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Teaching Religion in Public Schools

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INTRODUCTION

The Establishment Clause of the First Amendment¹ prohibits the government from taking any action that promotes religion, promotes one religion over another, prefers religion over no religion, or preferring no religion over religion.² There may be no state sponsored religion, no promotion of religion in government spaces, and no preferential treatment given to any particular religion³. Americans enjoy the freedom *of* religion and freedom *from* religion. We are free to practice or not practice whatever religion we choose, and the state may not, with some exceptions, interfere.

As technology advances, connections across the globe are made, and the world gets smaller and smaller. People from different countries, religions, and cultures increasingly work together, go to school together, and mingle in society. In previous generations, it could have been unlikely that someone encountered a person of a vastly different religion or cultural background. Now, communities that at one point in time were more or less homogenous are becoming more diverse. It is becoming increasingly important that people learn and appreciate other cultures, including other religions. World history classes are no longer abstract classes containing information that will likely never be used again in a student's daily life.

¹ U.S. Const. amend. I

² *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971); *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947).

³ *Id.*

THE ROLE OF PUBLIC SCHOOLS

In *Bethel Sch. Dist. v. Fraser*, the Supreme Court quoted two authors saying that the role of public education is to “prepare pupils for citizenship in the Republic. . . . It must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation.”⁴ Part of citizenship in the United States is understanding the varying cultures and religions of the people who reside both in the country and across the world. Religion gives context to so much of world history and current events, and a basic understanding is a fundamental necessity of one’s education.⁵

The study of different cultures and religions helps students foster a better understanding of the world, both history and current events.⁶ Being knowledgeable about different religions helps students put current conflicts into context, and also helps them understand relationships between countries.⁷ In addition to understanding the bigger picture issues, learning about different cultures and religions helps expose students to concepts and beliefs that they might not

⁴ *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 681 (1986) (quoting C. Beard & M. Beard, *New Basic History of the United States* 228 (1968))

⁵ *Vaughn v. Reed*, 313 F. Supp. 431, 433 (W.D. Va. 1970) (In this case, a school district had a program where a private religious organization sent religious teachers to public elementary schools during school hours to provide religious instruction once a week for an hour. Parents had the option to not consent to the lessons, and those children would leave and have a study hall while the other children attended religious lessons. The court held that although the program in its current state was unconstitutional, there were ways to make the classes become constitutional. This included making the classes compulsory for each student, using regular public-school teachers instead of special teachers affiliated with a religious organization, and refraining from indoctrination.

⁶ *Cal. Parents for the Equalization of Educ. Materials v. Noonan*, 600 F. Supp. 2d 1088, 1097 (E.D. Cal. 2009) (In this case, the group California Parents for the Equalization of Educational Materials objected to the use of a history/social science textbook. The group claimed that the textbook in question did not adequately portray Hinduism and was discriminatory and denigrating.)

⁷ *Id.*

otherwise encounter, especially in highly homogeneous communities. One of the tools to combat discrimination is becoming knowledgeable about other people, other cultures, and other

religions, so that the different “thing,” be it race, religion, gender, sexual orientation, class, disability, or anything else, becomes less mysterious and “other”. Additionally, teaching about various religions helps ensure the freedom of religion for everyone, because as more people become knowledgeable and tolerant of different religions, those who wish to practice them may do so with less fear of persecution.⁸

There is a difference between teaching religion for proselytizing purposes, and teaching religion from an academic secular standpoint. Presently, teachers are allowed to teach about different religions, but must not teach religion. However, they often must walk a tight line with what they are teaching, as stepping even ever so slightly over the line can lead to legal ramifications. It is very much a grey area insofar as what is and is not acceptable.

In order to provide more guidance and transparency, teachers need statutory protections outlining what is and is not acceptable in a public-school setting. The guidelines on what is acceptable to teach in terms of religion in public schools should be clear and unambiguous, as to prevent future litigation and to protect teachers, as well as further the educations of public-school students. Expectations could be managed, and lawsuits could be avoided if there were clear limits on what is allowed in public schools, instead of laws being cobbled together, state by state, from various case law.

⁸ *Religion in the Curriculum*, Anti-Defamation League, 2012, <https://www.adl.org/education/resources/tools-andstrategies/religion-in-public-schools/curriculum>.

CURRENT GUIDELINES FOR RELIGIOUS CONTENT IN PUBLIC SCHOOLS

There are already clear guidelines on various issues of religion in public schools. The Establishment Clause prohibits having clergy to say prayers at formal high school and middle

school graduations.⁹ Daily Bible readings are not allowed, nor are daily recitations of prayers.¹⁰ Prayers are also not allowed to be said at the beginning of school assemblies.¹¹ Public schools cannot distribute Bibles to students.¹² Schools may not post the Ten Commandments or other religious teachings in classrooms.¹³ Teachers may not be compelled to teach creationism with the theory of evolution or not teach evolution at all.¹⁴ These actions are fairly easy to avoid and do not create a problem for educators.

Unfortunately, the law is not so clear on what curricular tools can or cannot be used in a public-school setting regarding religion. General instruction of religion is prohibited in public schools, even if it is a separate class opted in by the parents.¹⁵ Reading the Bible, or any other religious text, for religious purposes is also prohibited.¹⁶ However, the use of religious texts is permissible if is used for a secular purpose, and not for worship.¹⁷ The grey area is when an educational tool, such as the contents of a lesson, a worksheet, a PowerPoint, or a video, is being used for a secular purpose, and when something is being used to promote religion. Sometimes

⁹ *Lee v. Weisman*, 505 U.S. 577 (1992).

¹⁰ *Engel v. Vitale*, 370 U.S. 421 (1962); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963).

