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TEACHERS' RIGHT TO FREEDOM OF SPEECH IN THE CLASSROOM

The First Amendment, as interpreted by the United States Supreme Court, contains the idea that the government, and therefore a public school such as charter school, has no authority to restrict expression because of its message, ideas, subject matter, or content. While the Supreme Court has recognized the right to freedom of speech for teachers, it has also acknowledged that public schools have significant educational interests that must be balanced against those rights. A teacher's right to freedom of speech is governed by the broad authority that the legislature and courts have granted school boards to determine curriculum and control teacher speech in the classroom. This Legal Alert reviews a recently decided case that focused on whether a school district had a right to restrict a teacher's use of supplemental instructional materials that contained religious content.

In *Williams v. Vidmar* (Cupertino Union School District) a federal court dismissed three of the four claims brought by a teacher who alleged that Cupertino USD violated his First Amendment rights to freedom of speech by censoring his teaching because he was a Christian. The case began to receive national attention when the media reported that the teacher was being prevented from teaching students about the religious context of documents written by the founding fathers, such as the Declaration of Independence.

A parent complained about the nature of discussion and supplemental handouts in fifth grade teacher Stephen Williams' classroom. Principal Patricia Vidmar met with Williams, an Orthodox Christian, to discuss his choice of materials and expressed concern that the materials violated the constitution because teaching about religion is acceptable where promoting religion is not. Principal Vidmar required the teacher to provide a copy of materials to be distributed by Williams two days in advance. Some of the disputed material included an "Easter activity" sheet and a sheet that described the history of National Prayer Day on one side with President Bush's Proclamation of a Day of Prayer on the other.

Williams alleged in his complaint that his First Amendment rights were violated because the district censored his speech in the classroom. The Court dismissed the claim by finding that teachers do not have a constitutional right to determine what curriculum will be taught in the classroom. The Court also stated that the principal's plan to monitor Williams' supplemental materials was based on a legitimate pedagogical concern - seeking to avoid constitutional violations under the Establishment Clause which prohibits schools from endorsing religion - and therefore did not violate the teacher's free speech rights.

According to the Court, Williams has no right to express his religion in an elementary school classroom because a well-defined difference exists between being a teacher who is an avowed Christian, which Williams is free to be, and expressing Christian faith in the classroom, which is constitutionally impermissible. Thus, charter schools may monitor and restrict its teachers'

speech in the classroom in order to ensure instruction and any supplemental materials distributed to students are not in violation of the constitution.

If you should have any questions regarding this update, please contact Paul Minney at (pminney@smymlaw.com) or Chastin Pierman at (cpierman@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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