



Teacher Violates Establishment Clause by Criticizing Creationism

In an unpublished opinion, the Federal District Court for the Central District of California held that a high school teacher violated the Establishment Clause of the First Amendment when he stated in class that creationism is “superstitious nonsense.” (*C.F. v. Capistrano Unified Sch. Dist.* (C.D. Cal., May 1, 2009, No: SACV 07-1434) 2009 WL 1202532.) While the court did not find the district liable in this case, it did indicate when a school district may be found liable for violating the Establishment Clause.

The Establishment Clause, which is made applicable to the states by the Fourteenth Amendment to the Constitution, prohibits any law “respecting the establishment of religion,” and prevents state actors from either advancing religion, or “affirmatively opposing or showing hostility to religion.” (*School Dist. of Abington v. Schempp* (1963) 374 U.S. 203, 225.) In *C.F. v. Capistrano*, C.F. accused his Advanced Placement European History teacher of making statements hostile to Christianity during class discussions.

The court found two of the teacher's statements—quoting Mark Twain on religion and referring to some socio-economic groups as viewing governmental action through “Jesus glasses”—did not violate the Establishment Clause. Both of these statements were made in the context of a classroom discussion regarding the historical intersection of religion, politics, and science. As such, the court held both statements had a secular purpose and lacked the primary effect of inhibiting religion.

However, the court found that a third statement did violate the Establishment Clause. Referring to a fellow teacher who was a well known proponent of creationism, the defendant teacher stated, “I will not leave [the other teacher] alone to propagandize kids with this religious, superstitious nonsense.” The court said it “cannot discern a legitimate secular purpose in this statement,” and found its primary effect was the inhibition of religion. In that context the court observed, the defendant teacher could have criticized the other teacher “for teaching religious views in class without disparaging those views.”

Although the court found the “superstitious nonsense” comment violated the Establishment Clause, it held that liability did not extend to the school district. The court found that there was insufficient evidence to demonstrate that the district either knew of the teacher's statements or failed to take action to address those statements. A non-specific complaint by a parent to the principal and a single complaint to a guidance counselor were deemed not enough to establish district knowledge of the one comment that was hostile to religion. As a result, the court granted summary judgment in favor of the district.

The court recognized the tension between students’ constitutional rights and the very nature of education, especially here in an Advanced Placement class, which often requires discussion of issues which some students may find offensive to their religious beliefs. However, the court offered no bright line rule to determine when discussion points turn into Establishment Clause violations. In this case, the only distinction between the unlawful statement and those found harmless, was that the unlawful statement was

not made as part of a broader class discussion, but as a commentary on a science teacher's desire to teach creationism instead of evolution.

School districts and teachers must remain cautious not only about expressing views that endorse religion, but also must be mindful that expressing hostility toward religious views can trigger judicial scrutiny. In this case, the district escaped liability because the plaintiff failed to demonstrate that the district was aware that the teacher made comments hostile to religion. Thus, if a school district learns that a teacher is making comments that either endorse or are hostile to religion, it must take action to prevent the teacher from making similar statements in the future in order to avoid violating the Establishment Clause.

If you have any questions regarding this case, please contact one of our four offices.

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This F3 NewsFlash is a summary only and not legal advice. We recommend that you consult with legal counsel to determine how this case may apply to your specific facts and circumstances.

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