



November 30, 2012  
*VIA FACSIMILE AND U.S. MAIL*

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**Re: Censorship of Student Expression in Violation of the First Amendment**

Ladies and Gentlemen:

We were recently contacted by several McDowell County residents regarding a recent incident at West Marion Elementary School where a student's poem that referenced her grandfathers praying while serving during the Vietnam War was censored after a parent complained about the content of the poem. It is our opinion that this censorship of a student's speech was a violation of her First Amendment rights, and the School District must immediately take steps to revise its policies to ensure this type of censorship does not happen again.

The relevant facts are as follows. A first-grader at the school was told that she had to remove references to "God" in a poem she wrote to honor her grandfathers' service to our country during the Vietnam War. In her poem, she had included the lines "He prayed to God for peace, he prayed to God for strength," to describe the historical actions of her grandfathers' during the war. However, after a community member complained about the inclusion of the student's poem in a Veteran's Day Ceremony, the school forced her to remove the lines from her poem prior to presenting it at the ceremony.

It is a fundamental principle of constitutional law that school officials may not suppress or exclude the personal speech of students simply because the speech is religious or contains a religious perspective. *Good News Club v. Milford Cent. Sch. Dist.*, 533 U.S. 98 (2001); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981). This principle cannot be denied without eviscerating the essential First Amendment guarantees of free speech and religious freedom. As the Supreme Court has stated,

“Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.” *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).

Efforts to suppress student speech discussing religion demonstrate that many school officials mistakenly believe that allowing religious expression would violate “the separation of church and state” – a doctrine often cited in connection with the Establishment Clause of the First Amendment. To dispel this notion, it is important to realize that the Supreme Court has never held that the Constitution “require[s] complete separation of church and state.” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984). The Court has merely held that the Establishment Clause of the First Amendment requires the state to be neutral in its relations with religious believers and non-believers; it does not require the state to oppose religion or religious expression. *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947).

Importantly, the Supreme Court has noted that “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.” *Board of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 249-50 (1990). Therefore, it is unconstitutional for public officials to deny students the right to religious speech and expression by imposing on them a limitation intended for the government. No one could reasonably believe that a student’s religious expression—here a poem she wrote about her grandfathers’ experience in the Vietnam War—is government speech.

The private religious speech of students is protected under the First Amendment. *Widmar v. Vincent*, 454 U.S. 263 (1981) (holding that a University that has opened its facilities for use by student groups cannot exclude groups because of the religious content of their speech). Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker*, 393 U.S. at 506. The Supreme Court has stated that a student’s free speech rights apply “when [they are] in the cafeteria, or on the playing field, or on the campus during the authorized hours. . . .” *Id.* at 512-13.

School officials must permit students to convey private religious sentiments through their written and oral school assignments, and even through student presentations at celebratory events like the Veteran’s Day Ceremony. *Tinker*, 393 U.S. at 512-13. Under the direction of former President Clinton, U.S. Secretary of Education Richard Riley issued guidelines concerning religious expression in school activities and 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.” U.S. Dept. of Educ., *Religion and Public Schools*, Archived Information, Guidelines, available at <http://www2.ed.gov/Speeches/08-1995/religion.html>.

The censorship of this young student’s poem about her grandfathers is repugnant to the First Amendment rights of all students and sends an impermissible message of hostility towards religion. What’s next? A student being told that she can’t publicly recite the Gettysburg Address because President Lincoln refers to “this nation, under God” or the Declaration of Independence because of references to the “Laws...of Nature’s God” and the rights endowed to all people “by

their Creator.” Will students be prohibited from doing a report on “Moby Dick” because a character offers a prayer in Chapter 9? The so-called “separation of church and state” does not require schools to excise any reference to religion or God or prayer from the halls of the school. Rather, the First Amendment protects the right of students to discuss their faith—especially when they are discussing a historical event like this student in her poem honoring her grandfathers.

Although the School District’s Policy 3515 entitled “Religion in the Schools” specifically states that “[i]t is the policy of the board of education not to prevent, or otherwise deny participation in, constitutionally protected prayer in the system’s schools,” it is clear that this policy is not sufficiently protective of students’ First Amendment rights to express their religious beliefs at school. We thus ask that you respond to us by Friday, December 7, 2012 and provide written assurance that (1) the school district will not engage in further censorship of private student religious expression, whether in private student conversations, school assignments, or student presentations at school events, and (2) the school district will immediately revise its policy to ensure that students will not be discriminated against based upon the religious content or viewpoint of their speech. We will be happy to assist the school district in drafting such policy revisions. If we do not receive a response by December 7th, then we will immediately take steps to pursue a remedy to the school district’s censorship of student expression. Your prompt attention to this matter is appreciated.

Cordially,



David A. Cortman, Senior Counsel

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J. Matthew Sharp, Legal Counsel