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Schools and the Law: First Amendment US Supreme Court Decisions That School Board Members Should Know

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Key Points

- Public school board members should be familiar with landmark Supreme Court decisions that could shape how they resolve conflicts and set school district policies.
- Students generally enjoy more First Amendment rights than teachers do. Settings and circumstances dictate when and where teachers are at liberty to indulge in free expression, but when it comes to the classroom, school boards set the curriculum, and teachers must follow it.
- Legal disputes arising from topics like racial discrimination and parental rights will test school districts' authority to regulate speech until the Supreme Court weighs in to clarify the limits of free speech in public schools on these topics.

In August 2021, two school administrators from public schools in Springfield, Missouri, filed a federal lawsuit against their school district over mandatory diversity, equity, and inclusion (DEI) training.[1] At risk of losing pay, district employees were obligated to attend trainings about and affirm a set of district-held beliefs about race and equity, which the two educators—Records Secretary Jennifer Lumley and 504 Process Coordinator Brooke Henderson—were uncomfortable with. The case, *Henderson v. Springfield R–12 School District*, is the first example of a lawsuit against mandatory district-wide DEI training.[2]

The case is a compelling example of emerging and complex legal struggles over First Amendment rights and their limitations in public K–12 education. Do teachers need to become equity champions or "anti-racist educators,"[3] as these trainings insist? Can school districts mandate this type of training—functionally compelling teachers' speech and beliefs—and punish employees who refuse to either attend or affirm their principles? While *Henderson* is the first of its kind, it is far from unique. Dozens of cases have been recently tried or are pending before courts, testing the free speech rights of staff and students alike in K–12 education, such as the following:

- In Middleborough, Massachusetts, a middle school student's suspension over a T-shirt claiming there are "only two genders" landed the school district in court.[4]

- A Catholic student in Fairfax, Virginia, sued the school board, claiming its transgender policies violate her religious beliefs.[5]

- In Maryland, two taxpayers filed a lawsuit against the Montgomery County Public Schools Board of Education, claiming it denied the public at large from participating in the open session of a board meeting.[6]

Over the past few years, several lawsuits and federal complaints have been filed concerning culture war battles over race, gender ideology, parental rights, and related topics.[7] These disputes often shine a spotlight on school boards, subject their decisions to heightened scrutiny, and frequently surface internal conflict between boards and the districts they oversee.

School board members are rarely legal professionals. They seldom have a team of lawyers at their disposal or a grasp of legal precedent to inform their decisions. Nor do they reliably have their own legal representation independent of the school district to guard them from getting steamrollered when conflicts arise. But school board members should familiarize themselves with several precedent-setting Supreme Court decisions that might help inform their thinking about increasingly contentious issues they might grapple with in the months ahead.

This report is the first in a series produced by the American Enterprise Institute and the Wisconsin Institute for Law & Liberty to help public school board members anticipate and think through legal issues they might have to consider in their supervisory and policymaking role.

A major theme of current legal challenges centers on First Amendment protections, including freedom from compelled speech. Several big ideas are worth keeping in mind: School boards have more power than they commonly assume to dictate teachers' classroom speech, but school district employees don't check their First Amendment rights at the door as a condition of employment. Students also generally enjoy stronger free speech rights than teachers do in school, but courts have recognized important exceptions, including school districts' authority to regulate student speech that occurs off campus, is lewd or vulgar, could be interpreted as posing a safety threat, promotes illegal activities, or might cause a substantial disruption to schools.

Who Decides What Children Learn? School Boards—Not Teachers and Staff—Have the Ultimate Authority to Establish School Curriculum

School boards have authority to establish curriculum for school districts, and teachers are required to follow that curriculum and all school board policies and applicable state laws. Teachers in K–12 education do not enjoy the same level of academic freedom typically granted to educators in higher education. The Supreme Court has noted that academic freedom at the university level is "a special concern of the First Amendment," emphasizing that a higher education classroom should be a "marketplace of ideas."[8]

