

the-Pole gatherings, on the same terms as they participate in secular activities on school grounds.

In a recent landmark case, *Christian Legal Society v. Martinez* (2010), the Supreme Court ruled that a public college does not violate the First Amendment right to religious freedom when it forces all official organizations to accept all student in their club and leadership, even if that requirement pushes a religious organization to admit students in their leadership who do not adhere to the group's statement of faith.

Sharing the Faith

The First Amendment also protects the right of students to share their faith, subject to reasonable time, place and manner regulations. They have the right to distribute religious tracts to their schoolmates, subject to constitutionally acceptable restrictions imposed on the distribution of all non-school materials.

Students may express their religious beliefs in the form of reports, homework and artwork. The Constitution also protects religious messages on T-shirts and religious remarks made in the ordinary course of classroom discussion or student presentations.

Students have the right to address and persuade their peers about religious topics, just as they do with regard to political topics, in a non-harassing manner. Students also have a right to read their Bibles.

Religious Holidays

The Court has upheld the observance of religious holidays. It let stand a ruling by the U.S. Court of Appeals for the Eighth Circuit regarding a Sioux Falls, South Dakota, school policy.

Under *Florey v. Sioux Falls School District* (1980), the court said:

The historical and contemporary values and the origin of religious holidays may be explained in an *unbiased and objective manner without sectarian indoctrination* (italics added). * The school policy permits the use of religious symbols, the singing of Christmas or sacred music, and public performances as tools of objective teaching about religious holidays. It includes Christmas card distribution, which is protected under the principle of free speech. Finally, since the federal government has long marked Christmas as a national holiday, it is constitutionally acceptable to refer to school winter break as "Christmas vacation."

Know Your Rights

The First Amendment to the U.S. Constitution guarantees freedom of speech and free exercise of religion to every American, and those rights do not vanish at the doors of a public school. The first step to halt the current erosion of rights is for every student, parent and administrator to become familiar with them and to understand recent Court rulings.

Then, parents need to participate in school matters: attend school board and PTA meetings, volunteer, and get to know their child's teacher. This involvement will increase their voice within the schools.

Sometimes, however, parents may find that their children's right to express their faith has been quenched. Then they need to take action. They must go to those in authority to respectfully express their concerns. If that doesn't work, they must go to a higher level. While legal action isn't to be taken frivolously, sometimes Christians must be willing to prayerfully take that difficult and sacrificial step.

* *Florey v. Sioux Falls School District*, 619 F.2d 1311(8th Cir. 1980).

To learn more:

The Department of Education's *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, released February 7, 2003, www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html

Released Time Education

Released Time Education is a nationwide program that teaches the Bible during school hours, off school campuses. Created in 1914, the program has withstood legal challenges. In 1952, the U.S. Supreme Court recognized it as constitutional. rtce.org

For legal advise:

Alliance Defending Freedom
adflegal.org

American Center for Law and Justice
aclj.org

Liberty Counsel
libertycounsel.org

Note: This pamphlet is not intended to be, nor does it constitute, the giving of legal advice. It should not substitute for privately retained legal counsel.

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Religion & the Public Schools



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Religion & the Public Schools: Where the Line is Drawn

Although we often hear of students being restrained from expressing their faith in public schools, neither law nor the Constitution requires this. A student's First Amendment right to the free exercise of religion is as strong as anyone else's. More often than not, these violations of their rights stem from teachers and school administrators who, being uncertain about the law, err on the side of caution. Yet in doing so, they should be careful not to violate a student's constitutional rights.

The problems stem from a fundamental misunderstanding of the so-called "wall of separation between church and state." If you ask most people if this phrase is in the constitution, they will say, without any hesitation, that it is. But it is not. The text of the First Amendment religion clause merely says:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

The first part is known as the Establishment Clause and the second, the Free Exercise Clause. Both clauses are a restraint on Congress and not on "we the people."

The wall of separation language was first brought into constitutional law from a Thomas Jefferson letter where he guaranteed religious freedom to some concerned citizens by appealing to a "wall of separation." But the phrase has come to replace the text of the constitution in the country's psyche turning government respect for religion into government hostility towards religion.

It all began with the landmark Supreme Court case, *Everson v. Board of Education*, in 1947. Justice Hugo Black, writing for the majority, said the Establishment Clause created a "complete separation between the state and religion," appealing to Jefferson's earlier language. *Everson*

itself upheld religious liberty but the language was to be used in future decisions to chip away at our First Amendment rights.

