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Students' Rights and the Public Schools

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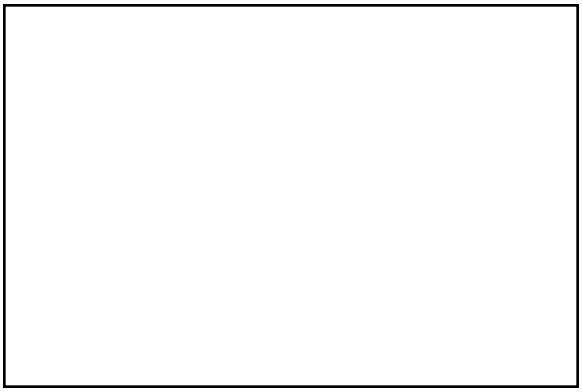

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The American Center For Law And Justice

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Dear Friend of Religious Freedom,

In this booklet, we discuss the rights of Christian students in public schools and answer questions about specific issues related to the exercise of those rights. For nearly a decade, we have been answering these questions. During that time, certain questions have frequently recurred. It became obvious to us at the American Center for Law and Justice that a great deal of confusion regarding students' rights continued to cloud the understanding of school officials, courts, students, parents, and community leaders.

To dispel the confusion over students' rights, we offer this revised version of "Students' Rights In the Public Schools." We designed this edition to answer any questions a student or school administrator might have about students' rights. We hope that this booklet will encourage students, parents, school administrators, and teachers to understand the constitutional rights of students in America's public schools.

Our goal is not to assign blame for the confusion over the rights of students. It is to explain what the Constitution and laws of the United States require and what the Supreme Court and Congress have said about the rights of students on public school campuses. I served as counsel or co-counsel in numerous cases before the Supreme Court of the United States, including the key case on prayer groups and Bible clubs in public schools, *Board of Education of the Westside Community Schools v. Mergens*. My goal is to explain those decisions and their impact on students' rights.

Although it is thorough, this booklet is not an exhaustive treatise on this area of the law. [Principles of law depend, in their application, on the specific facts of each case. A booklet of this sort is helpful because it addresses general questions.] We are willing to answer any specific questions that you have in an effort to help you understand the extent of your rights. Please feel free to contact our office for specific answers to specific questions.

Your Brother Advocating Jesus,
Jay Alan Sekulow
Chief Counsel

ABOUT THE AMERICAN CENTER FOR LAW AND JUSTICE

The American Center for Law and Justice is a non-for-profit public interest law firm and educational organization. The Center is committed to educating the public regarding individuals' First Amendment right; and to protecting those same rights, particularly, the freedoms of speech of speech, religion and assembly. In furtherance of those goals, the American Center for Law and Justice publishes informational materials for public dissemination. The Center also furnishes, in appropriate circumstances, free legal services for the protection of those First Amendment rights.

A significant number of the calls received by the American Center for Law and Justice relate to religion and the rights students possess in the public schools. Not surprisingly, there is widespread confusion among students, school officials and citizens in general concerning this area of the law. This booklet will address these issues in a manner that provides clear guidance in light of relevant case law.

"This publication is designed to provide accurate authoritative information regarding the subject matter covered. It is distributes with the understanding that the publisher and authors are not engaged in rendering legal, accounting or other expert assistance is required, the services of a competent

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SECTION ONE:

DO STUDENTS HAVE RIGHTS OF FREE EXERCISE OF RELIGION, FREEDOM OF SPEECH, FREEDOM OF THE PRESS, AND FREEDOM OF ASSOCIATION IN PUBLIC SCHOOLS?

YES! From the moment they step onto the campus, until they depart from it, students enjoy substantial and meaningful rights to freedom of speech, of the press, of assembly, and of religion. The First and Fourteenth Amendments to the Constitution of the United States, the Equal Access Act, and decisions of the Supreme Court interpreting and applying these constitutional and statutory provisions all mark important contours of the right of Christian students to share the Gospel with their classmates and to work with other Christian students in clubs and fellowship groups. To make the most effective use of these rights, it is important to understand them. Armed with a clear understanding, Christian students in public schools will have the best chance of serving as effective witnesses to the Gospel. The opportunities clearly exist to be salt and light in the communities existing in America's public schools. The rights that make it easy for students to take advantage of these opportunities are explained and explored in this booklet.

I. Federal Constitutional Rights of Students

Little more than thirty years ago, students were suspended from school if they engaged in even the most non-disruptive forms of free speech in public schools. School officials suspended or expelled students even when their protests were silent and did not disrupt schools. That approach treated students as something less than a whole person endowed with rights, rights ultimately guaranteed under our Constitution, Bill of Rights, and Constitutional Amendments.

The Supreme Court of the United States[1] radically and abruptly changed this approach in *Tinker v. Des Moines Independent School District*.[2] In *Tinker*, the Supreme Court rebuked school officials for panicking in the face of a peaceful expression of protest - the wearing of black armbands to express disapproval of America's involvement in South Vietnam - and suspending students from school. The Court explained that neither "students [nor] teachers shed their constitutional rights . . . at the schoolhouse gate."[3] *Tinker* remains the leading case on students' constitutional rights in public schools.

A. Fundamental Rights of Students

Throughout the United States, state laws compel children to attend school.[4] Although many families educate their

children in church-affiliated schools or at home, the overwhelming majority of school-aged students attend public schools. As a result of attendance laws and the enforcement of them by truant officers and courts, students are *coerced* to attend public school. But the students carry constitutional and statutory rights with them on campus. Those rights protect students in what could otherwise be a highly biased and selective program of indoctrination:

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They [have] fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views . . . . [S]chool officials cannot suppress "expressions of feelings" with which they do not wish to contend.[5]

B. *Tinker* and Disruptions

Tinker removed any lingering doubt about students' rights to freedom of speech. But make no mistake about the ability of public schools to prohibit conduct that actually disrupts school order and discipline. The school officials in the *Tinker* case, however, had no basis for charging that the protesting students had caused a disruption of the school.