While university professors have broad academic freedom, teachers in K–12 public schools are not permitted to use their role to instill their personal beliefs in students. In *Mayer v. Monroe County*, the Seventh Circuit Court of Appeals considered that issue and held that the First Amendment did not entitle a public school teacher to advocate her personal viewpoint opposing military intervention in Iraq during a classroom session.[9] Citing the 2006 US Supreme Court case *Garcetti v. Ceballos*, the Seventh Circuit noted that the teacher in *Mayer* was acting pursuant to her official duties. Beyond that, students are a captive audience, and teachers "must provide the service for which employers are willing to pay."[10] The Seventh Circuit further noted that education is compulsory and children "ought not be subject to teachers' idiosyncratic perspectives."[11]

Garcetti v. Ceballos, while not an education case, is noteworthy for its refinement of public employees' free speech rights. The case involved a Los Angeles County deputy district attorney, Richard Ceballos, who wrote a memorandum in which he recommended dismissing a case based on purported misconduct by the government. After being subpoenaed to testify by the defense counsel, the district attorney's office took retribution: Ceballos claimed he was reassigned to a lower position, transferred to another location, and denied a promotion as a result of his speech.

In a 5–4 decision authored by Justice Anthony Kennedy, the Court held that Ceballos's employers were justified in taking action against him because he spoke out within his authority as a public official. They noted that speech by a public official is protected only if it is

engaged in as a private citizen. Ceballos, cooperating with the defense as a public official, spoke in his capacity as a deputy district attorney, and his employer was therefore authorized to restrict his speech.[12] Ceballos was thereby liable to censorship by his employer. Specifically, the First Amendment protects the right of a public employee to speak as a citizen addressing matters of public concern.[13] But when public employees speak in the course of their official duties, as Ceballos did when he testified, that speech is functionally considered to be government speech and therefore may be regulated.

While *Garcetti* concerned a deputy district attorney, the case has been applied by lower courts to teachers. In *Mayer v. Monroe County*, the Seventh Circuit ruled unanimously against an Indiana elementary school teacher who alleged she was fired in 2003 for comments she made in her classroom criticizing the US war on Iraq. She sued the school district on First Amendment grounds and lost. "The First Amendment does not entitle primary and secondary teachers," the three-judge appeals panel said unanimously, "when conducting the education of captive audiences, to cover topics, or advocate viewpoints, that depart from the curriculum adopted by the school [system]."[14] They held that the teacher's comments were not protected speech, citing *Garcetti*.

When teacher speech is made *as a citizen* addressing matters of public concern, school boards might not be within their rights to restrict that speech. But crucially, teachers *are* speaking in their professional capacity while teaching. School boards can't script every word out of a teacher's mouth, but they maintain judgment over curriculum and are at liberty to restrict teachers' speech within the walls of the classroom, where it is considered "hired speech" and teachers are not free to indulge in their beliefs and impose them on students.

Is Teacher Speech Protected by the First Amendment? It Depends on the Setting and Circumstance.

In September 2023, the Foundation for Individual Rights and Expression (FIRE) filed an amicus brief with the US Court of Appeals for the Ninth Circuit in the case of *Damiano v. Grants Pass School District 7* as a reminder of the individual rights afforded to teachers.[15] Damiano concerns two Oregon educators, Katie Medart and Rachel Sager (formerly Rachel Damiano), who were suspended and terminated after speaking out against their district's transgender rights policies.[16]

FIRE cited *Pickering v. Board of Education*, a landmark case that set a high standard for firing teachers because of their speech. FIRE argued in its amicus brief that the district court's upholding of the firings fundamentally misunderstood the precedent set by *Pickering*. The famous 1968 case is named after Illinois teacher Marvin Pickering, who wrote a letter to the editor that was published in the local paper, complaining about a defeated school board proposal to increase school taxes.

Pickering was terminated on the grounds that his letter made erroneous public statements and complaints about how the board handled past funding proposals. The board felt his letter was "detrimental to the efficient operation and administration of the schools."[17] He filed a lawsuit and argued that his speech was protected under the First Amendment. The Supreme Court agreed 8–1, reversed the district court's decision, and held that the First Amendment protected Pickering's speech.

