

# THE RUTHERFORD INSTITUTE

Post Office Box 7482  
Charlottesville, Virginia 22906-7482

JOHN W. WHITEHEAD  
Founder and President

TELEPHONE 434 / 978 - 3888  
FACSIMILE 434/ 978 – 1789  
www.rutherford.org

## Constitutional Q&A: The Twelve Rules of Christmas

© 2016 The Rutherford Institute\*

Over the years, The Rutherford Institute has been contacted by parents and teachers alike concerned about schools changing their Christmas concerts to “winter holiday programs” and renaming Christmas “winter festival” or cancelling holiday celebrations altogether to avoid offending those who do not celebrate the various holidays.

In one incident, a public school 6th-grade class was asked to make “holiday cards” to send to the troops but were told by school officials that they could not use the words “Merry Christmas” on their cards. Similarly, nativity displays, Christmas carols, Christmas trees, wreaths, candy canes and even the colors red and green have been banned as part of the effort to avoid any reference to Christmas, Christ or God.

Hoping to clear up much of the legal misunderstanding over the do’s and don’ts of celebrating Christmas, the following Constitutional Q&A on the “Twelve Rules of Christmas” provides basic guidelines for lawfully celebrating Christmas in schools, workplaces and elsewhere.

1. **Q: May public school students speak about Christmas at school?**

**A:** Public school students’ written or spoken personal expressions concerning the religious significance of Christmas (e.g., T-shirts with the slogan, “Jesus Is the Reason for the Season”) may not be censored by school officials absent evidence that the speech would cause a substantial disruption of the orderly operation of the school.<sup>1</sup>

2. **Q: Are public school teachers forbidden from celebrating the holiday at work?**

**A:** So long as teachers are generally permitted to wear clothing or jewelry or have personal items expressing their views about the holidays, teachers may not be prohibited from similarly expressing their views by wearing Christmas-related clothing or jewelry or carrying Christmas-related personal items.<sup>2</sup>

---

\* The Rutherford Institute, a nonprofit civil liberties organization based in Charlottesville, Va., is deeply committed to protecting the constitutional freedoms of every American and the integral human rights of all people through its extensive legal and educational programs. The Institute provides its legal services at no charge to those whose constitutional and human rights have been threatened or violated. The Institute’s mission is twofold: to provide legal services in the defense of civil liberties and to educate the public on important issues affecting their constitutional freedoms.

3. **Q: May students be taught about Christmas?**

**A:** Public schools may teach students about the Christmas holiday, including its religious significance, so long as it is taught objectively for secular purposes such as its historical or cultural importance, and not for the purpose of promoting Christianity.<sup>3</sup>

4. **Q: Are teachers allowed to send holiday cards or gifts to their students or their students' families?**

**A:** Public school teachers may send Christmas cards and gifts to the families of their students so long as they do so on their own time, outside of school hours.<sup>4</sup>

5. **Q: Is Christmas music prohibited in schools?**

**A:** Public schools may include Christmas music, including those with religious themes, in their choral programs if the songs are included for a secular purpose such as their musical quality or cultural value or if the songs are part of an overall performance including other holiday songs relating to Chanukah, Kwanzaa, or other similar holidays.<sup>5</sup>

6. **Q: What if a student does not believe in or celebrate Christmas?**

**A:** Public schools may not require students to sing Christmas songs whose messages conflict with the students' own religious or nonreligious beliefs.<sup>6</sup>

7. **Q: May students give out Christmas cards at school?**

**A:** Public school students may not be prohibited from distributing literature to fellow students concerning the Christmas holiday or invitations to church Christmas events on the same terms that they would be allowed to distribute other literature that is not related to schoolwork.<sup>7</sup>

8. **Q: Are people allowed to put up Christmas displays in parks?**

**A:** Private citizens or groups may display crèches or other Christmas symbols in public parks subject to the same reasonable time, place, and manner restrictions that would apply to other similar displays.<sup>8</sup>

9. **Q: Is a city or town prohibited from sponsoring a holiday display?**

**A:** Government entities may erect and maintain celebrations of the Christmas holiday, such as Christmas trees and Christmas light displays, and may include crèches in their displays at least so long as the purpose for including the crèche is not to promote its religious content and it is placed in context with other symbols of the Holiday season as part of an effort to celebrate the public Christmas holiday through its traditional symbols.<sup>9</sup>

10. **Q: Can my employer prohibit me from celebrating Christmas while on the job?**