The students in *Tinker* did not disrupt the school day with their protest activity. They merely wore black armbands over their shirt-sleeves to show their disagreement with a policy of the United States government. They did not interrupt classes or walk out of them; they did not conduct a sit-in in the school's administrative offices. They did not block the hallways, allowing only those who expressed agreement with them to pass. Despite the peaceful, nonviolent nature of the activity, the school officials panicked and suspended students from school as though they had engaged in the sort of disruptive behavior mentioned above.

In *Tinker*, the Court criticized the school officials' panicked and thoughtless injury to the students' constitutional freedoms. The Court concluded that a proper respect for the constitutional rights of students serves to bar a principal from interfering with student speech on the grounds that he *fears or believes* that the

school day will be disrupted, without any facts to suggest that the fear is a reasonable one. The *Tinker* Court concluded that fear of disruption was not sufficient, that students could not be treated like they had "materially and substantially interfere[d] with the requirements of appropriate discipline" on the basis of unsupported fears or beliefs.[6]

Certainly, it is necessary to acknowledge that school officials have "important, delicate and highly discretionary functions" to perform.[7] These functions, however, must be performed "within the limits of the Bill of Rights."[8] "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."[9]

As a consequence of *Tinker* and the many subsequent decisions of lower federal courts, teachers and administrators cannot justifiably stop students from discussing their religious beliefs in school so long as the students are not disrupting school order and discipline. Nor should school officials interfere with students who share religious materials with other students during breaks, between classes, at lunch, on the school bus, or while on campus before and after school. This liberty of students is reflected in the *Tinker* decision:

> It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of [the Supreme] Court for almost 50 years.[10]

In the more than thirty years after *Tinker*, the Supreme Court has relied on its decision in *Tinker* and that case continues to be the law of the land.

Occasionally, school officials claim that *Tinker* is a special case involving a "public forum."[11] But the result in *Tinker* did not depend on the school campus being a public forum. As the Court explained, when a student "is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions . . . ."[12] So it simply does not matter whether a school campus has been made into a public forum for anyone else.[13] Because students are required to attend these schools, they are entitled to enjoy the constitutional rights that they carry on campus with them.

C. Religious Speech is Constitutionally Protected Speech

Unfortunately, bigotry against religion is real and continues to be exhibited by some courts and some school officials. One form of that bigotry is to treat religious speech - whether discussion of religious matters or prayer, worship, or other religious expression - as different than the kinds of speech protected by the First

Amendment. That bigoted view is untenable in light of several Supreme Court decisions.[14] The First Amendment protects religious thoughts, ideas, religious worship, and prayer as components of free speech as well as the free exercise of religion. In fact, the right of religious persons to try to persuade others, to advocate the rightness of their beliefs, and to evangelize implicates the very purpose of the First Amendment:

> [T]he protection [the Framers] sought was not solely for persons in intellectual pursuits. It extends to more than abstract discussion, unrelated to action. The First Amendment is state order for government, not for institutional learning. "Free trade in ideas" means free trade in the opportunity to persuade, not merely to the scrap facts.[15]

The fact that a school is owned by a state or local government does not warrant or justify the infringement of a student's constitutional rights. State and local government officials are duty-bound to respect the federal constitutional rights of students. There is no better way for a public school to teach students about the importance of the Constitution and our rights as citizens than to show respect for the constitutional rights of those students.

II. The Equal Access Act and the Rights of Students

In a series of decisions in the early 1960's, the Supreme Court of the United States concluded that the Constitution prohibited states and local school boards from forcing students to pray. In the years following those decisions, some groups that oppose the enjoyment of religious freedom in public schools conducted organized programs of opposition to student religious activities. Such groups pressed school districts to prohibit religious clubs and organizations from meeting on campus, and they urged courts to order school districts to do so.

Over time, familiar campus organizations such as the Fellowship of Christian Athletes and Young Life became the target of political and legal pressure aimed at distancing these groups from the schools. Ultimately, student prayer groups and Bible Clubs became the focus of organized opposition and of court orders barring school districts from permitting such groups to meet on campus on terms equal to those enjoyed by other student groups like the Key Club, the Chess Club, and Odyssey of the Mind.

When school officials, often under the constraint of bad judicial decisions, barred religious student groups from meeting on campus and from enjoying equal rights on campus, President Ronald Reagan and the United States Congress responded. Congress enacted, and President Reagan

signed, the "Equal Access Act."[16] Congress enacted the Equal Access Act to cure pervasive anti-religious bigotry exhibited by some federal courts and some public school officials.

A. How Does the Equal Access Act Work?

Application of the Equal Access Act depends on three factors. When these factors are present, school officials are required by federal law to grant official recognition and equal treatment to religious student groups, such as prayer groups and Bible Clubs. Those factors are: (1) that the school involved is a secondary school under state law; (2) that the school receives money from the federal government; and (3) that the school allows any other student club or group, not related to the school curriculum, to meet on campus.

It is often quite simple to determine whether your school is obligated, under the Equal Access Act, to grant official recognition to a Bible Club or prayer group. As a practical matter, virtually all public schools in the United States are recipients of federal funds. Only slightly more difficult is the question of whether your school is considered a secondary school under state law. As a general principle, senior high school grades, ninth through twelfth, are secondary school grades throughout the United States. In some states, grades as low as sixth, seventh, and eighth are also treated as secondary schools.[17]

Finally, the Equal Access Act applies only to schools that either already have other student clubs not related to the curriculum or have adopted policies that allow student clubs not related to the curriculum to meet. In most high schools, this fact question is easily answered

A quick look in the yearbook, if it includes a section devoted to student clubs and organizations, can shed light on whether such clubs are being allowed to meet. You may also refer to the student handbook that most schools now distribute at the beginning of the school year. Often the handbook describes the extracurricular opportunities available to students at the school, including sports activities, curriculum related clubs (such as a French Club, Science Club, or Math Club), and non-curriculum student groups, such as Key Club, Zonta, and Interact.

If the yearbook and the handbook do not answer this question, you can probably get the answer from your school district's office. The district office will have a copy of its policies and procedures available for public review. Reviewing the school district's policy manual may allow you to determine whether a policy requires recognition of such clubs.

