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“Charlie Brown, you're the only person I know who can take a wonderful season like Christmas and turn it into a problem.” ~ Linus van Pelt

-Can School Districts Prohibit Celebratory Religious Music at School-Sponsored Events?-

Just in time for the pending holiday season, the courts have brought us yet another case that considers religion in public schools. This time, the United States Court of Appeals for the Third Circuit upheld a public school district’s policy that, in essence, banned religious music at school concerts.

On November 24, 2009, the Third Circuit issued its opinion in the case of *Stratechuk v. Board of Education*. The case involves Michael Stratechuk who is the father of two students in the School District of Orange-Maplewood, New Jersey (“School District”).

Mr. Stratechuk brought suit against the School District claiming that its policy regarding the performance of religious holiday music violates the Establishment Clause and his children’s First Amendment “right to receive information and ideas, right to learn, and right to academic freedom.” The particular School District policy at issue in this case stated, in part:

Treatment of Religious Holidays in Classrooms, School Buildings, Programs or Concerts

1. Religious holidays are not to be celebrated in the schools, except in the form of the secular nature of that holiday. However, opportunities to learn about cultural and religious traditions should be provided within the framework of the curriculum. Information about religious and cultural holidays and traditions, focusing on how and when they are celebrated, their origins and histories may be part of this instruction.
2. In planning school activities related to the teaching about religious holidays or themes, special effort must be made to ensure the activity is not devotional and that pupils of all faiths and beliefs can join without feeling they are betraying their own faith or beliefs.
3. Decorations with religious significance are not permitted.
4. Religious music, like any other music, can only be used if it achieves specific goals of the music curriculum.
 - a. Music programs prepared or presented by student groups as an outcome of the curriculum shall not have a religious orientation or focus on religious holidays.

Importantly, though, the School District's policy permitted the "inclusion of religious literature, music, drama, dance and visual arts in the curriculum provided that it achieves specific goals of the written curriculum in the various fields of study; that it is presented objectively; and that it neither inhibits nor advances any religious point of view."

The School District made a decision to limit the types of songs performed at its December Concerts. This was due, at least partially, to complaints from parents who objected to the performance of songs such as "Joy to the World," "Silent Night," "Oh, Come All Ye Faithful," "Hark the Herald Angels Sing," and "a medley of 3 Hanukkah tunes" at the School District's 2003 December concert. Following the 2003 December concert, the School District's Director of Fine Arts issued a memo to his department informing them that "we will avoid any selection which is considered to represent any religious holiday, be it Christmas, Hanukkah, etc."

Establishment Clause Claim

Mr. Stratechuk claimed that the School District's policy violated the Establishment Clause of the First Amendment of the United States Constitution in that the policy conveyed a "government-sponsored message of disapproval of and hostility toward religion, including Christianity." The Establishment Clause states that "Congress shall make no law respecting an establishment of religion." The Supreme Court of the United States has held that this clause also forbids any law that has an "official purpose to disapprove of a particular religion or of religion in general." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

In seeking to determine whether or not the School District's policy in this case violates the Establishment Clause, the Third Circuit asked whether 1) the policy "lacks a secular purpose," 2) the "principal or primary effect" of the policy "advances or inhibits religion" or 3) the policy "fosters an excessive entanglement with religion." This three-part test was created by the Supreme Court in a case called *Lemon v. Kurtzman*, and it is often simply referred to as the *Lemon* test. See *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

In applying this test, the court found 1) that the School District's purpose in implementing the policy was to avoid government endorsement of religious holidays and a potential Establishment Clause violation, 2) that the effect of the policy did not inhibit religion, as is established by the fact that religious songs continued to be taught and performed as a part of the curriculum, and 3) that although the screening of music by school administrators for concerts does constitute some government entanglement with religion, it is not excessive so as to violate the Establishment Clause. The court approvingly cited to a brief filed by the Anti-Defamation League, the Jewish Congress, and the Jewish Council for Public Affairs (among others) for the proposition that "Establishment Clause jurisprudence recognizes that neutrality towards religion is quite distinct from hostility towards it."

Additional First Amendment Claim

In addition to the Establishment Clause claim, Mr. Stratechuk argued that the School District's policy violated his children's First Amendment "right to receive information and ideas, right to learn, and right to academic freedom." The court rejected this argument by finding that there

was “no restriction of the students’ access to the ‘ideas’ to which he refers because the students have access to religious celebratory music in the classroom within the framework of the curriculum.” The court further found that any restriction of the information received by the students was reasonably related to legitimate pedagogical concerns and therefore permitted.

After reviewing the Establishment Clause claim and the other First Amendment claim asserted by Mr. Stratechuk, the court ultimately concluded that the School District’s policy and the application of that policy were not in violation of the Constitution. In reaching this conclusion, the court expressed its belief that “many decisions about how to best create an inclusive environment in public schools, such as those at issue here, are left to the sound discretion of the school authorities.”

What Does this Mean for School Districts?

In its decision, the Third Circuit stated that “those of us who were educated in the public schools remember holiday celebrations replete with Christmas carols, and possibly even Chanukah songs.” So as not to be confused, the *Stratechuk* decision does not suggest that such celebrations are in violation of the Constitution. In fact, in responding to Mr. Stratechuk’s citation of federal court cases that upheld the performance of religious music in public schools, the court stated that those cases are “far different from holding that the First Amendment *compels* a school district to permit religious holiday music or risk running afoul of the First Amendment” (emphasis added).

An important lesson to be gained from this case is that in situations where school districts make attempts to be religiously neutral, challenges are likely to arise from religious individuals and organizations (In this case, Mr. Stratechuk was represented by attorneys from the American Catholic Lawyers Association, Inc. and the Thomas More Law Center). On the other hand, school districts that allow the performance of religious songs at school-sponsored events should also expect lawsuits from parents whose religious or non-religious beliefs are not represented (or underrepresented) at such performances.

Although this may seem like a lose-lose situation for school districts, what is important is knowing how courts are likely to decide these issues when lawsuits do arise and putting policies in place ahead of time that comport with those legal decisions. To that end, it is always wise to have your school district’s attorney review the current policies and ensure that they are in compliance with existing law.

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