



Principals Found Immune from Liability for Restricting Student Religious Speech

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The Fifth Circuit Court of Appeals recently held that two elementary school principals in Texas are immune from liability for allegedly preventing students from distributing religious gifts on school grounds. In *Morgan v. Swanson*, – the so-called “Candy Cane case” – a group of students and their parents alleged that the school principals violated the students’ First Amendment rights by prohibiting the students from distributing religious gifts on school grounds, including the distribution of candy cane-shaped pens attached with a Christian-based story about the history of the candy cane at a school-sponsored winter party. The court held that the principals were entitled to qualified immunity because the law surrounding students’ religious free speech rights is not clearly established. The qualified immunity doctrine protects government officials, including school officials, from liability for civil damages when their actions could reasonably have been believed to be legal. The court found that “no adequate guidance” exists for school administrators to assist them in trying to balance a student’s free speech rights with a district’s constitutional mandate to avoid endorsing religion.

Because current law fails to provide any real, specific guidance to school officials on how to balance these competing constitutional issues, the court declined to hold the principals liable for prohibiting the students’ speech and therefore dismissed the case.

While a majority of the court held that both principals were not liable for their actions, it nevertheless found that one of the principal’s alleged acts was unconstitutional. The court found that prohibiting one of the students from distributing “Jesus Loves Me” pencils on school grounds after school hours solely because of the pencils’ religious message violated the student’s First Amendment rights, particularly because the distribution occurred outside of a “school sponsored activity.” A separate majority further concluded that the ban on the distribution of all of the religious gifts was unconstitutional because it discriminated against the students’ speech solely on the basis of religious viewpoint. In a concurring opinion, the separate majority found that First Amendment principles apply to elementary school students and that viewpoint discrimination against private, student-to-student, non-disruptive speech is forbidden by the First Amendment unless such speech can be attributed to the school. Because this majority concluded that none of the students’ distribution of the religious gifts could reasonably be viewed as being endorsed by the school, the students’ actions constituted private, non-disruptive student-to-student speech against which the school officials could not discriminate.

Although the court’s opinion is not binding on school districts in Illinois, it provides further guidance to school officials both in and outside of the Fifth Circuit’s jurisdiction regarding permissible restrictions on students’ religious speech.



More Information

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