

**BRIEFS**

**Celebrating the Christmas Holiday in Public Schools**

While it would be inappropriate for The Rutherford Institute to provide you with legal advice under these circumstances, the Institute is pleased to provide you with the following information regarding your area of concern.

Christmas is celebrated by millions of Americans as one of the most sacred and joyful holidays of the year. Unfortunately, Christmas has also become a time of controversy in public schools as teachers, school administrators, parents and students struggle to determine their legal rights and responsibilities concerning the celebration of the holiday in the schools. The most common disputes surrounding the celebration of Christmas in public schools can generally be grouped into three areas: Christmas in the curriculum, students' rights, and teachers' rights.

**Christmas in the Public School Curriculum:**

The First Amendment of the United States Constitution states:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”<sup>1</sup>

Thus, the First Amendment explicitly prohibits Congress making any law establishing religion or prohibiting the free exercise of religion. These prohibitions have been extended to action taken by state governments and state institutions such as public schools.<sup>2</sup> In order to avoid violating the Establishment Clause, a public school activity: (1) must have a secular purpose; and (2) must have a principal or primary effect that neither advances nor inhibits religion.<sup>3</sup>

*Observing Christmas in the School:*

The Constitution does not prohibit government institutions, including public schools, from recognizing and celebrating the Christmas holiday.<sup>4</sup> Courts have recognized that Christmas has an important cultural significance, in addition to its obvious religious meaning.<sup>5</sup> Although many celebrate Christmas as the birthday of Jesus Christ, Christmas has also taken on more secular meanings to many people.<sup>6</sup> Therefore, public schools have a legitimate secular purpose in observing the Christmas holiday. Thus, the Establishment Clause does not forbid public schools from observing the holiday by closing schools, holding class Christmas parties or recognizing the holiday on school calendars.<sup>7</sup> As one federal court has stated, “Christmas and Chanukah are celebrated as cultural and national holidays as well as religious ones, and there is simply

no constitutional doctrine which would forbid school children from sharing in that celebration, provided that these celebrations do not constitute an unconstitutional endorsement of religion and are consistent with a school's secular educational mission."<sup>8</sup>

#### *Teaching About Christmas:*

Moreover, public schools also do not violate the Establishment Clause by teaching students about the religious origins of the Christmas holiday, or by teaching students that it is currently celebrated by Christians around the world as the birthday of Jesus. The Supreme Court has repeatedly stated that although public schools may not encourage students to practice any religion, they may teach students *about* religion if they do so objectively.<sup>9</sup> In *Abington School Dist. v. Schempp*, the Supreme Court said:

“[I]t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that the study of the Bible or of religion, when presented objectively as part of a secular program of education may not be effected consistently with the First Amendment.”<sup>10</sup>

Thus, the Establishment Clause would not forbid public schools from assigning the Biblical story of the birth of Jesus or stories about the religious significance of Christmas and its celebration by people around the world for the purpose of teaching students about the historical background of the holiday and its cultural importance.<sup>11</sup>

#### *Displaying Symbols of Christmas:*

Similarly, courts have held that schools may have a valid secular educational purpose in displaying symbols of Christmas, such as Christmas trees or creches, as an example of the cultural and religious heritage of the holiday.<sup>12</sup> In *Clever v. Cherry Hill Township Bd. of Ed.*, a federal district court held that a school's seasonal display of a creche and a Christmas tree along with symbols of Chanukah and Kwanzaa on a school bulletin board and classroom calendars did not violate the Establishment clause.<sup>13</sup> Moreover, in *Florey v. Sioux Falls Sch. Dist.*, a federal appeals court held that a school district policy permitting the use of religious symbols of Christmas as “a teaching aid or resource” did not violate the Establishment Clause. The court noted that the policy provided that “such symbols are displayed as an example of the cultural and religious heritage of the holiday and are temporary in nature.”<sup>14</sup>