B. The Equal Access Act Upheld in *Westside Community School v. Mergens*

The Equal Access Act, welcomed by students and by advocates for religious civil

liberties, was challenged in a case that went before the Supreme Court of the United States. That case, *Board of Education of the Westside Community Schools v. Mergens*,[18] presented the Supreme Court with the question of whether the Equal Access Act violated the Establishment Clause of the Constitution of the United States. The Supreme Court upheld the Act as constitutional.

After concluding that the Act was not an effort by Congress to improperly advance a religion,[19] the Court conducted a straightforward review of the facts in *Mergens*. The school officials in the case denied recognition to a Bible Club proposed by Bridget Mergens. When they did so, a number of clubs were already meeting and enjoying official recognition from the school district. Those clubs included service clubs, such as the Key Club, the Lions Club, Zonta, and Interact. The fact that these clubs were meeting on campus and enjoying the school's official recognition led the Court to conclude that the school district was required by the Equal Access Act to recognize the Bible Club. In doing so, the Court rejected the school district's argument that such service clubs are curriculum related:

> [W]e think that the term "non-curriculum related student group" is best interpreted broadly to mean any student group that does not directly relate to the body of courses offered by the school.

> In our view, a student group directly relates to a school's curriculum if the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; if the subject matter of the group concerns the body of courses as a whole; if participation in the group is required for a particular course; or if participation in the group results in academic credit . . . . This . . . definition . . . is consistent with Congress' intent to provide a low threshold for triggering the [Equal Access] Act's requirements.[20]

Nor was the Court convinced by the school district's argument that the Chess Club, which enjoyed official recognition, was related to the curriculum. On this point, the Court noted that, in the legislative record, a Chess Club was offered as an example of a club that was not curriculum related, unless a student actually received academic credit for participation in the club. The school district's argument, that chess was curriculum related because it enhanced logical thinking and mathematical performance, was soundly rejected.[21]

Ultimately, the Court concluded on those facts that the District was obliged to grant official recognition, equal benefits and treatment to the Bible Club proposed by Bridget Mergens. The obligation of the

school to provide equal benefits and treatment to religious clubs and organizations is an important component of the Mergens decision. In that case, official recognition entitled student groups "to be part of the student activities program [and to have] access to the school newspaper, bulletin boards, the public address system, and the annual Club Fair."[22]

In the more than fifteen years after enactment of the Equal Access Act, religious students in America's public schools continue to experience hostility and resistance to the proposed formation of student prayer groups and Bible Clubs. Now, with more than ten years having passed since the Supreme Court's decision in *Mergens*, the American Center for Law and Justice continues to receive a steady stream of requests for assistance from students whose reasonable and lawful attempts to form such clubs or groups have been frustrated by school officials as a result either of ignorance or hostility. When school officials deny recognition and/or equal treatment to student-initiated prayer groups and Bible Clubs, they treat the students who would form those clubs as second class citizens. That attitude is precisely the one which the Equal Access Act prohibits.

C. Equal Means Just That

Official recognition and equal treatment are not meaningless terms. These terms

require school districts to treat a student prayer group or Bible Club just as they treat other clubs on campus. The fact that such clubs may be religious will not justify school districts' decisions to exclude a Bible Club or prayer group from the club section of the school yearbook, from the equal right to make announcements of upcoming meetings, or from the right to participate in Homecoming parades and talent shows. School districts must grant to religious student groups whatever privileges and benefits school districts grant to other clubs.

Once the Equal Access Act is triggered, secondary schools are barred from discriminating against religious student groups because of their religious identity. Secondary school officials may not control or interfere with the operation of a Bible Club. Nor may school officials condition the right of Bible Clubs and prayer groups to recognition and equal treatment on their deletion of references to Christianity from the club's Constitution, announcements, or other materials. In sum, school districts must make their resources available to Bible Clubs and prayer groups in the same way and to the same extent as they are made available to other clubs.

D. One Difference: Sponsors vs. Custodians?

The Equal Access Act imposes one difference in treatment between religious

student groups and other clubs. The Equal Access Act prohibits faculty or staff from serving in any role with religious student groups other than as a custodial monitor. In other words, the teacher-sponsor of a religious group is present only to ensure that the group does not violate school policies or injure school property. Unlike the sponsor of a Chess Club, often himself a chess player, the sponsor of a Bible Club or prayer group is not permitted under the Act to actively participate in the club's activities.

Prayer groups and Bible Clubs must be student-initiated. Students must create the clubs, organize their activities, and lead their meetings. This requirement does not mean, however, that religious student groups cannot invite outside speakers. It only means that students must lead the clubs, not outside speakers. These groups, like other clubs on campus, may be permitted to invite community leaders and others to occasionally speak to their groups.

E. Conflicts Between Federal Law and State Law

Over the past twenty years, as the issue of religious student groups has worked its way through the Halls of Congress and the Courts of Justice, regional differences have become obvious. In some states, student prayer groups and Bible Clubs have organized and met without any difficulties. In other cases and

other states substantial roadblocks are consistently thrown in the way of such student groups and organizations. In fact, some school districts have refused to recognize prayer groups and Bible Clubs because, they claimed, their state laws or constitutions prohibited such recognition. That assertion is without merit under the Constitution of the United States. The Constitution of the United States and the laws enacted by Congress under its authority are the supreme law of the land. As a result, objections to recognition of student prayer groups and Bible Clubs that are based on state law or state constitutions must give place to the requirements of federal law.[23]

III. Guidelines on Religious Activities in Public Schools Issued by the United States Department of Education

In 1995, by order of the President of the United States, the United States Department of Education issued a set of written guidelines to every school district in the country. The guidelines set out the federal government's views regarding a variety of activities involving the intersection of public schools and religion. Those guidelines were modified and reissued in 1998 and again in 1999.

Although we do not agree with each and every point made in them, the positions taken by the federal government are substantially similar to ones we have

defended in litigation and otherwise. The Guidelines are included in the Appendix to this booklet, and can also be obtained by visiting the web site of the Department of Education, which is located at http://www.ed.gov. In the Guidelines, the Department of Education acknowledges that students have the right to:

- engage in prayer and religious discussion;
- participate in See You at the Pole, and other events before or after the school day;
- organize and conduct baccalaureate services and express religious sentiments when speaking in a private capacity;
- study about religion, including studying the Bible and other religious works, for purposes of instruction in history, literature, and religion;
- express their religious views and address religious themes in the completion of assignments;
- share with others copies of religious literature;
- be excused from school attendance as required by the teachings of their religion;
- be released from school for religious instruction, if such a program is permitted under state law;
- wear clothing and accessories mandated by their religion, or which depicts messages about their religion; and- have equal access to the club program if there are other noncurriculum related clubs.

