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# Legal Issues Surrounding Christmas in Public Schools

By Charles J. Russo, J.D., Ed.D., and Ralph D. Mawdsley, Ph.D., J.D.

The status of holiday celebrations in public schools is a key issue related to separation of church and state.

**A**s the United States becomes increasingly religiously diverse, surprisingly relatively little litigation has occurred over the celebration of religious holy days and holidays in public schools. Although the Supreme Court has addressed Christmas displays on two occasions—in *Lynch v. Donnelly* (1984) and *County of Allegheny v. American Civil Liberties Union* (1989)—neither case directly concerned public schools.

The status of holiday celebrations in public schools is a key, if seasonal, issue in light of the importance of religion in the lives of many Americans, as educators seek to teach students to appreciate diversity in all of its manifestations, including religion.

## Supreme Court Cases

As noted, neither of the Supreme Court’s two cases on the constitutionality of Christmas displays in public settings directly involved schools. Even so, both cases are worthy of consideration because they shed light on the Court’s thinking with regard to religious holidays and related activities in public schools.

### *Lynch v. Donnelly*

In *Lynch*, citizens in Pawtucket, Rhode Island, challenged the inclusion of a crèche in a Christmas display in a park in the city’s shopping district that was owned by a non-profit organization. The display, which had been set up for at least 40 years, included a Santa Claus house, reindeer pulling Santa’s sleigh, candy-striped poles, a Christmas tree, a variety of festive figures, the crèche, and a banner proclaiming “Season’s Greetings.”

After the First Circuit affirmed that the display violated the First Amendment, a divided Supreme Court reversed in favor of the city. The Court applied its standard test from *Lemon v. Kurtzman* (1971), holding

that including the crèche did not violate the establishment clause because officials acted with a secular purpose, it neither advanced nor inhibited religion, and it had not created excessive entanglement between religion and government.

In a concurring opinion, Justice Sandra Day O’Connor announced a test that the Court occasionally employs when reviewing establishment clause disputes. Under that test, the actions of government officials are constitutionally permissible as long as a reasonable observer agrees that they do not endorse a particular religion.

### *County of Allegheny v. American Civil Liberties Union*

In *Allegheny*, residents challenged the actions of government officials of Pittsburgh, Pennsylvania, who permitted a Roman Catholic organization to erect a crèche in the county courthouse. That display, which included an angel bearing a religious banner, posted a sign indicating that the scene was donated by the private group.

A second display, outside an office building that was jointly owned by the city and county, consisted of a 45-foot Christmas tree, an 18-foot menorah associated with Hanukkah, and a sign bearing a message that the city salutes liberty during the holiday season. The menorah was owned by a Jewish religious organization, but it was stored, erected, and taken down by the city.

After a federal trial court rejected the suit, the Third Circuit reversed in the residents’ behalf and forbade officials from allowing the displays because they had the impermissible effect of endorsing religion. On further review, the Supreme Court—in a judgment containing five different opinions—affirmed that the first display violated the establishment clause. The Court ruled that insofar as county officials associated themselves with

the display and did not merely recognize Christmas as a cultural event, their actions had the impermissible effect of endorsing a Christian message. However, the Court allowed the second display to remain because it lacked a principle or primary effect of advancing a specific religion as part of a larger seasonal commemoration.

### Lower Court Cases

**Religious observances.** The Eighth Circuit upheld guidelines developed by a school board in South Dakota for use in connection with religious observances, most notably Christmas, and other holidays (*Florey v. Sioux Falls School District* 1980a, 1980b). The guidelines permitted objective discussion of religious and secular holidays. The court reasoned that explanations of historical and contemporary values relating to holidays; short-term use of religious symbols as examples of religious heritages; and integration of music, art, literature, and drama with religious themes could be included in curricula as long as they were presented objectively as a traditional part of the cultural and religious heritages of holidays.

In New Jersey, the federal trial court, in *Clever v. Cherry Hill Township Board of Education* (1993), upheld a board policy requiring the display of a school calendar in each elementary classroom that allocated a square each for an array of national, cultural, ethnic, and religious holidays. The policy permitted religious symbols such as “a pictorial representation of a nativity, the Ten Commandments, a cross, a Star of David, a crescent, the Hindu OM symbol, Buddha, Confucius, and Jesus Christ” (p. 933, n. 7).