¹¹ *Collins v. Chandler Unified Sch. Dist.*, 644 F.2d 759 (9th Cir. 1991).

¹² *Berger v. Rensselaer Central Sch. Corp.*, 982 F.2d 1160, 1171 (7th Cir. 1993).

¹³ *Stone v. Graham*, 449 U.S. 39 (1981).

¹⁴ *Edwards v. Aguillard*, 482 U.S. 578 (1987); *Epperson v. Arkansas*, 393 U.S. (1968).

¹⁵ *Ill. ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203, 212, 68 S. Ct. 461, 466 (1948) (Instruction of religion prohibited in public schools during regular school hours even though it was a separate class opted in by the parents.) ¹⁶ *Sch. Dist. of Abington Twp.*, 374 U.S. 203. ¹⁷ *Id.* at 225.

the notion of whether something is being “promoted” can be subjective. Some parents may find that the introduction of information is offensive, and the offensive nature compels them to believe that it is, in fact, promotion, instead of presentation.

TEACHING RELIGIONS WITH A SECULAR PURPOSE

Statements made by teachers and written assignments

A great example of where this tension comes into play is in *Wood v. Arnold*¹⁶. In this case, a public school teacher in a world history class, among other subjects, taught students about Islam in connection with Middle Eastern empires.¹⁷ In teaching this course, the teacher, Trevor Bryden, a Christian,¹⁸ made a statement that “Most Muslim’s [sic] faith is stronger than the average christian [sic]”¹⁹ and also assigned a worksheet in which students were required to fill out missing parts of the “Five Pillars of Islam.”²⁰ One of the pillars, known as the Shahada, states that “there is no god but Allah and Muhammad is the messenger of Allah.”²¹ The statement was made via PowerPoint on a presentation about radical Muslims, and how the radical fundamentalist Muslims make up only a very small percentage of Muslims worldwide.²²

¹⁶ *Wood v. Arnold*, 321 F. Supp. 3d 565, 571 (D. Md. 2018), aff’d 915 F.3d 308, 312 (4th Cir. 2019), cert. denied 140 S. Ct. 399 (2019).

¹⁷ *Id.*

¹⁸ *Id.* at 576.

¹⁹ *Id.* at 571.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 577.

The student in question, eleventh grader Caleigh Wood, refused to complete these assignments.²³ Upon seeing the aforementioned homework assignments, Ms. Wood's father became incensed, warning the Vice Principal that he was "going to create a shit storm like you have never seen" and further advised him to "take that fucking Islam and shove it up your white fucking ass!"²⁴ Mr. Wood, a marine, was banned from the campus after this outburst as staff feared for their safety.²⁷

Mr. Wood followed through on his threatened "shitstorm" and filed a suit with claims under the First Amendment, the Fourteenth Amendment, Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, as well as Article 36 of the Declaration of Rights of the Maryland Constitution.²⁵ For the purposes of this discussion the Maryland District Court's discussion of the Establishment Clause is the most relevant.

The Establishment Clause states that "Congress shall make no law respecting an establishment of religion."²⁶ In order to decide the constitutionality of a government action in a public-school context, courts apply the three prong *Lemon* test. First, the government activity must have a secular purpose.³⁰ Second, its primary result "must be one that neither advances nor inhibits religion."²⁷ Finally, the action must not foster "an excessive government entanglement with religion."²⁸ While a seemingly off-hand comment, the comparative faith statement, in

²³ However, she still received a passing grade, and is unclear what impact the missing assignments had on her final grade.

²⁴ *Id.* at 572. ²⁷

Id.

²⁵ *Id.* at 573.

²⁶ U.S. Const. amend. I ³⁰

Lemon, 403 U.S. at 612.

²⁷ *Id.*

²⁸ *Id.* at 618 (quoting *Walz v. Tax Com. of N.Y.*, 397 U.S. 664, 674 (1970)). ³³
Wood, 321 F. Supp 3d at 577.

which Mr. Bryden stated that Muslims generally have a stronger conviction to their faith than Christians, proved to be the most troublesome issue for the court to handle.

However inaccurate or distasteful the comparative faith statement was, according to the court, it was made in the greater context of a lesson regarding the rise of radical fundamentalist Muslims, and had a secular educational purpose.³³ Mr. Bryden was attempting to compare the seriousness in which most Muslims take their faith in comparison with other religions, not one specific religion, so there was no direct attack on one particular faith. Additionally, Mr. Bryden was not advocating that students adhere to Islam, or purporting that it is a superior religion, because its adherents are stronger in their convictions than other religions. Again, as Mr. Bryden is a Christian, it is hard to argue that he was trying to indoctrinate students to a religion he does

not ascribe himself to.²⁹ Therefore, the court found that the comparative statement met the first prong of the test.

Next, the court looked at whether the primary effect of the statement was to advance or endorse religion. The Woods claimed that the comparative faith statement was deeply offensive to their Christian sensibilities, and therefore, the statement endorsed Islam.³⁰ The court disagreed, saying that no matter the supposed offensive nature, a singular sentence on a

²⁹ A critical fact in this case is that the teacher was a Christian. There are many questions to be had if this were a case where the teacher was, in fact, a Muslim. There could certainly be stronger arguments that that statement was made to further Islam if the teacher was Muslim. There are further questions of what a teacher is allowed to say if he or she is asked a question about their own religion. For example, a teacher in my high school was Muslim and wore a hijab. A student asked what it was called, and she paused, then said she just calls it a scarf. I wonder now if she worried about any Establishment Clause issues in using the correct verbiage. Another question is if there is a distinction between a teacher speaking and a student speaking. Although, there likely is a difference due to the power dynamics between teachers and their students.

³⁰ *Id.* at 577.