SECTION TWO:

QUESTIONS AND ANSWERS: SPECIFIC INSTANCES OF RELIGIOUS FREEDOM IN PUBLIC SCHOOLS

In the years since the American Center for Law and Justice began advocating for the rights of Christian students, we have received literally thousands of inquiries. Several frequently recurring questions relate to the rights of Christian students to engage in specific activities in government schools. A brief response to each of these is set out below.

I. May Students Distribute Literature and Share the Gospel on School Grounds?

YES! Students' First Amendment rights include the right to distribute Gospel tracts during non-instructional time, the right to wear shirts communicating Christian messages and symbols, and the right to pray and discuss matters of religion with others. Further, schools may not prevent students from bringing their Bibles to school. In fact, school officials must allow students to read their Bibles during free time, even if that free time occurs during class. The standard that must be applied by the school is: Does the activity "materially or substantially disrupt school

discipline?" Unless a student is disruptive, the school must refrain from interfering with their religious activities.

The distribution of free religious literature is protected by the First Amendment. Religious and political speech are protected by the First Amendment.[24] Furthermore, "[a]dvocacy and persuasive speech are included within the First Amendment guarantee if the speech is otherwise protected."[25]

The Supreme Court of the United States' consistent jurisprudence, for fifty years, has recognized that free distribution of literature is a form of expression protected by the Constitution of the United States.[26] In *Lovell v. City of Griffin*, the Supreme Court of the United States put the case for constitutional protection of leaflets and pamphlets quite clearly:

> The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to *the vital importance of protecting this essential liberty from every sort of*

infringement need not be repeated.[27]

The constitutional value of leaflets and pamphlets is not lessened by the fact that they address matters of religion.[28] The role of religious leaflets and tracts is historic:

> The hand distribution of religious tracts is an age-old form of missionary evangelism - as old as the history of printing presses. It has been a potent force in various religious movements down through the years . . . . It is more than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits.[29]

School officials may not lump a student's right to distribute free literature together with more disruptive forms of expression, such as solicitation. As the Supreme Court has explained, the experience of thousands of "residents of metropolitan areas [who] know from daily experience [that] confrontation by a person asking for money disrupts passage and is more intrusive and intimidating than an encounter with a person giving out

information."[30] Distribution of literature is inherently even less disruptive than spoken expression. As the Supreme Court stated, "[o]ne need not ponder the contents of a leaflet or pamphlet in order mechanically to take it out of someone's hand, but one must listen, comprehend, decide and act in order to respond to a solicitation."[31]

The applicable standard - material and substantial disruption - is not met by an undifferentiated fear or apprehension of disruption. In other words, it is not enough for school officials to fear that allowing religious speech will offend some members of the community. "Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."[32] Where a student wishes to peacefully distribute free literature on school grounds during non-instructional time, there simply is nothing which "might reasonably [lead] school authorities to forecast substantial disruption of or material interference with school activities . . . ."[33]

School officials need not fear that leaflet distribution by students may be imputed to them, and that the Establishment Clause would thereby be violated. This very argument has been rejected by the Supreme Court of the United States. In *Mergens*, the Court stated that the activities of student evangelists in a public school do not present any Establishment Clause problems:

> [P]etitioners urge that, because the student religious meetings are held under school aegis, and because the state's compulsory attendance laws bring the students together (and thereby provide a ready-made audience for student evangelists), an objective observer in the position of a secondary school student will perceive official school support for such religious meetings . . . . *We disagree*.[34]

Of course, *Mergens* merely reflects the Establishment Clause's intended limitation - not on the rights of individual students - but on the power of governments (including school officials). As the *Mergens* Court stated, "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 Exercise Clauses protect."[35]

II. Can We Have Student-led Prayer at Graduation or Other School Events?

YES! In *Lee v. Weisman*,[36] the Supreme Court held only that it violates the Establishment Clause for *school officials to invite clergy* to give prayers at commencement. The Court made clear that its decision was limited to the particular facts before the Court.[37] Thus, any change from the factual situation presented in *Lee*

might alter the resulting opinion from the Court.

In June, 2000, the Supreme Court took its decision in *Lee v. Weisman*, regarding school-organized prayer at graduations, a step further, and applied Lee to prohibit a school district from encouraging and endorsing prayers during pre-game ceremonies for high school football games. In *Santa Fe Independent School District v. Doe*,[38] the Court concluded that a school district policy violated the Establishment Clause by making the question of whether prayer would be offered at football games the subject of student debate and majority vote.

In its decision in the *Santa Fe* case, the Court specifically noted that not every instance in which a religious message or invocation is offered during a school event will violate the Establishment Clause. Although the Court did not specifically state it, they 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.

Subsequent to the Supreme Court's decisions in *Lee* and *Santa Fe*, courts *will* revisit the topic of graduation prayer, including the issue of student-led, student-initiated prayer. For an update on the current status of the law regarding graduation prayer, please contact the ACLJ's national headquarters at 1-800-296-4529 or visit the ACLJ website at http://www.aclj.org.

III. Can Valedictorians, Salutatorians, or Honorary Speakers Give Speeches on Religious Subjects, Including Reading From the Bible?

YES! As stated previously, it is well-settled that religious speech is protected by the First Amendment of the Constitution.39 Remember that school administrators can only prohibit protected speech by students when it "materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school."[40]

If students have been granted freedom to compose their own speeches (e.g., valedictorian or salutatorian addresses), protected student expression should not be subjected to censorship because of its religious viewpoint. It is a fundamental proposition of constitutional law that a government official may not suppress or exclude speech for the sole reason that the speech expresses a religious perspective.[41] Denial of this bedrock principle would undermine the essential guarantees of free speech and religious freedom under the First Amendment.

