

Religion In The Public Schools

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Today's Topics

- Religious Liberty in America
- Prayer in School
- Religion in the Curriculum
- Evolution vs. Creationism
- Teaching About Religious Holidays
- Religious Displays
- Student Religious Clubs
- Distribution of Religious Materials
- Teacher Religious Expression

Religious Liberty in America

- “Religion and government will both exist in greater purity, the less they are mixed together.”
– James Madison
- “A union of government and religion tends to destroy government and degrade religion.”
– *Engel v. Vitale* (1962)
- “The First Amendment’s Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State.” – *Lee v. Weisman* (1992)



Religious Liberty in America

■ **Constitutional Values Behind “Separation”**

- **Preserve religious liberty** – private religious choices should be as free from government interference as possible
- **Avoid religious conflict:** “The purpose of the separation of church and state is to keep forever from these shores the ceaseless strife that has soaked the soil of Europe in blood for centuries.” – James Madison
- **Government lacks competence** to declare religious truth
- **Government involvement tends to corrupt religion**
- **Religious Equality:** America is not a land of “religious insiders” and “religious outsiders.”



Religious Liberty In America

■ Religion Clauses

- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”
- Really two clauses: The Establishment Clause and the Free Exercise Clause.
- Sometimes these two clauses appear to be in tension with one another.
- The Establishment Clause limits government action that would advance or inhibit religion; it requires government neutrality.
- The Free Exercise Clause protects private religious speech and conduct.



Religious Liberty In America

- **The Establishment Clause in the Public Schools**
 - “Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary.” – *Edwards v. Aguillard* (1987)
- **Three Establishment Clause Tests: *Lemon*, Endorsement, Coercion**



Religious Liberty In America

Lemon Test

- Does the policy have a secular purpose?
- Primary effect which neither advances nor inhibits religion?
- Entanglement of religion and government?



Religious Liberty In America

Endorsement Test

- Teachers and school officials must never give students the impression that their school favors one religion over another or favors religion over non-religion.
- “School sponsorship of a religious message is impermissible because it sends an ancillary message to members of the audience who are nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored.”

– *Santa Fe Ind. Sch. Dist v. Doe*



Religious Liberty In America

Coercion Test

“It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which ‘establishes a [state] religion or religious faith, or tends to do so.’” -- *Lee v. Weisman* (1992)



Prayer in School

THE BIG PICTURE

- **School-sponsored prayer in the public schools is always unconstitutional.**
- **Private, wholly student-initiated prayer is constitutionally protected so long it does not disrupt school activities or interfere with other students.**
- **Courts rarely find public prayer in school settings to be wholly devoid of school sponsorship, and hence they rarely find public prayer in school settings constitutional.**



Prayer in School

General Rule

- Institutionalized public school prayer is unconstitutional.
- Organized prayer in the public school setting, whether in the class room or at a school sponsored event, is unconstitutional.
- Teachers may not ask students to recite prayers (unconstitutional).
- Teachers may not set aside moments for silent prayer or meditation with the purpose of promoting prayer (unconstitutional).
- Teachers may not sponsor prayer during public school functions (unconstitutional).
- The only type of prayer that is constitutionally permissible is private, voluntary student prayer that does not interfere with the school's educational mission (constitutional).



Prayer in School

May students pray?

- Voluntary, individual prayer that is not coercive and does not substantially disrupt the school's education mission and activities is constitutional.
- Students may engage with other students in religious activities during non-curricular periods as long as the activities are not disruptive or coercive.
- Student-led, student-initiated prayer may be constitutionally permissible so long as it is not done over the school's public address system and does not involve faculty, coach, or staff participation.



Prayer in School

Can a school or state require a moment of silence in the classroom?

- When Alabama tried to set aside a moment of silence for meditation or prayer, the Supreme Court found the statute was enacted for the purpose of advancing religion and ruled it unconstitutional.
- Moments of silence are constitutionally permissible if enacted for a secular purpose and not exploited to pressure or encourage students to pray.
- If enacted or implemented to encourage prayer, they are unconstitutional.