- ◆ In *McCollum v. Board of Education* (1948), the Court ruled it is a violation of the Establishment Clause for Jewish, Catholic or Protestant religious leaders to lead optional voluntary religious instruction in public school buildings.
- ◆ In *Engel v. Vitale* (1962), the Court ruled the daily recitation of prayer in public schools unconstitutional.
- ◆ In *Abington School District v. Schempp* (1963), the Court said daily school-directed reading of the Bible (without comment) and daily recitation of the Lord's Prayer violate the Establishment Clause when performed in public schools.
- ◆ In the *Lemon v. Kurtzman* (1971) ruling, the Court created the three-part "Lemon test" for determining violations of the Establishment Clause. To avoid a violation, an activity must meet the following criteria: 1) have a secular purpose; 2) not advance or inhibit religion in its principal or primary effect; 3) not foster excessive entanglement between the government and religion.
- ◆ In *Stone v. Graham* (1980), the Court struck down a Kentucky law requiring public schools to post the Ten Commandments because the law had no "secular purpose."
- ◆ In *Wallace v. Jaffree* (1985), the Court struck down an Alabama statute requiring a moment of "meditation or voluntary prayer" as an establishment of religion because the intent of the legislature was deemed to be religious rather than secular.
- ◆ In *Lee v. Weisman* (1992), the Court ruled a private, nongovernmental individual (in this case a rabbi) at a public school graduation cannot offer prayer. This act infringed upon student rights, according to the Court, because the important nature of the event in effect compelled them to attend graduation. That effectively compelled students to bow their heads and be respectful during the prayer, which the Court ruled was a constitutional violation.

School Prayer

When it comes to religious liberty, no area is more contentious than school prayer. The U.S. Supreme Court ruled in 1962 in *Engel* that it was unconstitutional for the state of New York to direct the school district's principal to cause a state-composed prayer to be said aloud by each class in the presence of a teacher. The prayer that had been read daily said: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country."

In the spring of 2000, the Court issued another blow to school prayer. In *Santa Fe Independent School District v. Doe*, it struck down a school district's policy that allowed an elected student chaplain to open football games with a public prayer. Although high school football games are purely voluntary activities, the Court concluded that the policy "establishes an improper majoritarian election on religion, and unquestionably has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events."

However, the Court did not hinder the rights of students to pray individually. Students have the right to pray, individually or in groups, say grace before meals, and pray before tests.

Since the courts have reached conflicting conclusions under the U.S. Constitution on student-initiated prayer at graduation, parents should learn what laws apply in their own state.

Another dimension to school prayer is the "moment of silence," during which students may pray, if they so choose. Currently, half of the states allow public schools to set aside time for silence. In 1997, the U.S. Court of Appeals for the Eleventh Circuit upheld Georgia's "Moment of Quiet Reflection in Schools Act" as constitutional.

In the fall of 2000, Virginia's public schools implemented a moment-of-silence statute. The

law says a student may, "in the exercise of his or her individual choice, meditate, pray, or engage in any other silent activity which does not interfere with, distract, or impede other pupils in the like exercise of individual choice."

Once the law passed, seven Virginia families, with the help of the American Civil Liberties Union, sought an immediate injunction to block its effect, claiming it unconstitutionally violated religious freedom. The families lost in the federal district and appellate courts, and the U.S. Supreme Court declined to review the decision.

Bible Clubs and Prayer Meetings

In 1984, the U.S. Congress passed the Equal Access Act. Under the act, a school that receives federal funds and allows one or more non-curriculum-related student groups to meet on campus must also allow students who want to organize an on-campus Bible club or prayer group.

The U.S. Supreme Court upheld this Act as constitutional in 1990.

In 2001, the Court again upheld the act in *Good News Club v. Milford Central School*. There, school officials in Milford, New York, had forbidden the Good News Club from holding prayer and Bible study meetings on its campus, while allowing other groups to meet.

Protection of student-initiated, student-led meetings is basic to the act, which permits students to conduct the meetings either before or after classes. Teachers and other school employees may not participate in the meetings, though one may be present in a custodial role. If a school violates the Equal Access Act, it could be liable to the student group for damages and attorney's fees.

Students may also participate in before- or after-school religious activities, such as the See-You-at-