PowerPoint slide in an academic context, where the subject matter is radical Islam, was not endorsing Islam.³¹ Therefore, the comparative statement met the second prong of the test.

Finally, the court addressed whether the comparative statement, or even the entire curriculum, created an excessive entanglement between the government and religion. According to *Lemon*, entanglement is assessed by the “the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority.”³² The court held that the comparative statement did not give any direct benefit or support to Muslims, nor did it propose any relationship between the school and any Islamic organization.³³ Therefore, the comparative statement met the third prong of the test. Because the plaintiffs failed to prove that the school failed the *Lemon* test, the defendant's motion for summary judgement was granted as to the Establishment Clause claim.

This case is an example of why teachers and educators need statutory protection in teaching religions for educational purposes. Teachers and school districts should not be fearful in the content they assign to their students out of fear of being sued for an Establishment Clause violation. This fear may lead teachers to avoid teaching about other religions altogether, which also is not a suitable answer. Part of the issue likely lies in the biases in the parents of the students attending school, fearing something “different” or “other” being taught to their children.

³¹ *Id.*

³² *Lemon*, 403 U.S. at 615.

³³ *Wood*, 321 F. Supp 3d at 578.

Instruction through videos

For another example, a new case, consider *Hilsenrath v. Sch. Dis. Of the Chathams*, which takes place in my hometown of Chatham, New Jersey³⁴. In this case, the mother of a middle school boy is bringing a case against the school district, board of education, and various staff, including her child's seventh grade social studies teacher, for using two YouTube videos about Islam in her world history curriculum.³⁵ Interestingly, this case is being handled by The Thomas More Law Center, the same group that acted as the Woods' attorneys, which describes its mission as "Preserv[ing] America's Judeo-Christian heritage" and "Defend[ing] the religious freedom of Christians."³⁶

The Chatham Middle School world history curriculum includes lessons on the major religions of the world, including Christianity, Judaism, Buddhism, Hinduism. and Islam. The school's superintendent says that the students spend about three days studying Islam as part of a

unit on the Middle East.³⁷ The mother in question, Ms. Hilsenrath, alleges that the school district promoted Islam over Christianity and Judaism because only Islam was covered in the Middle East unit, despite Christianity and Judaism also originating from the same area. Christianity and Judaism were covered in other units of the class.

³⁴ Complaint and Demand for Jury Trial, *Hilsenrath v. Sch. Dist. Of The Chathams*, Case No. 2:18-cv-00966 (D.N.J.) <https://www.thomasmore.org/wp-content/uploads/2018/01/TIMED-STAMPED-HISLSENRATHCOMPLAINT.pdf>.

³⁵ *Id.*

³⁶ Thomas More Law Center, <https://www.thomasmore.org/>.

³⁷ Katie Kausch, *Lawsuit Over Islam In Chatham Curriculum Heading To Court*, PATCH (June 21, 2018), <https://patch.com/new-jersey/chatham/lawsuit-over-islam-chatham-curriculum-heading-court>.

Ms. Hilsenrath further alleges that students were “coerced” to watch two videos promoting Islam.³⁸ The first video, titled “5 minutes introduction to islam,” is a slideshow over music with pictures and some statements.³⁹ The first slide describes the video as “A brief introduction to Islam for Non-Muslims.” There are then slides in a question and answer format, with questions such as “What is Islam,” and “Who is Allah?” The problematic part of this video is the last slide, which says “May God help us all find the true faith, Islam.” This message is displayed for about five seconds during a five-minute video.

The second video is in cartoon format and teaches about the five pillars of Islam.⁴⁰ One of the five pillars is belief, and there is a clip that says “There is no god except Allah and Prophet Muhammad is His messenger,” that is displayed for about ten seconds of the 5:38 video. This statement is known as the “Shahada,” and it is one of the most important phrases in Islam.⁴¹ In fact, to become a Muslim, one only has to repeat the statement with belief in his or her heart.⁴²

At first glance, these two videos seem at the least, poorly chosen. However, Chatham is a fairly homogenous town, and greater context needs to be given to the entire situation. The

residents of Chatham are 88% White, 8% Asian, 1.5% African American, and 1.5% two or more races.⁴³ According to BestPlaces.net, 60% of households claim to be religious.⁴⁴ Fifty five

³⁸ Complaint and Demand for Jury Trial, 20, *Hilsenrath v. Sch. Dist. Of The Chathams*, Case No. 2:18-cv-00966 (D.N.J.).

³⁹ Hiday, *5 minutes introduction to islam*, YOUTUBE (May 23, 2006), <https://www.youtube.com/watch?v=ZHujiWd49I4>.

⁴⁰ Shoumans, *The 5 Pillars of islam 1st episode animated IN ENGLISH.*, YOUTUBE (Jul 26, 2011) <https://www.youtube.com/watch?v=ikVGwzVg48c>.

⁴¹ *Shahadah: the statement of faith*, BBC (last updated Jul. 23 2008) <https://www.bbc.co.uk/religion/religions/islam/practices/shahadah.shtml>.

⁴² *Id.*

⁴³ *Chatham NJ Population*, (May 12 2019) <http://worldpopulationreview.com/us-cities/chatham-nj/>.

⁴⁴ *Religion in Chatham, New Jersey*, https://www.bestplaces.net/religion/city/new_jersey/chatham.

percent of all households self-identify as Christian, with 42% identifying as Catholic.⁴⁵ In contrast, not even one percent (.9%) identifies as Muslim.⁴⁶ Almost all of those who report to be religious are Christian. There are at least 10 churches in Chatham, no Synagogues, and no Mosques. Additionally, although it is not possible to always learn a person's religious leanings from a name or a picture, the teacher in question, Ms. Megan Keown appears not to be a follower of Islam.

