



CLIENT NEWS BRIEF

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TEACHER HAS CONSTITUTIONAL RIGHT TO DISPLAY BANNERS CONTAINING RELIGIOUS REFERENCES IN THE CLASSROOM

In Johnson v. Poway Unified School District (Feb. 25, 2010) __F.Supp.2d__, a United States District Court for the Southern District of California ruled that the Poway Unified School District ("District") violated a high school teacher's free speech rights when it ordered him to remove two banners from the walls of his classroom because they "over-emphasized" God.

For approximately two decades, Bradley Johnson, a math teacher in the District, had displayed two banners in his classroom, one with the phrases "In God We Trust," "One Nation Under God," "God Bless America," and the other with the phrase "All Men Are Created Equal, They Are Endowed By Their CREATOR." Over the years that Mr. Johnson taught in the District, he received no complaints about the banners.

In January 2007, Mr. Johnson's principal ordered him to remove his banners after an inquiry from a fellow teacher and a decision by the school board to direct their removal. The principal told Mr. Johnson that the banners were impermissible because they conveyed a Judeo-Christian viewpoint. Mr. Johnson sued the District, asserting federal and state constitutional claims.

The court held that the District violated Mr. Johnson's rights under the First and Fourteenth Amendments of the United States Constitution and Article I, sections 2 and 3 of the California Constitution. As a result, the court ordered the District to allow Mr. Johnson to return the two banners to his classroom and awarded him nominal damages, along with reasonable attorney's fees.

The court found that the District impermissibly restricted Mr. Johnson's speech based on viewpoint, rather than for a content-neutral reason. The U.S. Supreme Court has made clear that viewpoint discrimination occurs when the government "denies access to a speaker solely to suppress the point of view he espouses on an otherwise includible subject." (Cornelius v. NAACP Legal Defense and Education Fund Inc. (1985) 473 U.S. 788, 806.) As a result, the court found that Mr. Johnson's speech was improperly suppressed because of its message.

The court noted that school teachers and students enjoy First Amendment rights inside the "schoolhouse gate." (Tinker v. Des Moines Independent Community School District (1969) 393 U.S. 503 at 396.) The court determined that Mr. Johnson's classroom walls constituted a "limited public forum" because the District had a long-standing policy, practice, and custom of permitting teachers to display personal messages on their classroom walls. The District's policy permitted teachers to display items that reflect the teacher's personality, opinions, and values, as well as political and social concerns so long as the wall display did not materially disrupt school work or cause substantial disorder or interference in the classroom. As a result of the District's policy, the court found that a teacher's classroom walls served as a limited public forum

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for the teacher to convey non-curricular messages. The court stressed that “once a government has opened a limited forum, it must respect the lawful boundaries it has itself set.” By hanging and maintaining the two banners, Mr. Johnson was engaged in First Amendment speech otherwise permitted by District policy. Therefore, when the principal ordered Mr. Johnson to remove the banners, she and the District were silencing protected speech.

The court considered the District’s argument that it ordered Mr. Johnson to remove his banners because the District feared that an observer would think the District was endorsing a particular religion in violation of the Establishment Clause. The court rejected this argument, noting that any perceived endorsement of a single religion was dispelled by the fact that the banners did not describe or advance any particular religion. Also, other teachers were permitted to display other religious messages and anti-religious messages on their classroom walls.

This case demonstrates that public employers may be vulnerable to federal and state constitutional claims for attempting to restrict individual employees’ free speech rights. However, the case also reaffirms legitimate limits on speech as long as any restrictions are content-neutral or viewpoint-neutral. Viewpoint-neutrality requires that one speaker’s message is not favored over another because of the content. It is also worth noting the court’s decision was fact specific. Had there been disruption in the classroom caused by the banners or had the District barred all personal items on classroom walls, the outcome may have been different.

On March 8, 2010, the District’s Board of Education voted to appeal the court’s ruling in this case. We will continue to follow this case and provide an update after the Court of Appeals rules on this matter.

If you have any questions regarding this decision, or employee rights in the workplace generally, do not hesitate to contact one of our [seven offices](#) located statewide.

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