Prayer in School

Can there be prayer before or after athletic events or activities?

- Student-led, student-initiated prayer before an athletic event with no involvement by teachers or school officials is constitutional.
- A school policy permitting students to vote on whether to have student-led prayer over the public address systems at football games is unconstitutional.
- A coach may not initiate prayer or lead a team in prayer.
- A coach may not ask a team member to initiate a prayer before, during or after a game.



Prayer in School

Can there be prayer at graduation ceremonies?

- Prayers delivered by clergy at official public school graduation ceremonies are unconstitutional.
- The fact that a prayer is nondenominational or voluntary does not render it constitutional.



Prayer in Schools

May teachers pray in school?

- It is unconstitutional for teachers to pray **with** or **in the presence of** students in school or in their capacities as teachers or representatives of the school.
- Teachers may have their free speech and free exercise rights to speak about religious matters and otherwise say prayers in the presence of students abridged in an effort to ensure that there is no appearance that the school is violating the Establishment Clause.



Religion in the Curriculum

General Rule

- Public schools may not teach religion, although teaching *about* religion in a secular context is permitted.
- Programs that "teach about religion" are geared toward teaching students about the role of religion in the historical, cultural, literary, and social development of the United States and other nations.



Religion in the Curriculum

May schools teach the Bible as literature?

- The Bible may be studied as literature, but not as religious doctrine. The lessons must be secular, religiously neutral, and objective.
- The Bible may be taught in school only for its historical, cultural or literary value and never in a devotional, celebratory, or doctrinal manner, or in such a way that encourages acceptance of the Bible as a religious document.



Religion in the Curriculum

May schools teach secular values which coincide with religious values?

- Yes, schools may and should teach secular values such as honesty, respect for others, courage, kindness and good citizenship.
- The fact that most religions also teach these values does not change the lawfulness and desirability of teaching them.



Religion in the Curriculum

What happens when a student responds to a secular assignment with religious expression?

- Educators are able to exercise considerable control over "student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school."
- Decisions about curricular speech need only be "reasonably related to a legitimate pedagogical purpose."
-- *Hazelwood Sch. Dist. v. Kuhlmeier* (1988)
- Teachers may reject student work that is not responsive to the terms of an assignment whether the student's expression is religious or not.



Religion in the Curriculum

What happens when a student responds to a secular assignment with religious expression?

- Where student work responds to the terms of an assignment (for example, a book report) with a religiously themed project (for example, reporting on a religious tract), a teacher should not refuse to accept the assignment solely because it has a religious basis.
- But putting the assignment on public display may cause endorsement problems.
- Where students have sought to speak or otherwise share their religious views with a “captive audience” in the classroom, courts have generally upheld the authority of schools to restrict the student’s religious speech.



Evolution v. Creationism

General Rule

- Evolution must be taught as scientific fact.
- More precisely, evolution must be taught as the dominant paradigm for research in the biological sciences.
- Creationism may not be taught as science under any circumstances.



Evolution v. Creationism

May a science teacher who teaches evolution also teach creationism?

- No. Educators may not teach, as fact, the theory that a divine being created humans or any life form.
- Educators must present only scientific explanations for life on earth and scientific critiques of evolution.
- Classroom or textbook disclaimers that seek to undermine the authority of evolutionary theory have been ruled unconstitutional.



Evolution v. Creationism

May creationism ever be discussed in the public schools?

- Yes. Creationism may be included in classes on comparative religion as an example of how some religious groups believe human life began.
- Creationism may NEVER be taught as scientific fact.



Teaching About Religious Holidays

General Rule

- Teaching about Holidays is OK.
- Celebrating Holidays is Not.
- Teaching about a holiday is constitutional if:
 1. it furthers a genuine secular program of education,
 2. is presented objectively, and
 3. does not have the effect of advancing or inhibiting religion.



Teaching About Religious Holidays

May religious symbols be used as teaching aids in the classroom?