As the case has yet to go to trial, we can use the *Lemon* test on the videos in question to determine whether or not there is an Establishment Clause violation. First, does the showing of these videos have a secular purpose? Are the motivations of the assignments doctrinal or educational? Second, is the primary effect one that advances religion? Is Islam helped or does it benefit from these videos? Finally, does the action create an excessive government entanglement with religion?

First, what is the purpose of these videos - secular or non-secular? There is, indeed, a secular purpose in teaching students, especially students of a predominantly Christian town, about other religions. Knowledge is power, and information helps combat discrimination. Clearly, the purpose of these short videos was to educate students on the basics of Islam and what Muslims believe. They appear to be produced by Muslim groups, but they are authentic in showing what Muslims believe about their own religion and how they view the world.

⁴⁵ *Id.*

⁴⁶ *Id.*

The second prong of the test is not quite as easy as the first. Is the primary effect of these videos to promote Islam? Yes and no. It is possible that the producers of these videos could have wanted their primary effects to be promoting Islam, instead of being solely educational and informational. It is hard to decide if an informational video made by someone of a that faith is proselytizing. Where is the line between providing information on what one believes and attempted indoctrination? People that are passionate about anything are likely to speak about that subject with passion and vigor. If this case involved students reciting a prayer or listening to an Imam preach, then this case would be much clearer, as any sort of prayer in a public school runs the risk of being perceived as indoctrination.⁴⁷ The line can also be subjective on the recipient of the information. One may feel as though the speaker is evangelical, while another may not. Although the intended purpose of these videos, in the context of a seventh-grade world history class, was educational, it is unclear how the students actually perceived them.

Additionally, there is an argument to be made that using a firsthand account of what Islam is about from a Muslim's perspective gives a better picture and understanding to the student, just as firsthand account from a Holocaust survivor would. Primary sources have educational value. A picture of a Nazi propaganda poster would not been seen as promoting white supremacist beliefs. These videos are primary sources for how Muslims view their own religion and the world, and understanding the world view of others is important in teaching about diversity and tolerance. However, there is, of course, the counter argument that educational materials should be produced by educators, so that they are able to be more neutral in regard to the subject matter.

⁴⁷ *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

In the video that states that Islam is the “true faith,” of course an alternative could be to not include that part, however, Muslims do believe that their faith is the “true faith,” as do all religions. Christians believe Christianity is the “true faith,” as Jews believe that Judaism is the “true faith,” as do proponents of most religions. Even within Christianity, the varying sects all believe that their specific interpretation of Christianity is the “true” one. All religions believe that their interpretation is the correct interpretation, otherwise they would not be practicing their respective faiths.

Finally, the statement was shown for five seconds of a five-minute informational video. The same arguments can be made for the second video, which states “There is no god except Allah and Prophet Muhammad is His messenger.” Again, this is one of the five pillars of Islam, and something that Muslims believe, just as Christians believe that Jesus is the son of God and that he was resurrected.

Nothing in the videos or the curriculum urged students to convert to Islam or to attend a Mosque. In fact, the only thing the students were required to do was watch and listen to the videos. No further action needed to be taken, they did not have to profess a belief in Islam and denounce their own religions. They did not have to participate in any rituals. The videos were used to instill a greater more comprehensive understanding of Islam and how Muslims think about their own religion. The videos also did not disparage other religions. The purpose was educational, and the primary effect was understanding and tolerance, not conversion.

Finally, these videos must not foster excessive entanglement between government and religion. No institutions were benefited in assigning these videos. They were free to view on YouTube, so there was no monetary benefit to a religious organization. Students were not asked to convert or join the Muslim faith. The only thing provided to students through these videos

was information. The analysis here is similar to *Wood*, as the videos were part of a wider curriculum, and they did not purport any relationship between the school and a religious organization. These videos easily meet this third prong.

The videos might have been poorly curated, but it is asinine for the mother in this case to claim that the Chatham School District was promoting Islam. The unit on Islam in this middle school world history class is about three days out of the 180 mandated public-school days in New Jersey, so about one percent of the course as a whole. Along with these videos, students, just as in *Wood*, were required to do fill-in-the-blank worksheets about the Shahada.⁴⁸ Some of the websites described the ease of converting to Islam, which Ms. Hilsenrath considers to be promoting the conversion of children.⁵⁴ That argument is weak, because it is a factual and informational statement; in order to convert to Islam, one only needs to recite a phrase three times in front of a witness. By comparison, in order to convert to Judaism, one has to meet with a Rabbi over a prolonged period of time, study, attend services, and finally meet in front of a Beit Din,⁴⁹ who will determine whether or not he or she is ready for conversion. That statement, just as the one regarding conversion to Islam, is factual and not promotional. Merely informing someone of the ease of something does not equate to promotion of said activity.

The complaint alleges that Christianity was ignored entirely,⁵⁶ however, the Superintendent denies that claim.⁵⁰ As the class is about the history of varying cultures around the world, students also spend time on varying sects of Christianity, Judaism, Hinduism, and

⁴⁸ Complaint and Demand for Jury Trial, 19, *Hilsenrath v. Sch. Dist. Of The Chathams*, Case No. 2:18-cv-00966 (D.N.J.). ⁵⁴

Id.

⁴⁹ Three rabbis.

⁵⁶ *Id.*

⁵⁰ As a former student of Chatham Middle School and of this class, I specifically remember taking significant time learning about different sects of Christianity. I do not remember learning about Islam at all, but I was in the seventh

Buddhism. They also learn about non-religious cultural practices in other countries, the origins of human civilization, and world geography.

