

## School Holiday Celebrations Information 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 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 law 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. ACLJ attorneys have argued before the Supreme Court of the United States in several significant cases in this area, including *Locke v. Davey*, 540 U.S. 712 (2004); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb's Chapel v. Center Moriches School District*, 508 U.S. 384 (1993); and *Board of Education v. Mergens*, 496 U.S. 226 (1990).

Although holiday observances are constitutionally permissible, it is our concern that local school districts may feel pressured to censor religious expression during Christmas. This letter will attempt to provide answers to those questions which are most commonly asked regarding the rights of students and teachers to participate in these observances.

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

**YES.** The Establishment Clause does not prevent the singing of Christmas carols with religious origins 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 District*, 619 F.2d 1311 (8th Cir. 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 Eighth Circuit 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 upon Supreme Court cases that permit the study of the Bible in public schools. For example, 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.

Other court 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. 1997), a student sued the school because of, among other things, the religious content of the songs performed by the school choir. The Tenth Circuit dismissed the lawsuit, citing *Doe* and 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 554 (internal citations omitted). It is hardly surprising, then, that "the Constitution does not forbid all mention of religion in public schools." *Id.*; see also *Sease v. School Dist. of Philadelphia*, 811 F. Supp. 183 (E.D. Pa. 1993) (noting that the Equal Access Act protects the ability of student-led and initiated choirs to sign religious songs and access school facilities on the same basis as other student groups).

## **II. 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 Biblical passages that relate to Christmas (*e.g.*, Matthew 1:18-2:22, Luke 2:1-20) if the purpose was to study the historical or literary significance of the passages. In considering the type of activities that are appropriate in public schools, the federal appeals court in *Florey* stated, "[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, stating "[t]o 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.* (alteration in original). Of course, any student that has ideological or religious objections to participating in a particular performance should be excused from the assignment.

The United States Department of Education has issued guidelines for the nation’s school leaders which address the extent that religious expression and teaching are allowed in public schools. The guidelines state that:

[p]ublic schools may not provide religious instruction, but they may teach **about** religion, including the Bible or other scripture: the history of religion, comparative religion, the Bible (or other scripture)-as-literature, and the role of religion in the history of the United States and other countries are all permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature, and social studies. . . .

U.S. Dep’t of Education, *Religious Expression in Public Schools*, available at <http://www.ed.gov/PDFDocs/faith-good-ideas.pdf> 61-62 (last visited Nov. 26, 2007). 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.* These guidelines reaffirm that students and teachers may celebrate the Christmas holiday without fear of running afoul of the Establishment Clause.

The case of *Sechler v. State College Area School District*, 121 F. Supp. 2d 439 (M.D. Pa. 2000), applied the principles set forth in *Stone* and the Department of Education guidelines. In *Sechler*, the district court upheld a school’s holiday display and song program which included various references to Christmas, Chanukah, and Kwanza. 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 “sen[t] a message of inclusion and celebrate[d] freedom to choose one’s own beliefs.” *Id.* at 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.* The court noted that public school officials have some latitude in designing permissible holiday programs.

### **III. 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 the absence of denominational preference, the court held the policy to be constitutional. The court noted:

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.*; see also *Skoros v. City of New York*, 2004 U.S. Dist. LEXIS 2234 (E.D.N.Y. 2004) (upholding a public school policy which encouraged schools to display “secular” holiday symbols such as Christmas trees, Menorahs, and the Star and Crescent and discouraged the display of more religious symbols such as nativity scenes or excerpts from the Bible, Torah, or Qur’an), *aff’d* 437 F.3d 1, 4 (2d Cir. 2006) (upholding the policy and refusing to decide whether the addition of a creche would violate the Establishment Clause); *Sechler*, 121 F. Supp. 2d 439 (upholding a school’s holiday program which included various references to Christmas, Chanukah, and Kwanza).

#### **IV. 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 “separation of church and state.” It is well settled, however, that private religious speech—including the speech of students—is protected by the First Amendment. In *Capitol Square & Advisory Bd. v. Pinette*, the Supreme Court stated:

Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as 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. 753, 760 (1995) (internal citations omitted). In *Mergens*, the Court noted: “[T]here 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.” 496 U.S. at 250.

Additionally, the U.S. Department of Education’s guidelines on religious expression in public schools clearly state that students are permitted to discuss religious topics in class assignments:

##### *Religious Expression and Prayer in Class Assignments*

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Such home and classroom work should be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Thus, if a teacher’s

assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards (such as literary quality) and neither penalized nor rewarded on account of its religious content.

*Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, 68 Fed. Reg. 9645 (2003). Thus, for example, if a student is instructed to write an essay discussing what his favorite holiday is and why, he should be able to write an essay explaining that his favorite holiday is Christmas because it represents the birth of Jesus. The essay should be judged by normal academic standards of literary quality and grammar without regard to the essay's religious content.

**V. 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 calls that holiday “Christmas.” *See Lynch v. Donnelly*, 465 U.S. 668, 675, 680 (1984); *see also Ganulin v. United States*, 71 F. Supp. 2d 824 (S.D. Ohio 1999), *aff’d*, 238 F.3d 420 (6th Cir. 2000) (upholding the federal law making Christmas a legal holiday).

In the last decade, several constitutional challenges have been mounted to federal and state laws which designate Christmas and Easter as official holidays. These challenges have been mostly rejected. *See generally Koenick v. Felton*, 190 F.3d 259 (4th Cir. 1999) (upholding a Maryland law recognizing Good Friday as a public school holiday); *Granzeier v. Middleton*, 173 F.3d 568 (6th Cir. 1999) (upholding a practice of some Kentucky state court offices to close on Good Friday); *Cammack v. Waihee*, 932 F.2d 765 (9th Cir. 1991) (upholding a Hawaii law recognizing Good Friday as a public holiday).

For instance, in *Bridenbaugh v. O’Bannon*, 185 F.3d 796 (7th Cir. 1999), the Seventh Circuit held that Indiana’s recognition of Good Friday as a legal holiday 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 801-02. The Seventh Circuit added that people are free to celebrate Good Friday as they choose. *Bridenbaugh’s* analysis supersedes earlier decisions in the Seventh Circuit to the contrary. *See Metzl v. Leininger*, 57 F.3d 618 (7th Cir. 1995) (holding unconstitutional an Illinois law recognizing Good Friday as a holiday and stating that Illinois could enact a constitutional

law in the future); *Freedom from Religion Found. v. Litscher*, 920 F. Supp. 969 (W.D. Wisc. 1996) (applying *Metz* in holding Wisconsin's recognition of Good Friday unconstitutional).

We hope that this letter helps to clarify the legal issues surrounding the role of religious expression in the public schools. 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 questions you might have concerning this letter. Please feel free to share this information with your school's board, attorney, principals, and staff.

Very truly yours,

**AMERICAN CENTER FOR  
LAW AND JUSTICE**

JAY ALAN SEKULOW  
CHIEF COUNSEL