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Reply To: Virginia Beach, VA

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Chief Counsel

November 17, 1992

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Dear School Superintendent:

The purpose of this letter is to clarify the permissible constitutional limits of Christmas observances by public schools. This letter has been sent for informational purposes to each of the 14,766 school superintendents in the United States.

The undersigned served as legal counsel on behalf of the students in *Board of Education v. Mergens*, 496 U.S. 226 (1990) and co-counsel on behalf of the school board in *Lee v. Weisman*, 112 S.Ct. 2649 (1992). I am currently serving as the counsel of record for the petitioners before the U.S. Supreme Court in *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 959 F.2d 381 (2d Cir. 1992), *cert. granted*, 61 U.S.L.W. 3219 (U.S. Oct. 5, 1992) (No. 91-2024).

It is my concern that certain national groups have been pressuring local school districts to censor any religious observations of Christmas, when court decisions permit these holiday observances. Public school officials who do not understand the permissible constitutional parameters concerning Christmas observances in public schools, may unnecessarily prohibit or eliminate Christmas activities that are clearly constitutional.

The purpose of this letter is to accurately inform school districts of their constitutional authority in regards to holiday observances. Censorship of permissible holiday activities should be avoided.

For example, no court has ever banned the singing of religious Christmas carols by public school choirs. The only court to have ever addressed the issue upheld the singing of religious Christmas carols in public schools. In *Florey v. Sioux Falls School Dist.*, 619 F.2d 1311 (8th Cir. 1980), the United States Court of Appeals for the Eighth Circuit said that the study and performance of religious songs, including Christmas carols, is constitutional if the purpose of the study and performances 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." 619 F.2d 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." 619 F.2d at 1317. This court decision was based on two U.S. Supreme Court decisions 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 said, "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."

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In *Stone v. Graham*, 449 U.S. 39, 42 (1980), the Supreme Court said, "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. Of course, any student that had ideological or religious objections to reading the Bible should be excused from the assignment.

It should be remembered that school officials must take into account the free speech rights of students, as well as the district's obligations under the Establishment Clause. For example, students have the free speech rights to distribute Christmas cards or religious tracts on the "true meaning of Christmas" to their fellow students, or to wish them a "Merry Christmas" or a "Happy Hanukkah." A school district could not constitutionally prohibit those activities.

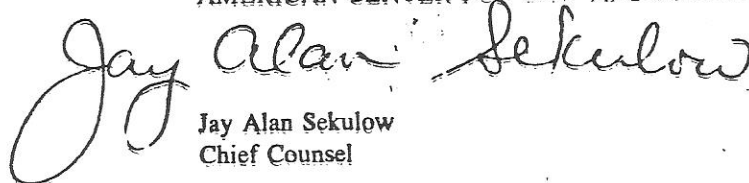
Members of the local community also have free speech rights in the school if the district rents school facilities to outsiders during non-school hours. In other words, if the school district rents its facilities to non-school groups on weeknights and weekends, then the school district has a constitutional duty to rent to religious speakers, such as a local church that wants to rent a facility for its annual Christmas pageant.

Finally, school districts are under no constitutional obligation to rename "Christmas vacation" as "Winter Vacation" or some similar name. 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).

I hope this letter helps clarify the legal issues. The American Center for Law and Justice is committed to seeing the constitutional rights of students protected on their public school campus. Because of our commitment, we are available to answer any questions you might have concerning this letter.

Please feel free to share this informational letter with your school board, their attorney, and your staff and principals.

Very truly yours
AMERICAN CENTER FOR LAW AND JUSTICE


Jay Alan Sekulow
Chief Counsel

JAS/sdb