There is quite a difference between refusing to *direct* prayer or *invite* clergy to give prayer at graduation, and choosing to prohibit individual student expression based on its content. The First Amendment precludes any governmental effort to single out and censor - or otherwise burden - the

speech of private parties *solely because that speech is religious*.[42] A decision by a school board to respect the free speech rights of students and to refrain from censoring student speech based solely on its content is not a deliberate violation of the law. Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[43] Nor do students shed those rights as they pass through the auditorium doors to attend graduation or promotional exercises.

IV. Can We Have Baccalaureate Services?

YES! Students, community groups and area churches are entitled to sponsor events, such as baccalaureate services. If school facilities are available to the community for use, these groups should be allowed to use school facilities also, regardless of the religious nature of their activities. A policy of equal access for religious speech conveys a message "of neutrality rather than endorsement; if a State refused to let religious groups use facilities open to others, then it would demonstrate not neutrality but hostility toward religion."[44] At least three federal courts have considered this question and have concluded that privately-sponsored baccalaureate services may be conducted on a public high school campus without violating the Establishment Clause.[45]

V. Are Official "Moments of Silence" Permissible Under Current Law?

YES! In *Wallace v. Jaffree*,[46] the Supreme Court took a look at the issue of official "moments of silence." While the Court struck down the particular "moment of silence" statute in that case, a majority of the Justices in that case clearly recognized that moments of silence are constitutionally permissible.[47] And all the parties in the *Wallace* case agreed that another Alabama statute mandating a "moment of silence" during classtime was constitutional.[48] In *Wallace*, the Supreme Court held only that the particular facts of the case made a second Alabama statute calling for a moment of silence for meditation *"or voluntary prayer"* during class unconstitutional.[49] The Court justified its decision striking that second statute down on two factors: (1) the clearly expressed intent of the statute's sponsors to advance religion; and, (2) the express language of the statute calling for a moment of silence for meditation *"or voluntary prayer."*[50]

In light of *Wallace*, it is clear that any official moment of silence must be motivated by a well-defined secular purpose and be neutral on its face, leaving the use of the "moment of silence" to individuals and the dictates of their own consciences.

VI. Do Students Have a Right to Pray Together at School and Participate in Events Like the See You at the Pole and the National Day of Prayer?

YES! *See You at the Pole* and the National Day of Prayer is a student event, and it is not organized or conducted by school administrators or officials. Students across the nation annually gather with like-minded peers around the flagpole at their respective schools before the class day begins and pray for their schools, teachers, administrators and country.

This question brings us back to this settled legal principle: students retain their constitutional rights of free speech and expression, including the right to pray and share personal beliefs, while on school grounds. After *Tinker*, school officials may restrict protected student speech only if it materially and substantially interferes with appropriate discipline. Thus, school officials may not prevent students from gathering together for prayer and religious discussion on school grounds, provided that students do so in a non-disruptive manner during non-instructional time. Non-instructional time would be immediately before and after school, at lunchtime, or any other "free" time when students are permitted to talk and mingle with peers on campus.

Of course, while school officials may not stop students from engaging in protected religious expression unless it

causes a material or substantial disruption of school order, they may impose reasonable regulations governing the time, place and manner of student activities. Such regulations cannot target the religious content of the student activity. In addition, any restriction must be "narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication."[51] Students may also participate in before or after school events with religious content, such as "see you at the flag pole" gatherings,[52] on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.

VII. Can Students Participate in Events Like the *See You at the Pole* and the National Day of Prayer Even if the Event is not Part of an Officially Recognized Club?

YES! As the Supreme Court made clear in *Tinker*, students have substantial rights under the First Amendment. As long as a student's conduct does not "materially or substantially interfere with school discipline," he has the right to gather with other students on campus for prayer, even if no prayer group or Bible Club is officially recognized on their campus.

Prayer is a protected form of speech that cannot be banned by school officials

when it is being offered in a manner such as *See You At The Pole*. A school official who refuses to allow students the right to pray on their campus is engaging in *censorship*.

If there is an officially recognized Bible Club or prayer group on campus, then students in the club can advertise the Prayer Rally. Students must be allowed to use the same forms of advertisement that the other clubs are allowed to use, such as the public address system, bulletin boards, and the school newspaper.

VIII. Is It Constitutional to Have Holiday Observances in the Public Schools?

YES! Students, of course, are free to express their beliefs and convictions as they apply to particular holidays, provided they do so in a non-disruptive manner. For example, students have the right to distribute Christmas cards or religious tracts on the "true meaning of Christmas" to their peers during non-instructional time. Students could also wish their classmates a "Merry Christmas" or a "Happy Hanukkah." School officials could not constitutionally prohibit such activities.

Students may express their individual beliefs during classroom discussions, as well as in the context of *appropriate* class assignments. For instance, an elementary student instructed to draw a "Thanksgiving" picture may choose to draw a picture of a pilgrim praying to God. Or, when told to

prepare an essay on a topic of choice, a student may select the birth of Christ or any other religious topic the student wishes. School officials cannot discriminate against a student's work simply because of its religious nature.

Regarding official public school observance of religious holidays, the Eighth Circuit concluded that religious songs and symbols can be used in the 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 . . . ."[53] That court also stated that the study and performance of religious songs is constitutional if the 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."[54]

The decision from the Eighth Circuit Court drew largely from the Supreme Court of the United States' decision in *School District of Abington Township v. Schempp*.[55] In *Schempp*, 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."[56]

IX. Can the Bible be Used as Part of the Curriculum of the School?

YES! In *Stone v. Graham*,[57] the Supreme Court said, "the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like."[58] Thus, 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.

In addition, the Bible was an important book in the early history of this country. The Court's view in *Stone v. Graham* suggests that it is constitutionally permissible to develop a curriculum that evaluates the role of the Bible in this country and Western Civilization. The Bible is also considered to be literature from antiquity. A school board could establish a policy that allows the Bible to be discussed as part of a literature program in the school.[59]

X. Can Members of the Community or Organizations Use School Facilities for Religious Purposes?

YES! Members of the local community also have free speech rights in the school if

the district rents school facilities during non-school hours. In other words, if the school district rents its facilities to non-school groups during non-school hours, 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.[60]

In *Lamb's Chapel v. Center Moriches School District*, the Supreme Court rejected the exclusion of religious speakers from public school facilities. Refusing to uphold a religious exclusion, the *Lamb's Chapel* Court stated that "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.'"[61] *Lamb's Chapel* affirms the rights of religious persons to express their views publicly.