School board members should be mindful of what has come to be known as the *Pickering* "balancing test." As Justice Thurgood Marshall wrote in his majority opinion:

> The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.[18]

Pickering provides guidelines to interpret when constitutional protections must be accorded to public employee speech. First, determine whether the employee spoke as a citizen on a matter of public concern. If the answer is no, à la *Garcetti*, the employee has no legal claim or basis to sue their employer for violation of their First Amendment free speech rights.[19] "If the answer is yes," Justice Kennedy wrote in *Garcetti*, "then the possibility of a First Amendment claim arises. The question becomes whether the government employer had an adequate justification for treating the employee differently from any other member of the general public."[20]

Despite erroneous claims in Pickering's letter to the editor, the Court explained that teachers are "the

members of a community most likely to have informed and definite opinions" regarding school-related issues, so "it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal."[21] Importantly, similar speech is not protected if it contains false statements knowingly or recklessly made. But since it could not be proved that Pickering made his erroneous statements knowingly, his speech remained protected.

In its amicus brief in *Damiano*, FIRE relied on established precedent and insisted that "it is well-settled that a teacher's public employment cannot be conditioned on her refraining from speaking out on school matters."[22] Since district court held that, under *Pickering*, the school district could do exactly that, FIRE pointed out to the appellate court "that ruling gets *Pickering* all wrong."[23] FIRE argued that since the case was about teacher speech on a matter of public concern, the speech is protected unless the district can meet its burden to prove the speech actually caused substantial disruption to the classroom environment.[24]

School board members should keep in mind that teachers cannot be compelled to relinquish First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest. In crafting employee speech policies, school boards should consider that speech by teachers can be especially important to public debate, because teachers know things about education that are important to inform public discussion. School board members should include as much detail as possible to let teachers know what their rights are and where the line will be drawn—for example, threats about colleagues, false statements, confidential information, or statements that disrupt the workplace may cross the line—and justify taking adverse action against employees.

Does School Prayer Violate the Principle of Separating Church and State? Not Necessarily.

Joseph Kennedy was a high school football coach in Bremerton County, Washington, from 2008 to 2015. He routinely engaged in prayers with a number of his players during and after games. The school district, which had long refrained from weighing in on the coach's habit, finally took issue in September 2015, asking that he discontinue the practice to protect the school from a lawsuit.

Under the establishment clause of the First Amendment, government entities—including public school districts—are prohibited from the "establishment of religion."[25] In *Kennedy*, the school district took the position that Kennedy's prayers amounted to "problematic practices" in violation of the establishment clause.[26] But Kennedy refused to stop praying after games and was subsequently fired. He sued the Bremerton School District for violating his First Amendment rights.

By a 6–3 margin, the Court ruled in favor of Kennedy. Citing the free speech and free exercise clauses of the First Amendment, it held that individuals engaging in personal religious observance cannot be prosecuted by the government. In *Kennedy*, the Court gave a definitive answer to the question of whether a public school employee's prayer during school sports was protected speech and whether the public school employer can prohibit praying to avoid violating the establishment clause: "Respect for religious expression is indispensable to life in a free and diverse Republic," said Justice Neil Gorsuch in the majority opinion.[27] The Constitution "neither mandates nor tolerates" the government to suppress such expression.[28]

Like the cases previously mentioned, it is important to recognize whether the speech in question occurred within the speaker's professional capacity: Was Kennedy leading his prayers as a coach employed by a public organization or as a private citizen? As noted in the case, Kennedy "never pressured or encouraged any student to join" his postgame midfield prayers.[29] Since students were not *required* to join, the Court concluded that his prayers were not within the scope of his duties as a public employee. His prayers were private speech that the district was not justified in restricting.

Echoes of the *Kennedy* decision could shape school boards' thinking about teachers saying grace quietly before lunch, wearing a cross necklace to school, praying before or after extracurricular activities, or even opening public school board meetings with a prayer. Permitting private speech, including prayer, is not the same thing as forcing students to participate in it, which can be constitutionally problematic.[30]

A related issue is whether districts may prohibit staff from displaying political or controversial signs and decorations. The short answer is yes, but any

policy prohibiting teacher expression through political or controversial displays in the classroom must be viewpoint-neutral; it cannot favor any particular belief or political system. School board members may view Black Lives Matter signs or pride flags as creating an unnecessary distraction or even an attempt to indoctrinate students. But if they desire to prohibit such displays, school boards should consider adopting a policy that balances a teacher's rights as a citizen in commenting on matters of public concern with promoting the efficiency of the public services it performs through its employees.