#### *Christmas Dramatic and Musical Presentations:*

Courts have also held that public schools do not violate the Establishment Clause by hosting dramatic and musical productions, including Christmas music with religious themes, if the music is chosen for a secular purpose such as its musical quality or cultural value.<sup>15</sup> In fact, no court has ever held that Christmas music or drama programs at public

schools violate the Establishment Clause. In *Florey*, a federal appeals court held that a public school district did not violate the Establishment Clause by teaching students Christmas carols, including some with religious themes, and including those carols in a school Christmas program.<sup>16</sup> In *Bauchman v. West High School*, another federal appeals court held that a public school chorus teacher's selection of music with explicitly Christian themes did not violate the Establishment Clause.<sup>17</sup> Thus, in Christmas choral presentations, the Establishment Clause does not prevent public schools from teaching students Christmas carols with religious themes (i.e. "Silent Night") or even Handel's Messiah if those songs are included for their musicality or cultural importance and not merely for the purpose of advocating the religious message of those songs. However, at least one federal appeals court has suggested that public schools would be required to permit students who have a religious objection to singing a particular song to opt-out of singing that song.<sup>18</sup>

### **Teachers' Free Speech Rights:**

Individual public school teachers also may encounter questions about their First Amendment rights in the context of the Christmas season. The Constitution protects all persons, no matter what their calling, including public school teachers. Thus, "[a]ny inhibition of freedom of thought, and of action upon thought in the case of teachers brings the safeguards of [the First Amendment] vividly into operation."<sup>19</sup> However, because teachers are not only private citizens, but also agents of the state, courts have held that "the rights of teachers in public schools are not automatically coextensive with the rights of adults in other settings."<sup>20</sup> Nevertheless, teachers' rights of free speech and expression may only be abridged in very narrow circumstances.

#### *Teachers' Speech and Expression Outside the School:*

Teachers do not forfeit their rights as private citizens when they accept public school employment. When they are off school grounds and not on their "contract time" (which includes both classroom instruction time and other times when teachers are required to be present) with the school, teachers are private citizens and may fully practice their rights as such.<sup>21</sup> In *Pickering v. Bd. of Ed.*, the Supreme Court held that "a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment."<sup>22</sup> The Court reasoned that where the teacher's outside speech (1) concerned a matter of public concern, and (2) did not interfere with his ability to perform classroom duties, or (3) the regular operation of the school, the teacher's free speech rights were no different than those of any other member of the general public.<sup>23</sup> Moreover, courts have broadly interpreted the "public concern" prong of the test to include a teacher's speech on virtually any topic other than internal bureaucratic disputes.<sup>24</sup> Therefore, for example, teachers, acting in their capacity as private citizens, may include students' families on their Christmas card lists and may participate in church Christmas performances despite the fact that students and parents may see the performances.

#### *Teachers' Speech and Expression at School:*

Aside from questions that arise in the context of teachers' discharge of their duties to teach the proscribed curriculum (discussed above), disputes about teachers' personal speech at school also may arise in the context of the Christmas holiday. While teachers, like students, do not "shed their constitutional rights to speech or expression at the schoolhouse gate,"<sup>25</sup> teachers' rights to freely express their religious beliefs at school, including those pertaining to Christmas, are often much more limited than those of their students.<sup>26</sup> Unlike their students, teachers, at least when acting in their capacity as classroom instructors, are state actors charged with the responsibility not to promote religion.<sup>27</sup> Thus, some courts have held that teachers may not wear clothing with explicitly religious messages. For instance, in *Downing v. West Haven Bd. of Ed.*, a federal district court held that school officials did not violate a teacher's free speech rights by forbidding her from wearing a t-shirt bearing the words, "Jesus 2000 – J2K."<sup>28</sup> Thus, teachers would not likely be constitutionally entitled to wear Christmas-related clothing that promotes their religious beliefs (i.e. sweatshirts with the phrase "Jesus is the Reason for the Season.").

However, just as public schools do not violate the Establishment Clause by using the word, "Christmas" on school calendars or bulletin boards,<sup>29</sup> individual teachers need not avoid the word "Christmas" or similar common seasonal expressions (i.e. "Joy to the World") on their apparel. Furthermore, just as the public schools themselves may constitutionally recognize the Christmas holiday, individual teachers do not violate the Establishment Clause when they merely wish their students a "Merry Christmas."<sup>30</sup>