XI. Can Christmas Vacation Still be Called Christmas Vacation?

YES! School districts are under no constitutional obligation to rename "Christmas vacation" as "Winter vacation" or some similar name. Any suggestion to the contrary is simply unnecessary and should be avoided. The Supreme Court itself has acknowledged with approval that Congress recognizes a National Holiday on December 25 and that Congress calls it "Christmas."[62]

CONCLUSION

No one is better equipped and positioned to shine the light of the Gospel into America's public schools than the students who are compelled by law to attend those schools. Although teachers, administrators, parents, and pastors can all pray for the success of students seeking to live out their faiths while in school, it is the student whose religious expression enjoys full constitutional protections during the school day. The Constitution, laws, and court decisions all are constructed to protect your wise use of your God-ordained freedoms while on campus.

The American Center for Law and Justice is committed to protecting students' freedoms of speech, religion, and assembly. We have dedicated ourselves to the task of guaranteeing that local school boards understand and obey the First Amendment, the Equal Access Act, and the controlling decisions of the Supreme Court of the United States. The American Center for Law and Justice has proven our commitment, even instituting appropriate legal proceedings when necessary, by working to ensure that school boards pay due respect to the rights of religious students in America's public schools.

This booklet provides general information and guidance on students' rights. The American Center for Law and Justice is ready to answer your specific questions on these and other issues.

Please contact us at:

The American Center for law and Justice
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http://www.aclj.org

APPENDIX A:

UNITED STATES DEPARTMENT OF EDUCATION GUIDELINES ON RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS

Student prayer and religious discussion: The Establishment Clause of the First Amendment does not prohibit purely private religious speech by students. Students therefore have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activity. For example, students may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable nondisruptive activities. Local school authorities possess substantial discretion to impose rules of order and other pedagogical restrictions on student activities, but they may not structure or administer such rules to discriminate against religious activity or speech.

Generally, students may pray in a nondisruptive manner when not engaged in school activities or instruction, and subject to the rules that normally pertain in the applicable setting. Specifically, students in informal settings, such as cafeterias and hallways, may pray and discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech. Students

may also speak to, and attempt to persuade, their peers about religious topics just as they do with regard to political topics. School officials, however, should intercede to stop student speech that constitutes harassment aimed at a student or a group of students.

Students may also participate in before or after school events with religious content, such as *"see you at the flag pole"* gatherings, on the same terms as they may participate in other noncurriculum activities on school premises. School officials may neither discourage nor encourage participation in such an event.

The right to engage in voluntary prayer or religious discussion free from discrimination does not include the right to have a captive audience listen, or to compel other students to participate. Teachers and school administrators should ensure that no student is in any way coerced to participate in religious activity.

Graduation prayer and baccalaureates: Under current Supreme Court decisions, school officials may not mandate or organize prayer at graduation, nor organize religious baccalaureate ceremonies. If a school generally opens its facilities to private groups, it must make its facilities available on the same terms to organizers of privately sponsored religious baccalaureate services. A school may not extend preferential treatment to baccalaureate ceremonies and may in some instances be obliged to disclaim official endorsement of such ceremonies.

Official neutrality regarding religious activity: Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited by the establishment clause from soliciting or encouraging religious activity, and from participating in such activity with students. Teachers and administrators also are prohibited from discouraging activity because of its religious content, and from soliciting or encouraging antireligious activity.

Teaching about religion: Public schools may not provide religious instruction, but 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 all are permissible public school subjects. Similarly, it is permissible to consider religious influences on art, music, literature, and social studies. Although public schools may teach about religious holidays, including their religious aspects, and may celebrate the secular aspects of holidays, schools may not observe holidays as religious events or promote such observance by students.

Student assignments: Students may express their beliefs about religion in the form of homework, artwork, and other written and oral assignments free of 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.

Religious literature: Students have a right to distribute religious literature to their schoolmates on the same terms as they are permitted to distribute other literature that is unrelated to school curriculum or activities. Schools may impose the same reasonable time, place, and manner or other constitutional restrictions on distribution of religious literature as they do on nonschool literature generally, but they may not single out religious literature for special regulation.

Religious excusals: Subject to applicable State laws, schools enjoy substantial discretion to excuse individual students from lessons that are objectionable to the student or the students' parents on religious or other conscientious grounds. However, students generally do not have a Federal right to be excused from lessons that may be inconsistent with their religious beliefs or practices. School officials may neither encourage nor discourage students from availing themselves of an excusal option.

Released time: Subject to applicable

State laws, schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation or penalize those who do not attend. Schools may not allow religious instruction by outsiders on school premises during the school day.

Teaching values: Though schools must be neutral with respect to religion, they may play an active role with respect to teaching civic values and virtue, and the moral code that holds us together as a community. The fact that some of these values are held also by religions does not make it unlawful to teach them in school.

Student garb: Schools enjoy substantial discretion in adopting policies relating to student dress and school uniforms. Students generally have no Federal right to be exempted from religiously-neutral and generally applicable school dress rules based on their religious beliefs or practices; however, schools may not single out religious attire in general, or attire of a particular religion, for prohibition or regulation. Students may display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. Religious messages may not be singled out for suppression, but rather are subject to the same rules as generally apply to comparable messages.

APPENDIX B:

THE EQUAL ACCESS ACT

The Equal Access Act is designed to ensure that, consistent with the First Amendment, student religious activities are accorded the same access to public school facilities as are student secular activities. Based on decisions of the Federal courts, as well as its interpretations of the Act, the Department of Justice has advised that the Act should be interpreted as providing, among other things, that:

General provisions: Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups. Under the Equal Access Act, a school receiving Federal funds that allows one or more student noncurriculum-related clubs to meet on its premises during noninstructional time may not refuse access to student religious groups.

Prayer services and worship exercises covered: A meeting, as defined and protected by the Equal Access Act, may include a prayer service, Bible reading, or other worship exercise.

