii. 20 U.S.C. § 4071(c)(3).

xix. *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). The Pickering/Garcetti analysis considers (1) whether the speech was made pursuant to an employee's official duties; (2) whether the speech was on a matter of public concern; (3) whether the government's interests, as employer, in promoting the efficiency of the public service are sufficient to outweigh the plaintiff's free speech interests; (4) whether the protected speech was a motivating factor in the adverse employment action; and (5) whether the defendant would have reached the same employment decision in the absence of the protected conduct.