Applying the second part of the *Lemon* test, the court pointed out that the policy eradicated feelings of hostility that some non-Christian children may experience “by looking at a symbol which represents the religion of a great majority of

Americans” and allowed students “to share the knowledge of other religious heritage without feeling threatened by them” (p. 940).

The Second Circuit upheld a policy of the New York City Board of Education that permitted seasonal displays of a menorah along with a star and crescent but not a manger scene or crèche in *Skoros v. City of New York* (2006, 2007). Declaring that the first two displays, namely, the menorah and star and crescent, were wholly secular, whereas the manger scene was not, the court relied on the *Lemon* test in upholding its constitutionality, because it had the secular purpose of promoting pluralism and respect for diversity, neither advanced nor inhibited religion, and had not created excessive entanglement between religion and government.

### None of the litigation on religious music in schools directly involved Christmas.

In *Sechler v. State College Area School District* (2000), a youth pastor in Pennsylvania challenged a “Winter Holiday” display at a public elementary school that included a menorah, a Kwanzaa candelabra and book about Kwanzaa, two books about Hanukkah, and a volume on the comparative study of holiday expressions; a banner hung overhead read “Happy Holidays.” A related program began with secular songs and a parody of a Christian hymn and included presentations on Hanukkah and Kwanzaa. Educators did nothing to encourage students to participate in events dealing with Christmas. A federal trial court rejected the claim that the activities violated the establishment clause because they did not favor one religion over another.

**Religious music.** None of the litigation on religious music in schools directly involved Christmas. The

Third Circuit (*Stratechuk v. Board of Education, South Orange–Maplewood School District* 2009, 2010), Ninth Circuit (*Nurre v. Whitehead* 2009, 2010), and Tenth Circuit (*Bauchman v. West High School* 1997, 1998), joined by a federal trial court in Florida (*S.D. v. St. Johns County School District* 2009) forbade the singing of songs mentioning God in public schools, whereas the Fifth Circuit (*Doe v. Duncanville Independent School District* 1995) reached the opposite outcome.

**Gift exchanges.** In *Walz ex rel. v. Egg Harbor Township Board of Education* (2003, 2004), the Third Circuit upheld the authority of school officials in New Jersey to prohibit a kindergarten student from distributing pencils and candy canes in class during December because they had religious messages attached. According to the court, school officials did not violate the First Amendment because the student had no right to distribute the items in the context of a curricular activity.

In a case from Michigan, the Sixth Circuit affirmed that a student in Michigan could not sell pipe-cleaner candy cane Christmas tree ornaments that he made as part of a school project if they were attached to religious cards promoting Jesus (*Curry ex rel. Curry v. Hensiner* 2008). The court agreed that the principal did not violate the student’s free speech rights because insofar as the activity was school-sponsored, he had latitude to restrict the child’s behavior. The court viewed the principal’s actions as acceptable, because they were reasonably related to the pedagogical concern of neither offending other students nor their parents while not subjecting young children to unsolicited religious promotional messages that might have conflicted with what they were taught at home.

Conversely, in *Westfield High School L.I.F.E. Club v. City of*

*Westfield* (2003), the federal trial court in Massachusetts granted a preliminary injunction preventing officials from prohibiting members of a religious club from distributing candy canes with religious messages during noninstructional time just before the start of the school's "Winter breaks." The messages attached to the candy canes contained Bible verses and exhortations regarding religious beliefs. The court ruled not only that the board's policy against the distribution of non-curriculum-related material likely violated free speech but also that the students' intended distribution of candy canes did not represent board sponsorship under the establishment clause.

## Reflections

The celebration of religious holidays presents interrelated First Amendment religion and speech concerns. To that end, the ensuing reflections offer food for thought for school business officials and other education leaders when dealing with Christmas and other religious holy days in public schools. Those issues address whether educators can permit celebrations of all religious traditions that are part of holiday seasons as long as all religions are treated equally, can refuse to honor all religious holidays, or can select only specified religious traditions to honor.

