



MEMORANDUM

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School Prayer

As the Supreme Court has held, “[N]othing in the Constitution . . . prohibits any public school student from voluntarily praying at any time before, during, or after the school day.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000). The ACLJ is committed to protecting the constitutionally guaranteed right of public school students to pray.

Below is a short legal analysis prepared by ACLJ attorneys on this topic.

The First Amendment to the United States Constitution protects a student’s right to freedom of speech and expression along with the student’s religious freedom. However, many school officials mistakenly believe that student prayer inside the public schoolhouse violates the Establishment Clause’s so-called “separation of church and state.” That is simply not the case. “School officials do not possess absolute authority over their students. Students in school as well as out of school are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969). The law regarding the First Amendment rights of students is well established. Students’ speech cannot be restricted solely because of the content of that speech. It is well settled that religious speech, which includes prayer and worship, is protected by the First Amendment of the Constitution. *Widmar v. Vincent*, 454 U.S. 263, 269 (1981). The Supreme Court has also made it clear that “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.” *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990). Accordingly, a public school may not suppress or exclude private student speech for the sole reason that the speech contains a religious perspective. *Widmar*, 454 U.S. at 269.

It is imperative that school officials respect the rights of students to express their private religious views and understand the boundaries of their authority and obligations. In view of that, it is essential to understand “[t]he 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.” *Mergens*, 496 U.S. at 248 (plurality) (quoting *McDaniel v. Paty*, 435 U.S. 618, 641 (1978) (Brennan, J., concurring in judgment)).

The Supreme Court has directly affirmed that public school students have the right to discuss religious beliefs, and even share religious materials, with their peers between classes, at break, at lunch, and before and after school, anywhere on school grounds where students have a right to be. Schools can only prohibit protected speech by students when it “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school.” *Tinker*, 393 U.S. at 509–12.

Accordingly, the First Amendment precludes any governmental effort to single out and censor or otherwise burden the speech of private parties solely because that speech is religious. Although public school officials may not promote or initiate student prayer or require unwilling students to participate in prayer, they may support and give official recognition to this nation’s collective religious heritage without risking a violation of the Establishment Clause.

Important questions arise when it comes to whether students can have student-led prayer at graduation or other school events. The answer depends to a large extent on the particular circumstances of the prayer and the event.

In *Lee v. Weisman*, 505 U.S. 577 (1992), the Supreme Court held that school officials violated the Establishment Clause by inviting clergy to give prayers at a graduation commencement, but the Court clearly limited its decision to the particular facts that the school organized the prayer at the graduation ceremony. Similarly, in *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), the Court concluded that the Establishment Clause prohibits school officials from facilitating prayer at school functions such as school football games. However, in its decision in the *Santa Fe* case, the Court specifically noted that not every instance in which a

religious message or invocation is offered during a school event will violate the Establishment Clause. *Santa Fe*, 530 U.S. at 302 (“[A]n individual's contribution to a government-created forum was not government speech.”)

Nevertheless, *Lee* and *Santa Fe* do not stand for the proposition that *all* student-led religious speech at graduation and related events is unconstitutional. In *Lee*, Justice Souter noted that religious students may “organize a privately sponsored baccalaureate if they desire the company of likeminded students.” *Lee*, 505 U.S. at 629 (Souter, J., concurring). Moreover, in *Santa Fe*, the Court explained that voluntary prayer is permissible “at any time before, during or after the school day.” *Santa Fe*, 530 U.S. at 313.

The American Center for Law and Justice has been in the vanguard of protecting the religious liberties of public school students and their families. Over the years, ACLJ attorneys have won countless cases where school officials have, out of ignorance or hostility, attempted to violate the First Amendment rights of public school students. Whether the case involves the discriminatory treatment of a student Bible Club, or the refusal to allow a kindergartner to pray before eating her lunch, ACLJ attorneys work continually to educate public school officials about student rights. Because of our commitment, we are available to answer any questions you might have concerning this matter. Please feel free to share this informational with your local government officials, school officials, and others in your community.