



DISCHELL | BARTLE | YANOFF | DOOLEY
R E S U L T S M A T T E R

THE DBYD DIFFERENCE – EDUCATION LAW
DECEMBER 31, 2008

This holiday season The DBYD Difference brings you a note from the U.S. Supreme Court...and a poem!

On December 8, 2008, the United States Supreme Court refused to hear an appeal of a case that tests the limits of public schools' authority to regulate students' speech. Arguably, in doing so the Supreme Court has allowed the standard set in *Curry v. Hensiner*, a case out of Michigan, to become the law of the land. Under *Curry*, school districts may regulate student speech – even if that speech has religious undertones – for legitimate pedagogical purposes if the speech is made in connection to a school-sponsored event. School sponsored speech is different from “personal expression,” which falls under the *Tinker* standard (*Tinker* was the Supreme Court case in which students were allowed to wear black armbands to protest the Viet Nam war). This speech is also very different from the MySpace case currently pending before the Third Circuit.

The basic facts in *Curry* are that a student was prohibited from using a school project to proselytize his faith. School districts should note two very important details. First, this case is **not** about religious freedom; it is about the student's right to free speech. Second, the school district took a calm and evenhanded approach to the prohibition. Although the student could not distribute religious materials, he was otherwise allowed to continue participating in the project. Ultimately, the student earned an “A” for his work. Had the school taken more draconian measures, this case may have gone differently.

And so, without further adieu, The DBYD Difference is proud to bring you *Curry v. Hensiner*, 513 F.3d 570 (6th Cir. 2008), *cert denied* --S.Ct.--, 2008 WL 3849381 (U.S.)...*in verse!*

‘Twas the week before Christmas and deep in the Court
The Justices conferenced. Which case would get cert?
With GITMO detainee releases vexin’
Could a simple school case escape their attention?

To the Court did petition young Joel Curry:
I declare my First 'Mendment rights have been buried!
For my fifth grade project I wanted to sell
Religious tree ornaments. It didn't go well.

At my teacher's direction, a plan I designed
To research and market and sell – not a crime.
My submitted proposal adhered to the rules
I'd sell tree ornaments, not perishables.

My proposal reflected my mother's suggestion
Candy cane trinkets of flotsam and jetsam
But nowhere within my proposal's visage
Was my father's idea for a card and a message.

"On each candy cane," said Father so wise
"We'll attach a card that I will devise
Each card will state boldly, not just a smidgen
How candy canes symbolize our religion."

To my project partner this plan I explained.
"Nobody wants to hear about Jesus" was his refrain
We parted ways but I went merrily
To sell canes with cards in "Classroom City"

All was well, there wasn't a glitch
'Till Gym Teacher strolled by – I'm convinced she's a witch
"What's with these cards? I doubt this is lawful!"
Principal agreed, saying "These cards are awful."

They said proselytizing was beyond my discretion
But don't I have rights to free speech and expression?
Mom got upset; my school raised her ire
And so her attorney, a lawsuit did file

Expression, it's said, is subsumed by speech
Thus the court considered my school district's reach
To stifle my viewpoint before it gets out
Can't there be room for reasonable doubt?

We shed not our rights at the schoolhouse gate
But sponsored events, schools may regulate
Our Supreme Court has drawn a distinction
'Tween school-sponsored speech and personal expression

"BONG HiTS 4 JESUS" and black war armbands
Must meet different standards, different tests on remand
The latter, I argued, my conduct reflected
This argument the Sixth Circuit rejected.

Within a fifth grade project my speech was contained
For pedagogical purposes my speech was restrained
And all of this, said the court, was not a big deal
And so to the Supremes I plead my appeal

On Roberts, on Stevens, and on Kennedy!
On Souter, on Thomas, on Ginsburg, you see
On Breyer, Scalia, onward Alito
Reindeer rhymed better, and this I do know.

My petition for cert, the Court did consider
Their cold, hard decision left me quite bitter
An order was issued and cert was denied
The Circuit's decision still remains applied

Does this case bring smiles this holiday season?
Or has too much caution triumphed over reason?
Was it really free speech or Church versus State?
Did we learn something useful or spark a debate?

Some day we'll have answers, just wait and see
Till then,

Season's Greetings from DBYD!

The DBYD Difference is published by Dischell Bartle Yanoff & Dooley, P.C. It does not, and is not intended to, constitute legal advice. Your receipt of this publication does not create or constitute an attorney-client relationship. You should not consider this publication to be an invitation for an attorney-client relationship, you should not rely on the information provided in this publication without first obtaining separate legal advice, and you should always seek the advice of competent legal counsel in your own state. This publication should not be viewed as an offer to perform legal services in any jurisdiction other than those in which DBYD's attorneys are licensed to practice. DO NOT send DBYD any information concerning a potential legal representation until you have spoken with one of DBYD's attorneys and obtained authorization to send that information.