Those questions highlight the issue of permissibility regarding religious activities in public schools. Educators who wish to permit all religious activities need show only that they do not violate the establishment clause, an approach that may allow celebrating all religions. Although one can argue that the *Lemon* test applies only where there is a secular counterpart, no such secular counterpart exists if only religions are being accommodated.

Demonstrating constitutionality is more difficult because Christmas not only has religious symbols associated

with it but may be better known than holy days of other faiths. If officials emphasize only Christmas in December, they not only run the risk under the establishment clause of overlooking other faiths but may emphasize the symbols of only one or two religions.

Arguably, officials could create public areas that might permit celebrants to display their own items. Although the court permitted such a display to remain in *Sechler*, it is unclear whether officials could permit displays of one celebration—such as Kwanzaa alone, which includes religious dimensions but is not a religious holiday per se—to the exclusion of other faiths—such as Christianity, as the Second Circuit allowed in *Skoros*—and still satisfy establishment clause scrutiny.

A second issue concerns the permissibility of religious activities from the negative side, because to

the extent that the establishment clause cannot mandate celebrations, officials generally can exclude all religious displays. Although the Supreme Court has been clear that public school officials cannot display hostility toward religion, it is unclear whether evenhandedness in denying access to all religions is constitutionally acceptable under the establishment clause.

That second question also demonstrates the permissibility of religious activities from the negative side. Insofar as the establishment clause cannot mandate the inclusion of religious celebrations in schools, officials generally may exclude all religious displays. Although the Supreme Court has been clear that boards and educators cannot demonstrate hostility toward religion, it is unclear whether evenhandedness in denying access to all religions is judicially permissible.



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Classroom activities present special establishment clause concerns, because public school teachers cannot engage in in-class religious activities, use religious music without curricular connections, or post religious themes. At the same time, although teachers cannot restrict what students do or read privately, they can limit the expressive religious activities of children in classroom settings. Accordingly, activities can be placed on a continuum from those that can probably survive judicial scrutiny through those that are likely to be prohibited.

At one end of the spectrum are activities that should pass judicial muster. Consistent with the federal Equal Access Act (2014), a law that allows student-organized prayer and Bible study clubs to meet during noninstructional time if officials permit other student groups to do so, educators probably cannot prevent those clubs from having their own celebrations. Moreover, if officials allow other clubs to decorate wall space, halls, or other parts of school buildings during holiday seasons, then they would unlikely be able to deny religious clubs the same opportunities.

Courts have allowed education leaders to permit some acknowledgment of Christmas in schools, albeit through secular symbols, such as Christmas trees and Santa Clauses that, at most, have attenuated relationships to the religious dimensions of Christmas. Educators should thus be able to allow secular representations of the season, such as secular Christmas carols and religious carols, if they are mixed in as parts of programs dealing with songs celebrating other religious traditions, such as the story of Hanukkah, or are linked to legitimate curricular and pedagogical goals, such as the study of music, culture, and history.

Two other activities may be able to survive litigation. First, educators

probably can permit some form of gift giving, such as “secret Santa” exchanges. As is illustrated by two of the three cases discussed earlier, though, educators probably cannot allow identifiably Christian gifts, such as candy canes or pencils with attached religious messages.

Second, displays of mangers or religious art are trickier. Although an argument can be made that such items may be permissible as part of larger displays, in order to avoid, or survive, costly legal challenges, displays cannot be presented as overly Christian and would have to emphasize the more secular aspects of the season.

### Displays of mangers or religious art are trickier.

At the other end of the spectrum, educators cannot allow school-sponsored singing of religious Christmas carols or the recitation of prayers in assemblies or classes. Additionally, educators should avoid placing manger scenes or displaying religious objects and paintings in schools because doing so will likely be struck down as violating the establishment clause and endorsing a particular faith.

### Conclusion

Christmas and other religious holidays are times of celebration for students, and others, in public schools. Even so, educators must conduct themselves within the boundaries of the establishment clause insofar as they can neither appear to sponsor nor endorse religion, nor can they display hostility to religion in public schools. Maintaining the correct balance between the competing legal duties of safeguarding religious freedom but not endorsing one faith over another is a tricky task indeed for school business officials and other education leaders in the increasingly religiously diverse American public schools.

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