Equal access to means of publicizing meetings: A school receiving Federal funds must allow student

groups meeting under the Act to use the school media - including the public address system, the school newspaper, and the school bulletin board - to announce their meetings on the same terms as other noncurriculum-related student groups are allowed to use the school media. Any policy concerning the use of school media must be applied to all noncurriculum-related student groups in a nondiscriminatory matter. Schools, however, may inform students that certain groups are not school sponsored.

Lunch-time and recess covered:
A school creates a limited open forum under the Equal Access Act, triggering equal access rights for religious groups, when it allows students to meet during their lunch periods or other noninstructional time during the school day, as well as when it allows students to meet before and after the school day.

- The Department of Education's guidelines for the Equal Access Act were revised May 1998.

APPENDIX C:

STUDENT RIGHTS GUARANTEED UNDER THE CONSTITUTION AND FEDERAL LAW

Freedom to Meet with Other Students for Prayer, Bible Study, and Worship

Freedom to Wear Clothing Depicting Religious Messages and Symbols

Freedom to Express Religious Beliefs on Campus

Freedom to Share Religious Tracts on Campus

Freedom to Pray Voluntarily

Freedom to Carry a Bible or Other Religious Literature

Freedom to Prepare School Assignments and Projects From, and Expressing, a Religious Perspective

Freedom to Observe Religious Holidays on Campus

Freedom to Organize Religious Clubs

Freedom to Live According to Their Religious Beliefs While on Campus

END NOTES:

1. Throughout this booklet we refer to decisions made by the United States Supreme Court. With respect to the meaning of the United States Constitution and the application of federal laws, such as the Equal Access Act, decisions of the Supreme Court are the last word for the parties in a lawsuit. If decisions of the Supreme Court only affected persons involved in lawsuits, it would hardly be necessary to take account of those decisions. Under our Constitution, however, a decision by the Supreme Court regarding the meaning and application of the federal Constitution or federal laws controls on all federal appeals courts and trial courts as well as all state courts. By "controls," we mean that, after the Supreme Court has decided a question of federal law, all other courts are bound to apply the principles of law established by the Supreme Court in cases presenting similar facts and circumstances. In short, a decision of the Supreme Court is "the law of the land."

2. 393 U.S. 503 (1969).

3. *Id.* at 506.

4. For example, a Virginia statute states: "[E]very parent, guardian, or other person in the Commonwealth having control or charge of any child . . . shall . . . send such child to a public school or to a private, denominational or parochial school or have such child taught by a tutor or teacher of

qualifications prescribed by the Board of Education and approved by the division superintendent or provide for home instruction of such child as described in § 22.1-254.1." Va. Code § 22.1-254.

5. *Tinker*, 393 U.S. at 511 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)).

6. *Id.* at 509 (quoting *Burnside*, 363 F.2d at 749).

7. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).

8. *Id.*

9. *Shelton v. Tucker*, 364 U.S. 479, 487 (1960).

10. *Tinke*r, 393 U.S. at 506.

11. "Public forum" is the phrase used by courts and lawyers to describe properties that are owned by a government body, yet in which it is normal and usual to find citizens freely expressing their views and opinions. Such properties always include streets, sidewalks, and parks. Other places such as auditoriums, meeting halls, and government buildings can be made into a "public forum" if the government owner of the property chooses to do so.

12. *Tinker*, 393 U.S. at 512-13.

13. One federal court has explained the irrelevance of the public forum doctrine to the question of a student's free speech rights: "whether or not a school campus is available as a public forum to others, it is clear that the students, who of course are

required to be in school, have the protection of the First Amendment while they are lawfully in attendance." *Rivera v. E. Otero Sch. Dist.* R-1, 721 F. Supp. 1189, 1193 (D. Colo. 1989). That view is consistent with *Tinker's* recognition that "personal intercommunication among the students" in high schools is an activity to which schools are dedicated. *Tinker*, 393 U.S. at 512 (and accompanying footnote).

14. *Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (citations omitted); *Heffron v. Int'l Soc'y for Krishna* Consciousness, Inc., 452 U.S. 640 (1981); *Niemotko v. Maryland*, 340 U.S. 268 (1951); *Saia v. New York*, 334 U.S. 558 (1948); *Lovell v. City of Griffin*, 303 U.S. 444 (1938).

15. *Thomas v. Collins*, 323 U.S. 516, 537 (1945).

16. 20 U.S.C. § 4071 et seq.

17. The Equal Access Act only applies to schools defined as secondary under state law. In turn, although secondary schools certainly include high school grades, that law and decision do not address the issue of student religious clubs and organizations in the junior high grades. One of the principle questions that led to the adoption of the Equal Access Act was whether high school students possessed sufficient maturity of thought to understand that a school was not endorsing religion by tolerating it. The Court found no reason to reject Congress' conclusion that high school students are sufficiently mature to understand this fact. So far, neither the

Congress nor the Court have made a similar determination about the maturity of junior high school students.

18. 496 U.S. 226 (1990).

19. Various public interest groups expressed heated opposition to the enactment of the Equal Access Act. A key feature of opposition to the Act was the claim that Congress violated the "wall of separation between church and state" by imposing the duty of treating student religious organizations equally with other noncurriculum clubs. Too often, the "separation of church and state" phrase is allowed to take the place of any actual constitutional provision.

Simply put, the Constitution of the United States never mentions "separation of church and state." The "wall of separation" was first described by Roger Williams, the founder of the Rhode Island colony. A Baptist minister, Williams described the wall that separates the church from government intrusion as being protective, much like the wall that separates a garden from a wilderness. Later, writing to an association of Baptists, Thomas Jefferson borrowed the phrase. When he did so, however, in 1802, thirteen years had passed after the Bill of Rights had been drafted in Congress and sent to the states for ratification.

The actual provision of the Constitution that describes the proper relationship between the general government and religion is found in the First Amendment.