For more context on life in Chatham, there is a Youth Interface Council that hosts the middle school dances in town at one of the ten churches each month. Although this is not something promoted through the school, it takes the place of what otherwise might be a school sponsored activity. There is a Baccalaureate ceremony the day before high school graduation held at one of the two Catholic churches. A collective fifteen seconds of YouTube videos assigned to middle schoolers for homework is not enough to accurately say that the district is promoting one religion over another or attempting to indoctrinate children to becoming Muslims. This case is nothing more than the bigoted rantings of a bigoted woman.

The use of religious texts

The Supreme Court has held that religious texts, such as the Bible, may be used for their historical and literary importance.⁵¹ The lessons must be part of a secular education about religion, not instructional or devotional.⁵² Although the *Abington* case was about the reading of Bible verses for a religious purpose and recitation of the Lord's Prayer, the Court still set the precedent that there are, in fact, secular purposes to reading the Bible in a public school setting that do not create any Establishment Clause issues⁶⁰. Religious texts are important primary sources that have cultural and historical value, aside from their spiritual uses.

grade in the 2001-2002 school year, so it is possible that after 9/11 the administration decided to scrap mentions of Islam, especially because some students lost parents in the attacks.

⁵¹ *Sch. Dist. of Abington Twp.* 374 U.S. at 225.

⁵² *Id.*

⁶⁰ *Id.*

The courts have gone as far as to allow an elective Bible study class taught from a historical standpoint. In *Gibson v. Lee County Sch. Bd.*, a high school wished to offer two classes on the Bible as a historical document.⁵³ One would be on the Old Testament, and the other would be on the New Testament.⁵⁴ The courses would be focused “on the Bible as a historical document through an overview of significant events that have affected the people of the Old Testament.”⁵⁵ The court held that the content of the New Testament made it more problematic to be taught as a class entirely secularly.⁵⁶ However, the Old Testament class could be taught from a secular standpoint, and the school was allowed to offer the course.⁵⁷

Inadvertent Religious Instruction

These two cases highlight issues that arise when teachers wish to teach about religions. However, sometimes these issues arise accidentally. In *Malnak v. Yogi*, several New Jersey high schools offered an elective about the Science of Creative Intelligence.⁵⁸ This class studied and practiced Transcendental Meditation.⁵⁹ Meditation purports to provide various health benefits, such as lower heart rate and breathing rate.⁶⁸

⁵³ *Gibson v. Lee Cty. Sch. Bd.*, 1 F. Supp. 2d 1426, 1428 (M.D. Fla. 1998).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 1434.

⁵⁷ *Id.* at 1433.

⁵⁸ *Malnak v. Yogi*, 440 F. Supp. 1284, 1288 (D.N.J. 1977).

⁵⁹ *Id.* at 1288.

⁶⁸ *Id.*

The textbook used in this class contained various statements regarding pure creative intelligence, calling it the source of all creation and an impelling life force.⁶⁰ It further states that the field of creative intelligence is “the very source of life-energy, the reservoir of wisdom, the origin of all power in nature, and the fountainhead of all success in the world.”⁷⁰ There are plenty of other passages which are very similar to passages that are found in other religious texts.

Additionally, these classes were taught by a “gurus” of transcendental meditation, not by regular teachers.⁶¹ The teachers for this elective class were not employed by the school, but were instead employed by the organization.⁷² Students were also required to attend a “Puja” ceremony, where they were given their mantras.⁶² Attending the ceremony was required of the course.⁷⁴ The Puja ceremony involved reciting prayers in Sanskrit and providing offerings.⁶³ Many of the prayers spoke about a god, and appeared to be devotional.⁷⁶

Although the courts have neglected to give a formal definition to what is and what is not a religion, the Third Circuit compared the activity in this case to other types of activities that have previously been found to be indicative of religion in other well-known religions.⁶⁴ Although the defendants argued that it was not a religion, the similarities between creative intelligence and other religions were too much to overcome, and the course was deemed unconstitutional.⁶⁵ Here,

⁶⁰ *Id.* at 1292.

⁷⁰ *Id.* at 1291.

⁶¹ *Id.* at 1289.

⁷² *Id.*

⁶² *Id.* at 1305.

⁷⁴ *Id.*

⁶³ *Id.*

⁷⁶ *Id.*

⁶⁴ *Id.* at 1312.

⁶⁵ *Id.* at 1324.

the followers and proponents of the questionable subject matter did not even themselves consider it to be religious, yet the court decided otherwise.

Context: Religious Symbols and a Contextual Secular Purpose

Religious symbols, such as the Ten Commandments, cannot be displayed in public school classrooms, no matter what the supposed secular purpose may be.⁶⁶ In *Stone v. Graham*, a Kentucky statute required that a copy of the Ten Commandments should be posted in each public school classroom.⁸⁰ The state argued that there was a secular purpose behind mandating the

posting of the Ten Commandments, because the fine print indicated that the Ten Commandments is the basis for “the fundamental legal code of Western Civilization.”⁶⁷

While the lower courts all agreed that posting the Ten Commandments in a classroom was allowable under the Establishment Clause because it had a secular purpose, the Supreme Court disagreed, noting that quite obviously there was a religious purpose in posting them.⁶⁸ The Ten Commandments are the tenets of Judo-Christian religions. The Court argued that had they been included in a classroom exercise about history, ethics, civilizations, or something similar, they could possibly have a secular purpose.⁶⁹ However, posting them in each classroom with no other context serves a religious purpose. Here we can see that context is important when considering religious texts and ideas in the public-school classroom.

⁶⁶ *Stone v. Graham*, 449 U.S. 39 (1980).⁸⁰

Id. at 39.

⁶⁷ *Id.* at 40.

⁶⁸ *Id.* at 41.

⁶⁹ *Id.* at 42.

