

Info Letters

Holiday School Letter

Dear Concerned Citizens,

The American Center for Law and Justice wishes everyone a happy holiday season. Undoubtedly, students in school districts all over the country are celebrating the holidays in a variety of creative and entertaining ways. We are aware that some of these celebrations may be hindered by questions of what is permitted or prohibited by the United States Constitution. Consequently, the purpose of this letter is to assist local school district officials in addressing both what activities are permissible for schools to engage in, and to protect the rights of student participation in Christmas or other holiday observances in public schools.

By way of introduction, the American Center for Law and Justice (ACLJ) is a not-for-profit public interest and educational group. Our organization exists to educate the public and the government about the right to freedom of speech, particularly in the context of the expression of religious sentiments. The undersigned has served as lead counsel in two significant United States Supreme Court cases in this area: *Lamb's Chapel v. Center Moriches School District*, 508 U.S. 384 (1993) and *Westside Community Schools v. Mergens*, 496 U.S. 226 (1990) and has submitted an amicus brief on behalf of the ACLJ in the United States Supreme Court decisions in *Good News Club v. Milford Central School*, 533 U.S. 98 (2001); *Capitol Square Review and Advisory Board v. Pinette*, 515 U.S. 753 (1995); and *Rosenberger v. Rector and Visitors of the University of Virginia et al.*, 515 U.S. 819 (1995).

Although court decisions permit holiday observances, it is my concern that certain national public interest groups have been pressuring local school districts to censor religious expression during Christmas. This bulletin will attempt to provide answers for those questions which are most commonly asked regarding the rights of students and teachers to participate in these observances.

Are students allowed to sing Christmas carols with religious themes at school events or in holiday programs?

YES. You should be aware that no court has ever banned the singing of religious Christmas carols by public school choirs. A case that addressed this specific issue upheld the singing of religious Christmas carols in public schools. In *Florey v. Sioux Falls School Dist.*, 619 F.2d 1311 (8th Cir.), *cert. denied*, 449 U.S. 987 (1980), the United States Court of Appeals for the Eighth Circuit held that the study and performance of religious songs, including Christmas carols, are constitutional if their purpose is the "advancement of the students' knowledge of society's cultural and religious heritage as well as the provision of an opportunity for students to perform a full range of music, poetry, and drama that is likely to be of interest to the students and their audience." *Id.* at 1314.

The federal appeals court in *Florey* found that religious songs and symbols can be used in public schools if they are presented in a "prudent and objective manner and only as part of the cultural and religious heritage of the holiday." *Id.* at 1317. It is important to note that the decision in *Florey* was based on two U.S. Supreme Court cases that permit the study of the Bible in public schools. In *School District of Abington Township v. Schempp*, 374 U.S. 203, 225 (1963), the Supreme Court stated, "**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 such 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."

Recent Courts of Appeals cases have confirmed the central holding of *Florey*. The United States Court of Appeals for the Fifth Circuit, in *Doe v. Duncanville Independent School District*, 70 F.3d 402 (5th Cir. 1995), upheld a school's longtime use of "The Lord Bless You and Keep You" as its theme song. In its decision, the Court stated, "A position of neutrality towards religion must allow choir directors to recognize the fact that most choral music is religious. Limiting the number of times a religious piece of music can be sung is tantamount to censorship and does not send students a message of neutrality. . . .Such animosity towards religion is not required or condoned by the Constitution." *Id.* at 408.

Similarly, in *Bauchman v. West High School*, 132 F.3d 542 (10th Cir.), cert. denied, 524 U.S. 953 (1998), a student sued the school because of, among other things, the religious content of the songs performed by the school choir. The court, citing *Doe*, dismissed the lawsuit, noting that "the Constitution does not require that the purpose of government-sanctioned activity be unrelated to religion." *Id.* at 553. Furthermore, the court recognized that "a significant percentage of serious choral music is based on religious themes or text . . . Any choral curriculum designed to expose students to the full array of vocal music culture therefore can be expected to reflect a significant number of religious songs." *Id.* at 553-54 (internal citations omitted). It is hardly surprising, then, that "the Constitution does not forbid all mention of religion in public schools." *Id.*

Can schools teach about the biblical origins of holidays such as Christmas and Easter?

YES. In *Stone v. Graham*, 449 U.S. 39, 42 (1980), the Supreme Court stated, "the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like." Therefore, it would be constitutional for a public school teacher to have students study the Biblical passages that relate to Christmas (e.g., Matthew 1:18-2:22 and Luke 2:1-20) if the purpose was to study the historical or literary significance of the passages. The federal appeals court in *Florey* defined what activities are considered a part of the word "study," by stating that "[w]e view the term 'study' to include more than mere classroom instruction; public performance may be a legitimate part of secular study." *Florey*, 619 F.2d at 1316. The *Florey* court went on to quote the lower court with approval by stating that "to allow students only to study and not to perform [religious art, literature and music when]such works . . . have developed an independent secular and artistic significance would give students a truncated view of our culture." *Id.* Of course, any student that had ideological or religious objections should be excused from the assignment.

