

Protecting the Rights of Students

What are the rights of students when it comes to expressing their religious faith in school? It is a question that we continue to receive at the American Center for Law and Justice – even years after critical Supreme Court decisions that protect the First Amendment rights of students in schools.

On my daily radio broadcast, *Jay Sekulow Live!*, which is carried on the Salem radio network, we often get questions like this one from Kelly in Missouri: “My 7 year old daughter came home from school in tears one day after she was told she could no longer fold her hands and pray silently over lunch. She told me she feels ashamed and I want to know if my daughter has the right to pray at lunch in school?”

I told Kelly what I tell other parents with similar questions: Yes, your daughter has protected constitutional rights, and in this case school officials overstepped their authority. I put Kelly in touch with our legal staff to ensure that her daughter would not face that type of treatment again. The school’s reaction to lunchtime prayer was not only wrong, but unconstitutional as well. In an important Supreme Court decision from just a few years ago, the Justices said that “nothing in the Constitution . . . prohibits any public school student from voluntarily praying at any time before, during, or after the school day.” (*Santa Fe Independent School District v. Doe*, 2000)

The fact is that the Supreme Court of the United States has created a tapestry of law that protects the constitutional rights of students in the public schools. The decisions span some 35 years and really began in 1969 when the Supreme Court ruled that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” (*Tinker v. Des Moines Independent Community School Dist.*, 1969) The Supreme Court re-affirmed those rights again last year in a unique case involving campaign finance reform. In oral arguments before the high court, I told the Justices that students should not be discriminated against in donating to political campaigns because they are under the age of 18. In a unanimous decision, the high court struck down the ban against minors contributing to campaigns determining that it was unconstitutional. In re-affirming the constitutional rights of students, the high court said, “minors enjoy the protection of the First Amendment” and added that “limitations on the amount that an individual may contribute to a candidate or political committee impinge on the protected freedoms of expression and association.” (*McConnell v. Federal Election Commission*, 2003).

In the mid 1980’s, Congress passed and the late President Ronald Reagan signed into law the Equal Access Act – an important law that guarantees equal treatment for students wishing to express their religious faith.

A critically important Supreme Court decision in 1990 determined that the Equal Access Act applied to students in the public school setting – clearing the way for them to form Bible clubs and prayer groups on public secondary school campuses. I had the privilege of presenting oral arguments to the high court in this case and in a 8-1 decision, the

Justices ruled that public secondary schools that receive federal funds and allow non-curriculum related clubs to meet on campus must also allow Bible clubs and prayer groups to meet on campus during non-instructional time. In the words of Justice Sandra Day O'Connor: "If a state refused to let religious groups use facilities open to others, then it would demonstrate not neutrality but hostility toward religion." Justice O'Connor also concluded "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." (*Board of Education of Westside Community Schools v. Mergens*, emphasis in original, 1990) And, finally the court in *Mergens* also stated that "the Establishment Clause does not license government to treat religion and those who teach or practice it, simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities." This is very important language from the high court – very important protections for students in the public schools.

In another case with equally important ramifications, the Supreme Court ended discriminatory behavior by school districts that shut out religious speakers. In a 1993 case in which I presented oral arguments before the court, an evangelical church desired to rent a school facility for an evening showing of a film series produced by Dr. James Dobson's Focus on the Family ministry. The film series, entitled "Turn Your Heart Toward Home," dealt with contemporary family issues from a biblical perspective. The church's request for use was denied by school administrators because it was "church related." Although the school facilities were available to community groups for social, civic, and recreational purposes, the rules and regulations specifically prohibited any religious use.

In a unanimous decision, the Supreme Court ruled against this prohibition, stating that the religious exclusion was unconstitutional. The court stated "the principle that has emerged from our cases 'is that the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.'" (*Lamb's Chapel v. Center Moriches Union Free School District*, 1993 – citing *City Council of Los Angeles v. Taxpayers for Vincent*, 1984) The *Lamb's Chapel* decision invalidated a public school policy that discriminated against religious speakers.

The Supreme Court decisions protecting rights of students in public schools have been widely circulated and adopted by the U.S. Department of Education. In a document entitled, "Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools," the DOE has issued guidelines to schools that reinforce the Supreme Court decisions protecting the rights of students in schools – especially when it comes to prayer. (available online at www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html)

The DOE guidelines state: "The Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious expression such as prayer. Accordingly, the First Amendment forbids religious activity that is sponsored by

the government but protects religious activity that is initiated by private individuals, and the line between government-sponsored and privately initiated religious expression is vital to a proper understanding of the First Amendment's scope.”

As students across the nation begin another school year, there will be questions about the rights of students expressing their religious faith in school. But, Supreme Court precedent is clear: students enjoy broad constitutional rights in the public school. And, the American Center for Law and Justice stands ready to protect those most cherished constitutional freedoms.

The American Center for Law and Justice, based in Washington, D.C., has resource material on this topic posted to the website at www.aclj.org. Also, a special toll-free legal helpline is available if you have specific legal questions concerning this issue at 1-800-296-4529.