Conversely, in *Lynch v. Donnelly*, the Supreme Court held that a town sponsored nativity scene, within the context of a larger holiday display, did have a secular purpose and was not a violation of the Establishment Clause.⁷⁰ In this case, each year for the holidays, the town of Pawtucket erected a holiday display.⁷¹ The display included, among other things, a creche or nativity scene.⁸⁶ Some of the other holiday displays in the town included a Christmas tree, colored lights, cut out figures of a clown, an elephant, and a teddy bear, a Santa Claus house, reindeer pulling Santa's sleigh, and candy-striped poles.⁸⁷ The Court held that the secular purpose of the nativity scene was to celebrate the origins Christmas, a federally recognized holiday, not completely dissimilar from the way Thanksgiving can be depicted.⁷² Additionally,

the nativity scene was just one of several Christmastime symbols.⁷³ Further, as the city had already purchased the creche, there was no excessive entanglement with religion, which may not have been the case had the creche been borrowed or rented from a particular church.⁷⁴ Here, we can see that even a religious symbol such as a nativity scene can have a secular purpose when it is used for specific purposes, such as celebrating the history of a state-sponsored holiday.

Context is always key when deciding these issues. In *Van Orden v. Perry*, a citizen challenged the State of Texas, because among other statues and monuments, there is a monument of the Ten Commandments on the grounds of the state capital building in Austin.⁷⁵ In a vacuum, this may

⁷⁰ *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984).

⁷¹ *Id.* ⁸⁶ *Id.*
at 671. ⁸⁷ *Id.*

⁷² *Id.* at 681.

⁷³ *Id.*

⁷⁴ *Id.* at 684.

⁷⁵ *Van Orden v. Perry*, 545 U.S. 677, 681 (2005).

seem like an obvious state promotion of religion. However, on the twenty-two acre grounds surrounding the capital building, there are 17 monuments and 21 historical markers marking the "people, ideals, and events that compose Texan identity."⁷⁶ The monument was paid for and donated by the Eagles, a national patriotic, social, and civic group.⁹³

The court in *Van Orden* shows us that there is no doubt that religion plays a role in the history of this country. In 1789 Congress asked President Washington to give a Thanksgiving Day proclamation, reminding Americans to take "a day of public thanksgiving and prayer, to be observed, by acknowledging, with grateful hearts, the many and signal favors of Almighty God."⁹⁴ The Pledge of Allegiance mentions "one nation under God."⁹⁷ There is a sculpture of the Ten Commandments carved into the outside of the Supreme Court building in Washington, among other carvings.⁹⁶

The Ten Commandments have a historical as well as religious significance, as they were given to Moses, a lawmaker as well as a religious figure.⁷⁸ The Supreme Court in this case ruled that the presence of the Ten Commandments, among other monuments and historical markers, is more passive than the posting of the Ten Commandments in school classrooms in *Stone*, because adults are presumably less impressionable than children, and generally people were not forced to face them every day for seven hours a day.⁷⁹ This sculpture is just one of many that can be found on the state capital building's grounds that people may walk past and see from time to time.

⁷⁶ *Id.* (quoting ex. H. Con. Res. 38, 77th Leg., Reg. Sess. (2001)). ⁹³ *Id.* at 681. ⁹⁴ *Id.* at 686.

⁷⁷ *The Pledge of Allegiance*, <http://www.ushistory.org/documents/pledge.htm>. ⁹⁶ *Van Orden*, 545 U.S. at 688.

⁷⁸ *Id.* at 690.

⁷⁹ *Id.* at 691.

Therefore, having the sculpture on the state capitol grounds is not an Establishment Clause violation.⁸⁰

Context matters in these cases. For example, in *Van Orden*, the issue was about the presence of the Ten Commandments in a place where the majority of the viewers would be adults, who are less impressionable than children. However, in *Stone*, the viewers of the Ten Commandments would be overwhelmingly children, who are more impressionable. In the school setting, more context should be the relative size of an assignment or lesson compared with the rest of the course as a whole. This obviously depends on the content or the message, but one worksheet out of dozens, or a few seconds of a video that is minutes long should not be seen as so important in the grand scheme of the lesson.

Naturally, if that one worksheet or small snippet of a video or lesson is egregious or very clearly proselytizing, then the context matters less. However, if the statements are, at the worst, ambiguous and poorly chosen, then when deciding if there is an Establishment Clause violation, the court should be able to consider these worksheets, videos, and the like in the greater context

of the course or lesson. Additionally, context should to be given to the purpose of the worksheets and lessons. If the purpose of the lesson, PowerPoint, video, or worksheet is supposed to be informational and not doctrinal, that too should matter to the court. Just as the Ten Commandments can have a secular purpose, so can the four pillars of Islam.

⁸⁰ *Id.* at 691-692.

Creationism and Intelligent Design in Public Schools

According to Encyclopedia Britannica, Creationism is “the belief that the universe and the various forms of life were created by God out of nothing.”⁸¹ It is purported to be a competing scientific theory alongside Darwin’s theory of evolution; however, it is based in religion and religious beliefs. The two theories are diametrically opposed, as they both cannot be correct; belief in one discounts belief in the other.

The state in *Epperson v. Arkansas* attempted to outlaw any discussion of the theory of evolution in the classroom.⁸² The only theory of the origin of mankind that was allowed to be taught in Arkansas was the theory of creationism.⁸³ The Supreme Court held that this had clear religious motivations, because the theory of creationism is a religious theory.¹⁰³

In *Edwards v. Aguillard*, Louisiana sought to include the teaching of creationism in science classes alongside the teaching of evolution, believing that this duality promoted academic freedom in the classroom for teachers.⁸⁴ However, this was not the case. The real purpose of teaching creationism alongside evolution was to discredit evolution, a scientific

theory, with creationism, a religious theory.⁸⁵ Here, the state was purposefully trying to advance religion in public schools through the guise of academic fairness, or as the state argued, “teaching all of the evidence.”⁸⁶

⁸¹ *Creationism*, Encyclopaedia Britannica (March 10, 2017) <https://www.britannica.com/topic/creationism>.