That amendment begins: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]"

Moreover, as government officials relentlessly pursue "strict separation between church and state," the risk of becoming actively hostile to religion becomes great. "[I]f a State refused to let religious groups use facilities open to others, then it would demonstrate not neutrality but *hostility* toward religion." *Mergens*, 496 U.S. at 248. Hostility to religion is just as bad, under the First Amendment. The Constitution does not demand that religion be kept out of our public schools; it only prohibits school sponsored religious activities. Free exercise of religion is our right under the Constitution.

20. *Id.* at 239-40.

21. *Id.* at 248.

22. *Id.* at 247.

23. *Garnett v. Renton Sch. Dist. No. 403*, 987 F.2d 641 (9th Cir. 1993); *see also Hoppock v. Twin Falls Sch. Dist. No. 411*, 772 F. Supp. 1160 (D. Idaho 1991) (students' rights to form religious club under federal law trumps state constitutional ban on use of school property by religious groups).

24. *Lovell v. City of Griffin*, 303 U.S. 444 (1938); *Widmar v. Vincent*, 454 U.S. 263, 269 (1981).

25. *Rivera v. E. Otero Sch. Dist. R-1*, 721 F.Supp. 1189, 1194 (D. Colo. 1989).

26. *Lovell, 303 U.S. 444*; *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640 (1981).

27. *Lovell*, 303 U.S. at 452 (emphasis added).

28. *Id.* at 448.

29. *Murdock v. Pennsylvania*, 319 U.S. 105, 108-09 (1943) (footnotes omitted).

30. U*nited States v. Kokinda*, 497 U.S. 720, 734 (1990) (plurality).

31. *Id.*; *see also Lee v. Int'l Soc'y for Krishna Consciousness*, 505 U.S. 672, 690 (1992) (O'Connor, J., concurring in judgment).

32. *Tinker*, 393 U.S. at 508.

33. *Id.* at 514. Several courts have held that the distribution of religious literature by high school students is protected speech under the First and Fourteenth Amendments. *See Rivera v. E. Otero Sch. Dist. R-1*, 721 F. Supp. 1189 (D. Colo. 1989); *Thompson v. Waynesboro Area Sch. Dist.*, 673 F. Supp. 1379 (M.D. Pa. 1987); *Nelson v. Moline Sch. Dist. No. 40*, 725 F. Supp. 965 (C.D. Ill. 1989). *Hemry v. Sch. Bd. of Colo. Springs School Dist. 11*, 760 F. Supp. 856 (D. Colo. 1991). In *Hemry*, school officials ultimately conceded that students had the right to distribute the religious material on campus both inside and outside the building. *Hemry v. Sch. Bd. of Colo. Springs, No. 90-S-2188*, Stipulation for Dismissal (D. Colo. Nov. 12,

1991) (unpublished). *Accord Harden v. Sch. Bd. of Pinellas County*, No. 90-1544-CIV-T-15A, Consent Decree and Order (M.D. Fla. 1991) (students permitted to distribute religious newspaper on campus).

34. *Mergens*, 496 U.S. at 249-50 (citation omitted) (emphasis added).

35. *Id.* at 250.

36. 505 U.S. 577 (1992)

37. *Id.* at 586-87.

38. 120 S. Ct. 2266 (2000).

39. *Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (citing *Heffron v. Int'l Soc'y for Krishna Consciousness*, Inc., 452 U.S. 640 (1981); *Niemotko v. Maryland*, 340 U.S. 268 (1951); *Saia v. New York*, 334 U.S. 558 (1948).

40. *Tinker*, 393 U.S. at 509.

41. *Widmar*, 454 U.S. 263.

42. *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

43. *Tinker*, 393 U.S. at 506.

44. *Mergens*, 496 U.S. at 248. *Accord Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Grace Bible Fellowship, Inc. v. Main Sch. Admin. Dist. #5*, 941 F.2d 45 (1st Cir. 1991); *Gregoire v. Centennial Sch. Dist.*, 907 F.2d 1366 (3d Cir.), 1990 cert. denied, 498 U.S. 899 (1990); *Concerned Women for America v. Lafayette County*, 883 F.2d 32 (5th Cir. 1989).

45. *Shumway v. Albany County Sch. Dist. No. 1*, 826 F. Supp. 1320 (D. Wyo. 1993); *Randall v. Pegan*, 765 F. Supp. 793 (W.D.N.Y. 1991); *Verbena United Methodist Church v. Chilton County Bd. of Educ.*, 765 F. Supp. 704 (M.D. Ala. 1991).

46. 472 U.S. 38 (1985).

47. *See Wallace*, 472 U.S. at 62 ("I agree fully with Justice O'Connor's assertion that some moment-of-silence statutes may be constitutional, a suggestion set forth in the Court's opinion as well") (Powell, J., concurring) (citation and footnote omitted).

48. 472 U.S. at 40 n.1.

49. *Id.* at 59-61.

50. *Id.*

51. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983).

52. United States Department of Education Guidelines, Richard W. Riley, Page 5.

53. *Florey v. Sioux Falls Sch. Dist. 49-5*, 619 F.2d 1311, 1317 (8th Cir. 1980).

54. 619 F.2d at 1314.

55. 374 U.S. 203 (1963).

56. *Id.* at 225.

57. 449 U.S. 39 (1980).

58. *Id.* at 42.

59. Cf. *Gibson v. Lee County Sch. Bd.*, 1

F. Supp. 2d 1426 (M.D. Fla. 1998) denying injunction against implementation of curriculum of instruction on Old Testament; granting injunction against implementation of curriculum of instruction on New Testament). Cf. *Herdahl v. Pontotoc County Sch. Dist.*, 933 F. Supp. 582 (N.D. Miss. 1996) (school district violated Establishment Clause by having Bible class that went beyond providing objective information to proselytizing for fundamentalist Christianity); *Doe v. Human*, 725 F. Supp. 1499 (W.D. Ark. 1989) (same).

60. *Lamb's Chapel*, 508 U.S. 384.

61. *Id*. at 394.

62. *See Lynch v. Donnelly*, 465 U.S. 668, 675, 680 (1984); *see also Clever v. Cherry Hill Township Bd. of Educ.*, 838 F. Supp. 929 (D.N.J. 1993) (school district policy requiring classrooms to maintain calendars depicting religious and other holidays and permitting seasonal displays that include religious symbols did not violate the Establishment Clause).