- Yes. Religious symbols such as crosses, creches, and menorahs may be used as teaching aids in the classroom provided that the symbols are displayed as examples of the cultural and religious heritage of the holidays, and are temporary in nature.

May religious symbols be used as decorations?

- No. Religious symbols are not permissible seasonal or permanent decorations.



Teaching About Religious Holidays

May school assemblies or special events include religious music?

- Yes, provided they are part of a secular program of education.
- An event may not promote or denigrate any particular religion.
- The program must be primarily secular, objective, and educational.



Religious Displays on School Property

General Rule

- Displays of religious symbols, texts, or artwork on school property are impermissible unless a display is integrated into an appropriate secular curriculum.
- The fact that a display is donated by a private group or paid for by private funds will not affect whether it is permissible under the Establishment Clause.



Religious Displays on School Property

May a school permanently display the Ten Commandments within classrooms or on school property?

- No. A temporary display of the Ten Commandments integrated into a secular curriculum such as history or comparative religion may be permissible.
- The Ten Commandments are "undeniably" a religious text, courts evaluating permanent displays of the Ten Commandments in the public schools have found such displays have a predominantly religious purpose and violate the Establishment Clause.



Religious Displays on School Property

May a school permanently display religious artwork within classrooms or on school property?

- No. Similar to displays of the Ten Commandments, a temporary display of religious artwork integrated into a secular curriculum may be permissible. However, courts also have found that permanent displays of religious artwork have a predominantly religious purpose and violate the Establishment Clause.



Student Religious Clubs

General Rule

- The Equal Access Act ("EAA") requires public schools to treat all student-initiated groups equally, regardless of the religious, political, philosophical or other orientation of the groups.
- To the extent a school board opens its school facilities to *any* student-led and run non-curriculum related group, it must uniformly open its facilities to all student-led and run groups, including religious ones.



Student Religious Clubs

Does the EAA apply to all schools?

- No. The EAA only applies to schools that meet a three-part test.
- The school must:
 1. Be a public secondary school;
 2. Receive federal financial assistance; and
 3. Have designated certain facilities as a "limited open forum."



Student Religious Clubs

What restrictions does EAA place on non-curriculum related student groups?

- The group must be student-initiated.
- The group must be student-sponsored and student-led.
- Participation in the group must be voluntary.



Student Religious Clubs

What are the restrictions and obligations placed upon the school, its agents, and employees by the EAA?

- School personnel, including teachers, may not initiate, sponsor, promote, lead, or participate in religious club meetings.
- However, school personnel may be required to monitor club meetings.

May outsiders attend meetings?

- Outsiders, such as clergy members, may not initiate club meetings. Outsiders "may not direct, conduct, control or regularly attend activities of student groups."
- Outsiders may occasionally attend club meetings if invited by the students and if the school does not generally prohibit such guests.



Distribution of Religious Material

Student Distribution - General Rule

- The Supreme Court has recognized students' right to free expression in public schools under the free speech clause of the First Amendment.
- However, that right is not absolute.



Distribution of Religious Material

Distribution By School Personnel on School Property to Students:

- Distribution by teachers to students would be considered endorsement in violation of the Establishment Clause.



Teacher Religious Expression

General Rule

- Public schools must maintain religious neutrality and public school teachers, who are the employees and agents of the public schools, must not interfere with this objective.
- Teachers may not participate in religious activities or advocate particular religious views when they are teaching or counseling students or acting as representatives of the school.



Teacher Religious Expression

May teachers share their religious views with students?

- No. Teachers should avoid sharing their personal religious views with students.
- Students must never be encouraged to accept or conform to specific religious beliefs or practices.
- The Constitution requires governmental agencies to see that state-supported activity -- such as a classroom -- is not used for religious indoctrination.
- Courts have held that public school officials have the authority to prevent teachers from giving students and others the impression that the school prefers a particular religion, or religion in general.



Religion in the Public Schools

- **Thanks for Listening.**
- **Questions?**

