

September, 1998 (UNISON)

## *Christmas observances in public schools: a legal opinion*

*By Jay Alan Sekulow, Chief Counsel American Center for Law and Justice*

Dear School Superintendent:

The purpose of this letter is to clarify the 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 student 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. Court 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 District*, 959 F2d 381 (2d Circuit 1992), cert, granted, 61U.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 constitutional parameters concerning permissible 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 regard 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 ever to address the issue upheld the singing of religious Christmas carols in public schools. In *Florey v. Sioux Falls School District*, 619 F2d 1311 (8th Circuit 1980), the United States Court of Appeals for the eighth circuit said that the study and performances are 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 F2d at 1314).”

The federal appeals court in *Florey* found that the 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” (619F2d 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.”

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 school if the district rents facilities to outsiders during non-school hours. In other words, if the school district rents its facilities to non-school groups on weekends or weeknights, 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, 676, 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 campuses. 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,

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