When public employees make statements within the scope of their employment, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.[31] Importantly, when it comes to school personnel and freedom of religion, teachers may take part in prayer during the workday if it does not disrupt the educational environment or interfere with their professional duties, and they may wear religious attire or symbols consistent with their faith. When they speak in their official capacities, they may not engage in prayer, and staff cannot initiate or participate in prayer during instructional time.[32]

Finally, what about *student* prayer and religious expression in public schools? Like student free speech rights at large (see the next section), students enjoy stronger rights than teachers do to freely exercise their religion. For instance, students may engage in personal and voluntary prayer and may not be discriminated against based on their religious beliefs or expression. School officials may not impose rules on religious student speech and activities if they are discriminatory based on religion.

Students may discuss religion and pray with fellow students during the school day on the same terms and conditions that they may engage in other conversations unrelated to school curriculum. Students may express their beliefs about religion in their school work, and such work must be evaluated by regular academic standards and without religious discrimination. Student clubs and organizations related to religion must be permitted as well, subject to the same guidelines as nonreligious clubs.

It's True: Students Have Stronger First Amendment Protections Than Teachers Do in School

In 1965, a group of junior high school students in Des Moines, Iowa, planned to protest the Vietnam War by wearing black armbands to school. When plans of the protest leaked, school officials hastily created their own plan to suspend students wearing armbands. The school did not prohibit the wearing of all symbols of political or controversial significance; however, black armbands worn to exhibit opposition to the Vietnam War were singled out. Students who wore the armbands were suspended, and they filed a lawsuit contending that their suspensions violated their First Amendment right to free expression.

That case, *Tinker v. Des Moines Independent Community School District*, is among the most famous cases in education policy and practice. The Supreme Court ruled 7–2 that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[33] Public schools cannot prevent students from expressing particular ideas simply because their message might contradict the school's preferred message.

Dissenting opinions on the case stated that wearing the armbands interfered with the school's operation. However, a distinction was made between merely wearing the armbands and the conduct of those wearing the armbands: Schools may suspend students for actions taken in protest but not just for wearing something *symbolizing* protest; the armbands represented pure speech, which is protected. In sum, fear of misconduct drove the school's action rather than any actual misconduct.

Tinker is revered by many as the Court's most consequential student rights opinion in the Court's entire history. It vindicated students' right to express their views in school. To regulate and punish student speech, districts need to show that the speech in question materially disrupts classwork, involves substantial disorder, or invades others' rights.

The Supreme Court recently cited *Tinker* in *Mahanoy Area School District v. B.L,* which involved a student who, after trying out for and failing to make her high school varsity cheerleading team, posted a picture of herself on Snapchat with a caption using vulgar language and criticizing various school programs. Subsequently, she was suspended from the junior varsity team for violating

team and school rules. She sued the school, alleging her First Amendment rights were violated. The school district asked the Supreme Court to decide whether *Tinker* "applies to student speech that occurs off campus."[34]

The Court cited three factors for consideration. First, schools are rarely seen as acting in place of parents regarding what students do off campus. Second, if schools were to try to control what students say outside of school, they would essentially be controlling what they say at all times, not just during school hours. For this reason, courts should be skeptical of schools' efforts to do this. Third, schools should protect students' right to say things that others might not like, especially when they say these things outside school.[35] All this means that while schools can sometimes regulate what students say off campus, they can only do so considering these three things, and each situation would be looked at individually.

In another case involving a student that held up a "Bong Hits 4 Jesus" banner at a school event, the Supreme Court cited *Tinker* but found that the First Amendment *does* allow public schools to prohibit students from displaying messages promoting the use of illegal drugs at school-supervised events.[36] After the principal took away the banner and suspended the student, the student filed a lawsuit alleging a violation of his First Amendment right to freedom of speech. The Court ultimately held that, consistent with the principles in *Tinker*, a school district may indeed "restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use."[37]

Tinker has been frequently used in the Supreme Court and state supreme courts over the past half century to establish a baseline of heavy protection for student speech. But other oft-cited Supreme Court decisions inform *Tinker*'s limitations when student speech is made in different contexts. While *Tinker* has been cited to address examples of vulgar speech, *Bethel v. Fraser* adapted its precedent and is frequently cited when questioning the limits of student speech in an academic context. *Hazelwood School District v. Kuhlmeier*, more recently, is cited regarding student expression in the context of school publications. In both cases, *Tinker* was cited in the minority opinion, and its precedent did not apply.