Likewise, in *Sechler v. State College Area School District*, 121 F.Supp.2d 439 (M.D. Pa. 2000), a school display which included symbols of Christianity and other religions, in conjunction with a school holiday program, was upheld. In finding no "excessive entanglement" with religion, the court noted that no clergy were involved in the planning or administration of the program, and the School District was not involved in any doctrinal questions. *Id.* at 449. In fact, the opposite was true: the program and display "sends a message of inclusion and celebrates freedom to choose one's own beliefs." *Id.* at 451, 453. Consequently, the program and display did "not offend the Establishment Clause, either as favoring one religion over others or as favoring religion over non-religion." *Id.* at 453.

In addition, it is important to note that former President Clinton expressed concern that some school officials and community members incorrectly assume that schools must be religion-free zones. To clarify this issue, President Clinton requested the Secretary of Education, Richard W. Riley, to issue guidelines which address the extent religious expression and teaching are allowed in our nation's public schools. In response, the United States

Department of Education provided guidelines to the nation's school superintendents stating that "[p]ublic schools may not provide religious instruction, but they may teach about religion, including the Bible or other scripture . . . Similarly, it is permissible to consider religious influences on art, music, literature, and social studies." Religious Expression in Public Schools, Directive of Richard Riley, Secretary of Education, Page 3. The guidelines further state that "public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of the holidays." *Id.* In addition, "[t]eachers and administrators are prohibited from discouraging activity because of its religious content, and from soliciting or encouraging anti-religious activity." *Id.* The guidelines clearly establish that students and teachers may celebrate the Christmas holiday without fear of running afoul of the Establishment Clause.

May schools display religious symbols during Christmas?

YES. This issue was directly addressed in *Clever v. Cherry Hill Township*, 838 F.Supp. 929 (D. N.J. 1993). In *Clever*, the plaintiffs challenged a school policy which provided for religious symbols to be used in school calendars and in a Christmas display. After noting the importance of context and absence of denominational preference, the court held the policy to be constitutional. "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." *Id.* at 939. The court then recognized that religion is an appropriate subject of secular study and found it "hard to imagine how such study can be undertaken without exposing students to the religious doctrines and symbols of others." *Id.*

Are students permitted to write about the origin of Christmas and the birth of Jesus or other religious sentiments in school assignments?

YES. Some educators have been misinformed by special interest groups that school officials must ban all religious speech in the public schools because of the doctrine of the "separation of church and state." It is well settled, however, that private religious speech is protected by the First Amendment. In *Pinette*, the Supreme Court stated:

Our precedent establishes that private religious speech, far from being a First Amendment orphan, is fully protected under the Free Speech Clause as secular private expression. Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince.

515 U.S. 760 (internal citations omitted). In *Westside Community Schools v. Mergens*, 496 U.S. 226, 250 (1990) (emphasis in original), the Court held: "There 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." Consequently, students have the free speech right to "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." U.S. Dept. of Education Guidelines at 4.

May schools continue to refer to winter and spring breaks as "Christmas" and "Easter" holidays?

YES. School districts are under no constitutional obligation to rename the Christmas and Easter holidays. The Supreme Court itself has acknowledged with approval that Congress gives federal employees a paid holiday on December 25 and Congress calls it "Christmas." See *Lynch v. Donnelly*, 465 U.S. 668, 675, 680 (1984).

In the last decade, several constitutional challenges have been mounted to federal and state laws which designate Christmas and Easter holidays. These challenges have been consistently rejected. For instance, in *Bridenbaugh v. O'Bannon*, 185 F.3d 796 (7th Cir.), *cert. denied*, 529 U.S. 1003 (2000), the court held that Indiana's legal holiday on Good Friday passed the 3-prong Lemon test and thus did not violate the Establishment Clause. In reaching this important result, the court noted that "the Establishment Clause does not prohibit Indiana from choosing Good Friday as the day for a legal holiday merely because that day coincides with what, to some, is a religious day. No court has ever held that the Establishment Clause is violated merely because a state holiday has the indirect effect of making it easier for people to practice their faith." *Id.* at 801-802. Indeed, the court went on to say that people are free to celebrate Good Friday as they choose.

I hope this letter helps clarify the legal issues. The American Center for Law and Justice is committed to defending the constitutional rights of students on their public school campuses. We are also committed to ensuring that the rights of citizens in your community are protected. Because of our commitment, we are available to answer any questions you might have concerning this letter. Please feel free to share this information with your school board, their attorney, staff and principals.

Very truly yours,
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