**A:** Neither public nor private employers may prevent employees from decorating their offices for Christmas, playing Christmas music, or wearing clothing related to Christmas merely because of their religious content so long as these activities are not used to harass or intimidate other employees.<sup>10</sup>

11. **Q: Can my employer require me to work on Christmas?**

**A:** Public or private employees whose sincerely held religious beliefs require that they not work on Christmas must be reasonably accommodated by their employers unless granting the accommodation would impose an undue hardship on the employer.<sup>11</sup>

**12. Q: If the Constitution requires a “separation of church and state,” why is Christmas a national holiday?**

**A:** Courts have routinely held that government recognition of Christmas as a public holiday and granting government employees a paid holiday for Christmas does not violate the Establishment Clause of the First Amendment. The government has a valid secular interest in providing a day of rest to citizens and may accommodate the religious beliefs of citizens in doing so.<sup>12</sup>

**Should you have further questions or need legal assistance in exercising your constitutional rights, please contact the Legal Department at [legal@rutherford.org](mailto:legal@rutherford.org).**

---

<sup>1</sup> *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969); *Nixon v. Northern Local Sch. Dist. Bd. of Educ.*, 383 F. Supp. 2d 965 (S.D. Ohio 2005).

<sup>2</sup> See *Tinker*, 393 U.S. at 506 (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate”). See also *Tucker v. California Dep’t of Ed.*, 97 F.3d 1204 (9<sup>th</sup> Cir. 1996) and *Nichol v. Arin Intermediate Unit 28*, 268 F. Supp. 2d 536 (W.D. Pa. 2003).

<sup>3</sup> See *Stone v. Graham*, 449 U.S. 39, 42 (1980); *Grove v. Mead Sch. Dist.*, 753 F.2d 1528, 1534 (9<sup>th</sup> Cir. 1985).

<sup>4</sup> See *Pickering v. Bd. of Ed.*, 391 U.S. 563 (1968); *Wigg v. Sioux Falls Sch. Dist. 49-5*, 382 F.3d 807, 814 (8<sup>th</sup> Cir. 2004).

<sup>5</sup> *Bauchman v. West High School*, 132 F.3d 542, 554 (10<sup>th</sup> Cir. 1997); *Florey v. Sioux Falls School Dist.*, 619 F.2d 1311 (8<sup>th</sup> Cir. 1980); *Sechler v. State College Area Sch. Dist.*, 121 F.Supp. 2d. 439 (M.D. Penn. 2000).

<sup>6</sup> *Id.* at 557.

<sup>7</sup> *Hedges v. Wauconda Comm. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1297-98 (7<sup>th</sup> Cir. 1993). See “Secretary of Education’s Statement on Religious Expression,” <http://www.ed.gov/Speeches/08-1995/religion.html>, site visited Oct. 21, 2005.

<sup>8</sup> See *Capital Square Review and Advisory Board v. Pinette*, 515 U.S. 753 (1995); *Kreisner v. City of San Diego*, 1 F.3d 775 (9<sup>th</sup> Cir. 1993); *McCreary v. Stone*, 739 F.2d 716 (2d Cir. 1984); *Snowden v. Town of Bay Harbor Islands*, 358 F. Supp. 2d 1178 (S.D. Fla. 2004).

<sup>9</sup> See *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573 (1989); *Lynch v. Donnelly*, 465 U.S. 668 (1984); *ACLU v. Schundler*, 168 F.3d 92 (3<sup>rd</sup> Cir. 1999); *Amancio v. Town of Somerset*, 28 F.Supp. 2d 677 (D.C. Mass. 1998).

<sup>10</sup> 42 U.S.C. § 2000(e)(j); *Warnock v. Archer*, 380 F.3d 1076, 1082 (8<sup>th</sup> Cir. 2004); *Tucker v. California Dep’t of Ed.*, 97 F.3d 1204 (9<sup>th</sup> Cir. 1996); *Brown v. Polk County*, 61 F.3d 650, 659 (8<sup>th</sup> Cir. 1995).

<sup>11</sup> *Pielech v. Massasoit Greyhound, Inc.*, 668 N.E. 2d 1298 (Mass. 1996).

<sup>12</sup> *Ganulin v. United States*, 71 F.Supp. 2d 824 (S.D. OH 1999), *aff’d* 2000 U.S. App. Lexis 33889 (6<sup>th</sup> Cir. 2000). See also *Bridenbaugh v. O’Bannon*, 185 F.3d 796 (7<sup>th</sup> Cir. 2000); *Koenick v. Felton*, 190 F.3d 259 (4<sup>th</sup> Cir. 1999).