⁸² *Epperson v. Arkansas*, 393 U.S. 97 (1968).

⁸³ *Id.* at 108. ¹⁰³

Id.

⁸⁴ *Edwards*, 482 U.S. at 581.

⁸⁵ *Id.* at 582.

⁸⁶ *Id.*

This concept is different, however, from the teaching of religion for academic purposes in public schools. Creationism is a theory of the beginnings of life on Earth, namely that a creator or god created life. It is not a scientific theory with a base in science; it is a religious theory with a base in the Bible. If Creationism were being taught in the context of a class about religions creation stories of different cultures, or theories of the origins of life, the outcomes of these cases may have been different, but to teach this religious theory alongside a scientific theory in a scientific class clearly promotes religion, and thus, fails the Lemon test.

Intelligent Design is another theory opposed to Darwin's theory of evolution which attempts to poke holes in Darwin's theory, and has roots in religion.⁸⁷ In *Kitzmiller v. Dover Area Sch. Dist.*, the Dover school district proposed a new biology curriculum which required the teaching of intelligent design.⁸⁸ The court ruled that Intelligent Design is not science and is directly related to religion, as it is a religious theory of the origins of the universe.¹⁰⁹ Therefore, its inclusion in a biology class as a theory of the origins of life violated the Establishment Clause.¹¹⁰ Once again, context here is so very important. Had Intelligent Design been taught as part of creation stories of different cultures or religions, perhaps alongside Creationism, Darwinism, and other theories, then the teaching of it might not have been an Establishment Clause violation.

⁸⁷ *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707 (M.D. Pa. 2005).

⁸⁸ *Id.* ¹⁰⁹ *Id.*
at 765. ¹¹⁰ *Id.*

FREE EXERCISE ACCOMMODATIONS FOR PARENTS WHO OBJECT

For various reasons, parents may wish to opt their children out of courses or lessons which present objectionable material. However, there are limits to when and how parents may get alternative accommodations for material that hinders their religious freedoms. In order to exempt their children from specific classes, parents must prove an unconstitutional burden on their and their children's religion.⁸⁹

In *Mozert v. Hawkins County Board of Education*, public school districts in Tennessee all used the same set of textbooks for elementary school children. These textbooks contained stories intended to help further children's abilities as readers and critical thinkers.¹¹² Vicki Frost, the mother of three students in the school district, found that many of the stories contained in the books offended her born again Christian beliefs, such as stories about using your imagination, describing talented artist Leonardo DaVinci as being close to having a "divine touch", and poems about telepathy.⁹⁰

Not wanting her children to be exposed to these concepts, Ms. Frost asked for a religious accommodation so that her children and other similarly situated children could leave the classroom during these lessons and complete alternative assignments.⁹¹ Although learning about

⁸⁹ *Mozert v. Hawkins Cty. Bd. of Educ.*, 827 F.2d 1058, 1065 (6th Cir. 1987). ¹¹²

Id. at 1060.

⁹⁰ at 1062.

⁹¹ at 1060. ¹¹⁵

at 1064.

Id.

Id.

Id.

other religions was not in question in this case, Ms. Frost did admit that she would also find that objectionable, if they were presented with any amount of detail.¹¹⁵

Ms. Frost believed that her and her children's First Amendment right to the freedom of religion were being infringed on when her children were assigned coursework that offended her religious sensibilities. However, the material in question was not only not substantively religious, it also did not require students to profess any affirmations to a specific religion nor adhere to one.¹¹⁶ It was the mere ideas and concepts that, at face value, are not religious, that she found to be offensive. The court found that because these lessons did not compel professions of religious beliefs, nor did they compel participation in religious practices, they did not create a burden on the free exercise of religion.⁹²

In *Mozert*, the court recognized that just because an idea, lesson, or concept offends one's religious beliefs, it does not mean that that idea, lesson, or concept infringes on that individual's freedom of religion. The freedom of religion is not the same as the freedom from being offended. Furthermore, the court held that so long as students are not required to affirm or deny a belief, or participate or not participate in an activity required or forbidden by their religion, reading texts and learning about subjects does not create an unconstitutional burden under the

⁹² at 1065. ¹¹⁸

at 1070.

Id.

Id.

Id.

Free Exercise Clause.¹¹⁸

Moreover, in order to show that religious freedom is being infringed, the claimant must show coercion. There is an argument that all schoolwork is coercive, as it is generally a requirement to complete all schoolwork in order to advance to the next grade or graduate. In most states and under normal circumstances, children legally must attend school until age sixteen. However, being “coerced” to learn a religion that is different from or offensive to one’s own religion is fundamentally different from being “coerced” into learning subjects such as math

¹¹⁶

and reading. Generally, as a society, we agree that children need to learn how to read and write, how to add and subtract, and have at least a loose understanding of scientific principles. However, we as a society are undecided on what the “right” religion is, and we have decided that religion is something personal and best taught at home.

Similarly, in *Parker v. Hurley*, parents of elementary aged school children felt that their religious freedoms were not protected or respected when their children were taught about various sexual orientations.⁹³ In this case, young children were exposed to books which portrayed various types of families, including same sex couples.⁹⁴ One book described all different types of families, such as single parents, interracial couples, and homosexual couples.¹²¹ Another book

⁹³ *Parker v. Hurley*, 514 F.3d 87, 90 (1st Cir. 2008).