### **Students' Free Speech Rights:**

Finally, unlike teachers and school officials, students are not state actors under the Establishment Clause. Thus, the First Amendment more fully protects students' speech on religious topics than that of teachers or school administrators. As the Supreme Court has recognized, "[t]here is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise clauses protect."<sup>31</sup> In fact, students' religious speech is as fully protected by the Constitution as students' speech on any other topic or from any other viewpoint.<sup>32</sup> The mere fact that a student engages in religious speech or expression at school does not implicate the Establishment Clause. Thus, public schools cannot excuse their censorship of students' expression concerning Christmas and its significance to them out of a fear that other students will interpret the expression as school endorsement of religion. As the Court wrote in *Bd. of Ed. v. Mergens*, "the proposition that schools do not endorse everything they fail to censor is not complicated."<sup>33</sup>

In *Tinker v. Des Moines Ind. Sch. Dist.*, the Supreme Court held that students do not "shed their constitutional rights to free speech or expression at the schoolhouse gate."<sup>34</sup> Nevertheless, students' free speech rights at school are not coextensive with the rights of adults in other settings.<sup>35</sup> Thus, public schools may censor student speech or expression which (1) materially and substantially interferes with the requirements of appropriate discipline in the operation of the school, or (2) invades the rights of others.<sup>36</sup>

Thus, school officials may not censor student speech or expression merely out of a desire to avoid any possible discomfort accompanying a particular viewpoint.<sup>37</sup> A mere undifferentiated fear that a student's expression might offend other students or cause a disturbance will not justify school officials in censoring student speech and expression.<sup>38</sup>

Therefore, absent evidence that such speech would cause a substantial disruption, the free speech clause protects a student's right to speak or wear clothing or distribute literature bearing religious messages about the Christmas holiday (i.e. "Jesus is the Reason for the Season."). School officials may not prevent students from expressing such messages merely because they fear that other students will be offended. As one federal court has noted, if evidence that other students objected to a student's expression were sufficient to permit its censorship "absent any further justification, the officials would have a license to prohibit virtually every type of expression."<sup>39</sup>

Students' free speech rights, including the right of religious expression, also extend into the classroom itself. According to the U.S. Department of Education Guidelines on Religion and Public Schools, first distributed to public schools in 1995 at the direction of President Clinton, "Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of discrimination based on the religious content of their submissions."<sup>40</sup> Thus, students should be free to express in their schoolwork and artwork, the personal religious significance to them of the Christmas holiday as well as their personal religious beliefs about the significance of the birth of Jesus Christ.<sup>41</sup>

## **Conclusion:**

Despite common misconceptions to the contrary, public schools may recognize and observe the Christmas holiday and teach students about Christmas so long as they do so prudently and in a manner which does not endorse or promote Christianity. Public school teachers are also entitled to express their religious beliefs about Christmas when they are acting as private citizens and not in their role as public school teachers. Even when they are acting in their role as public school teachers, the Constitution does not require that they ignore the Christmas holiday, but merely that they not express themselves in a manner that promotes or endorses their religious beliefs about the holiday. Furthermore, public school students are entitled to freely express their religious beliefs about Christmas and its meaning to them in their personal speech and clothing or in their schoolwork without discrimination based on the religious content of their message.

The Rutherford Institute hopes that this information has been helpful to you in your fight for religious freedom. If you desire additional information on this or other issues, or if you need personal legal assistance please feel free to contact us at (804) 978-3888 or via email at: [tristaff@rutherford.org](mailto:tristaff@rutherford.org). You may also visit our website and fill out our online help request form at [www.rutherford.org](http://www.rutherford.org).

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<sup>1</sup> U.S. Const., Amendment 1.

