



**PAST THE SCHOOLHOUSE GATE:
*AN EDUCATOR'S GUIDE TO CONSTITUTIONALLY PROTECTED PRAYER IN PUBLIC SCHOOLS***

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INTRODUCTION

Despite a national history replete with official acknowledgments of religious belief in the public sector, 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, however, is simply not the case. As the Supreme Court has said, students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."¹ And the Supreme Court has made it quite clear that "private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression."² Student-initiated, student-led prayer, even in the public school setting, constitutes a form of religious expression and thus warrants constitutional protections in many circumstances.

PRAYER INSIDE THE SCHOOLHOUSE

The law regarding the First Amendment rights of students is well established: student speech simply cannot be restricted solely because of viewpoint. The First Amendment protects student speech that is religious in nature against government restrictions aimed at its viewpoint.³ Accordingly, students must be permitted to engage in religious speech on the same terms as they are allowed to engage in other student-initiated, student-led speech. In other words, students have the same right to engage in prayer and religious discussion during the school day as they have to engage in comparable secular activities or discussions.

Despite these fundamental principles of First Amendment law, some school officials have been led to believe that they may—or perhaps even *must*—restrict student prayer because to allow prayer in a public school setting would violate the Establishment Clause. The Supreme Court, however, has never issued a decision to support that conclusion. In fact, students, acting for themselves and not on the part of the school, are constitutionally *incapable* of violating the Establishment Clause. That Clause concerns itself solely with the actions of the government and of government actors. Indeed, the Court has been careful to note 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

¹ *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969).

² *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).

³ *Widmar v. Vincent*, 454 U.S. 263, 269 (1981).

Exercise Clauses protect.”⁴ The Court has also explained that to restrict religious speech because it is religious (that is, to treat religious speech less favorably than other speech) amounts to unconstitutional viewpoint-based discrimination.⁵ As such, a public school may not suppress or exclude private student speech for the sole reason that the speech expresses a religious perspective.⁶

While student speech rights are not absolute, the Court has held that schools must have very weighty reasons to censor student speech. In fact, school administrators can only restrict protected student speech, including religious discussions and prayer, when it “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school.”⁷ As such, undifferentiated fears, such as the fear that others may be offended, do not justify a public school’s attempt to forbid a student from praying.

While the First Amendment protects individual student prayer, it also protects *corporate* student prayer. Absent a material or substantial disruption to school order, public school students may gather on campus for prayer meetings, Bible clubs, or other student-led events such as See You At The Pole or the National Day of Prayer.⁸ The Supreme Court has even found that an official “moment of silence” is constitutional, provided that it is motivated by a well-defined secular purpose, is neutral on its face, and permits individuals to utilize the moment of silence according to the dictates of their own consciences.⁹ Schools may also permit student-led prayer at graduation or other school-sponsored events without violating the Establishment Clause, provided that they do not encourage or endorse such prayer.¹⁰ Schools may not, however, expressly invite clergy to give the prayer.¹¹

CONCLUSION

The Establishment Clause requires government neutrality toward religion and does not permit the government to acknowledge only the secular and exclude the religious. The Supreme Court has held that such viewpoint discrimination violates the First Amendment: “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.’”¹² Discrimination against speech, such as prayer, simply because it is religious violates the principle of neutrality and, instead, exhibits hostility toward religion in violation of the Establishment Clause. Consequently, schools that do not choose to participate in or acknowledge events or occasions with religious significance must be careful not to tread on the First Amendment rights of students who choose to do so. Schools must respect the constitutional rights of students to pray and to engage in other forms of religious speech.

⁴ Bd. of Educ. of the Westside Comm’y Sch. v. Mergens, 496 U.S. 226, 250 (1990).

⁵ See Good News v. Milford Central School., 121 S. Ct. 2093 (2001); Lamb’s Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384, 394 (1993).

⁶ Widmar, 454 U.S. at 269.

⁷ Tinker, 393 U.S. at 509.

⁸ See Mergens, 496 U.S. 226.

⁹ Wallace v. Jaffree, 472 U.S. 38 (1985).

¹⁰ See Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000). In *Santa Fe*, the Supreme Court specifically noted that not every instance in which a religious message or invocation is offered during a school event violates the Establishment Clause. Although the Court did not specifically state it, it may have in mind the fact that students may choose to offer a prayer or invocation when they are offered the chance to open an assembly or event, and that they might do so without the direction or assistance of school officials. In light of the Court’s decisions in *Santa Fe* as well as *Lee v. Weisman*, 505 U.S. 577 (1992), the courts will likely revisit the topic of student-led graduation prayer.

¹¹ *Lee*, 505 U.S. 577.

¹² *Lamb’s Chapel*, 508 U.S. at 394 (quoting *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984)).