⁹⁴ *Id.* ¹²¹

Id. at 92. ¹²²

Id.

¹²³

Id.

Id.

Id.

told the tale of a prince who, after declining to marry a princess, marries another prince.¹²² The final page of the book depicts their wedding, including a kiss which is censored by a heart.¹²³ Another book told a story of a girl who was first made to feel embarrassed for having two mothers, but then learns that families come in all shapes and sizes and that she should not be embarrassed.⁹⁵

The parents, based on their religious backgrounds, objected to homosexuality, and objected to their children being taught about homosexual relationships in their public schools.¹²⁵ At the time this case was decided, Massachusetts had passed a gay marriage law. Therefore, the school had even more of a compelling interest in teaching tolerance of all different types of families and relationships to children, as there could likely be children of gay parents in the classroom. While the parents did not object to the books being used generally as part of an

⁹⁵ at 93. ¹²⁵

at 90.

Id.

Id.

Id.

antidiscrimination program; they wanted advance notice and the right to opt their children out of these lessons.⁹⁶ The parents feared that their children would be taught that homosexual relationships are acceptable, an idea that is in opposition to their Christian values.⁹⁷

In Massachusetts, parents are given advance notice of lessons regarding sexual health or sexual orientation and may opt their children out; however, the school did not believe these storybooks fell into that category, and did not give advance notice.⁹⁸ The school refused to exempt the children from being read these books, and also refused to give parents advance notice of when the books may be read.⁹⁹

Just as in *Mozert*, the court here found that the mere exposure of children to sensitive or seemingly offensive topics did not equate to indoctrination.¹³⁰ The parents were free to discuss these topics at home with their children and impart their own religious views on the subjects.¹³¹ Although the motivations behind reading these books was clearly to promote tolerance of homosexuality, the children were not then asked to affirm their belief in gay marriage.¹³² Again, the children were merely exposed to ideas and concepts that are in conflict with their parents' religious sensibilities. However, exposure to various concepts, no matter how subjectively offensive they may be, does not create a Free Exercise claim.

Therefore, based on these cases, it would seem that parents would be unlikely to be able to opt their children out from classes teaching about other religions. So long as the lessons are

⁹⁶ *Id.*

⁹⁷ *Id.* at 93.

⁹⁸ *Id.* at 90.

⁹⁹ *Id.* ¹³⁰ *Id.*
at 105. ¹³¹ *Id.*

¹³² *Id.*

prepared and done in a way that does not require students to affirm or deny a belief, and so long as they are not required to participate in or not participate in an activity that is opposed to their personal religious beliefs, and so long as the lesson does not promote religion or non-religion, then the lesson would not violate their first amendment rights. Any such lesson would likely fail the three prong *Lemon* test, so such a lesson would be unconstitutional.

A PROPOSED NEW METHOD OF TEACHING ABOUT RELIGION

Public education is mostly governed at the state level, instead of at the federal level.¹⁰⁰ However, as *Lemon* is a Supreme Court case, a federal guideline for curriculums including religion could help avoid litigation, protect teachers and school districts, and allow for a more well rounded education for students. These guidelines could propose how to teach about other religions and even provide a list of approved materials. Of course, *Lemon* provides guidelines as to what is acceptable, however, for lay-people, it may be difficult to decipher. The concern is that the subject of religion as a whole is too hotly contested, so schools may simply avoid the subject all together, robbing students of a chance to broaden their world views.

The main pillars of such guidelines would be that the lessons must be inclusive of the world's major religions, the lessons may not be devotional, the lessons may not require any oaths or affirmations, and they must be taught by regular public-school teachers. If any materials do contain oaths or affirmations, or even statements such as the ones in the YouTube videos in the Chatham case, teachers must instruct students that these are the beliefs of the adherents to those

¹⁰⁰ *The Federal Role in Education*, U.S. Department of Education (May 25 2017)
<https://www2.ed.gov/about/overview/fed/role.html>.

religions, and not something that the students should take on for themselves. If a religious text, such as a Bible, Torah, or Koran, is used, teachers must remind students that these are the religious texts of one religion, and that for the purposes of the class, they should be used to give greater understanding to the religion, but not to be studied for their religious purposes. These sorts of

disclaimers could even be printed on materials or during lessons, so that students are clear on what they are being taught.

The Chatham case revisited

Looking at the Chatham Middle School case through this lens, there probably are not any Establishment Clause violations. The students were exposed to two videos containing what the parents believed to be offensive material. They were not asked to profess belief in Islam nor deny their own beliefs. They were not asked to recite prayers. They were not asked to participate in any sort of ceremony or activity with religious undertones. The Five Pillars of Islam were not put up in each classroom. The students simply were instructed to watch and listen to a video containing information about another religion, similarly to how the children in the *Parker* case were exposed to pictures and words in a book. A court here might make the same determination, that not everything that subjectively offends one's faith objectively infringes on that person's First Amendment rights.

What's more, the unit on Islam was three days out of 180 days spent in school. The offensive material in the videos were mere seconds out of the 1260 hours spent in school each year. Other religions were taught throughout the school year as well as Islam. Nowhere did the teacher instruct the students that Islam is the correct religion and that they should all convert, or

that it is better than the religions they currently adhere to. The court should take the greater context into account when deciding this case.

CONCLUSION

Teaching religious tolerance is increasingly important in today's society. As public schools play the role of preparing children for their roles as responsible citizens, schools and teachers should be able to teach about different religions and cultures, sometimes using primary sources, so long as their instruction does not cross the line into indoctrination. Teachers and schools need federal guidelines as to be clear on what is and is not acceptable in a public-school setting. Following these guidelines and failing to deviate should provide protection for teachers in school districts so that they would be immune to lawsuits from disgruntled, possibly bigoted parents.