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- <sup>2</sup> See *Engel v. Vitale*, 370 U.S. 421, 425 (1962).
- <sup>3</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 612-13.
- <sup>4</sup> *Ganulin v. United States*, 71 F.Supp. 2d 824 (S.D. Ohio 1999), *aff'd* 2000 U.S. App. Lexis 33889 (6<sup>th</sup> Cir. 2000); *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).
- <sup>5</sup> *County of Allegheny v. ACLU*, 109 S.Ct. 3086, 3121 (1989) (O'Connor, J., concurring); See also, *Florey v. Sioux Falls Sch. Dist.*, 464 F.Supp. 911, 915 (1979), *aff'd* 619 F.2d 1311 (8<sup>th</sup> Cir. 1980) (distinguishing holidays like Christmas that have both religious and secular meanings from Pentecost, Ash Wednesday and Good Friday which the considered to have purely religious meanings.)
- <sup>6</sup> *County of Allegheny v. ACLU*, 109 S.Ct. at 3121.
- <sup>7</sup> See *Ganulin v. United States*, 71 F.Supp.2d 824, *Florey*, 464 F.Supp. at 915 (1979).
- <sup>8</sup> *Clever v. Cherry Hill Township Bd. of Ed.*, 838 F.Supp. 929, 939 (D. N.J. 1993).
- <sup>9</sup> See *Edwards v. Aguillard*, 482 U.S. 578 (1987) (Powell, J., concurring); *Stone v. Graham*, 449 U.S. 39, 42 (1980) (per curiam); *Epperson v. Arkansas*, 393 U.S. 97, 106 (1968); *Abington Township v. Schempp*, 374 U.S. 203, 225 (1963).
- <sup>10</sup> *Abington Township*, 374 U.S. at 225.
- <sup>11</sup> See *Id.*
- <sup>12</sup> *Florey*, 464 F.Supp. at 916.
- <sup>13</sup> *Clever*, 838 F.Supp. at 939-40.
- <sup>14</sup> *Florey*, 619 F.2d at 1314.
- <sup>15</sup> *Bauchman v. West High Sch.*, 132 F.3d 542 (10<sup>th</sup> Cir. 1997); *Florey*, 619 F.2d 1311; *Sechler v. State College Area Sch. Dist.*, 121 F.Supp. 2d 439 (M.D. Penn. 2000).
- <sup>16</sup> *Florey*, 619 F.2d at 1317.
- <sup>17</sup> *Bauchman*, at 542.
- <sup>18</sup> *Id.*, at 557.
- <sup>19</sup> *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).
- <sup>20</sup> *Daugherty v. Vanguard Charter Sch. Academy*, 116 F.Supp. 2d 897, 910 (W.D. Mich. 2000).
- <sup>21</sup> See *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U.S. 274 (1977) *Pickering v. Bd. of Ed.*, 391 U.S. 563 (1968); *Marchi v. Bd. of Coop. Ed. Servs.*, 173 F.3d 469, 477 (2d Cir. 1999); *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9<sup>th</sup> Cir. 1994).
- <sup>22</sup> *Pickering*, 391 U.S. at 574.
- <sup>23</sup> *Id.* at 574.
- <sup>24</sup> See, e.g., *Johnson v. County of Los Angeles Fire Dep't.*, 865 F.Supp. 1430, 1436 (C.D. Cal. 1994) (holding that a Playboy magazine was a matter of public concern because it was not merely speech about the employee's "bureaucratic niche.")
- <sup>25</sup> *Tinker*, at 506.
- <sup>26</sup> See *Downing v. West Haven Bd. of Ed.*, 162 F.Supp. 2d 19, 27 (D. Conn. 2001).
- <sup>27</sup> See *Breen v. Runkel*, 614 F.Supp. 355, 358 (C.D. Mich. 1985).
- <sup>28</sup> *Downing*, at 27-28.
- <sup>29</sup> See *Clever*, 838 F.Supp. at 939-40; *Florey*, 619 F.2d 1311.
- <sup>30</sup> See *Id.*
- <sup>31</sup> *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 765 (1995).
- <sup>32</sup> *Capitol Square*, 515 U.S. at 765; *Bd. of Ed. of Westside Comm. Sch. v. Mergens*, 496 U.S. 226 (1990).
- <sup>33</sup> *Mergens*, 496 U.S. at 250.
- <sup>34</sup> 393 U.S. 503, 504 (1969).
- <sup>35</sup> *Bethel Sch. Dist. # 403 v. Fraser*, 478 U.S. 675, 682 (1986).
- <sup>36</sup> *Id.* at 511.
- <sup>37</sup> *Id.* at 509.
- <sup>38</sup> *Id.* at 511.
- <sup>39</sup> *Clark v. North Dallas Ind. Sch. Dist.*, 806 F.Supp. 116, 120 (N.D. Tex. 1992).
- <sup>40</sup> "Secretary's Statement on Religious Expression," <http://www.ed.gov/Speeches/08-1995/religion.html>, site visited November 26, 2002.
- <sup>41</sup> *Id.*