Bethel arose from a lewd speech a student gave to his fellow high school classmates at a school assembly. Since his speech included what some observers believed was a graphic sexual metaphor, the high school suspended him for three days for use of obscene language.[38] The Court held that the First Amendment does not prevent a school district from disciplining a student for giving an obscene speech at a school assembly and that it was appropriate for the school to prohibit the use of vulgar and offensive language.

Chief Justice Warren E. Burger pointed out that the vulgar speech in *Bethel* is distinct from the controversial political expression in *Tinker*. While students are protected to voice their political opinions in a school setting, schools have the right to prohibit profanity and speech with inappropriate sexual content. In *Bethel*, the student's speech fell under what the high school deemed as language "substantially interfer[ing] with the educational process."[39]

In *Hazelwood*, the Court considered whether it was appropriate for the principal to delete two articles from the school-sponsored, student-led newspaper that he found to be inappropriate. Specifically, when the principal received the proofs, he ordered that two of the pages be withheld from publication. Students claimed that doing so violated their rights under the First Amendment.

The Court answered that no, the First Amendment does not prohibit schools from censoring student speech in a school-sponsored publication. Schools may set high standards for student speech that they disseminate, and schools can refuse to sponsor speech that is "inconsistent with 'the shared values of a civilized social order.'"[40] However, schools can exercise editorial control over the content of student speech only if students' actions are "reasonably related to legitimate pedagogical concerns."[41]

Similarly to *Bethel*, *Hazelwood* makes clear the type of student speech that schools are at liberty to censor. *Hazelwood* specifically addresses concerns over content published in the school's name. Even when composed by student journalists, the school, as the provider of funding and dissemination, does not impinge on the journalists' First Amendment rights by removing content from its own newspaper. The case further defines the limits of student expression, adapting the standards set by *Tinker*.

Conclusion

Familiarity with high-profile Supreme Court precedents can help school board members think through thorny free speech questions and anticipate the lenses through which courts are likely to view their decisions, should they face challenges.

It seems nearly certain that the nation's highest court will need to weigh in on one or more of dozens of cases with First Amendment ramifications wending their way through lower courts. For example: Can a public school teacher be fired for refusing to use a student's preferred name and pronouns? A teacher in Virginia sued his school board under the religious liberty provision of the Virginia Constitution after he was fired for declining to refer to a transgender student by their preferred pronouns.[42] His case was initially dismissed, but in a recent decision, the Virginia Supreme Court reversed that dismissal and held that the teacher asserted legally viable claims. The case has been sent back to the circuit court for further proceedings.[43] While this is a significant victory for free speech and religious freedom, this case turned on the religious liberty provision of the Virginia Constitution and is not binding law for the rest of the country.

While that case, *Vlaming v. West Point School Board*, has not yet concluded, it is important for teachers and school boards around the country to understand what the Virginia Supreme Court said in its decision. The court recognized that "absent a truly compelling reason for doing so, no government . . . can lawfully coerce its citizens into pledging verbal allegiance to ideological views that violate their sincerely held religious beliefs."[44] While the law on this topic continues to develop, this decision shows that if a school district compels its teachers to speak messages they do not believe to be true, the district could be sued, and it could lose.

Looking ahead, school boards should be prepared to navigate a First Amendment issue closely tied to whether schools should require parental notification and consent before a minor student transitions to another gender identity in school.[45] While this parental rights issue pertains to parents' constitutionally recognized 14th Amendment interest to "direct the upbringing and education of children under their control,"[46] districts should also be watchful about how rapidly evolving and contentious gender identity policies may unlawfully compel student speech.

In one Wisconsin school district, three eighth-grade students used a biologically correct pronoun when referring to a classmate who preferred to go by "they/them." As a result, the students were notified of a Title IX complaint and investigation against them for sexual harassment.[47] The district appeared to believe that any "mispronouning," as it was described in the complaint, is punishable speech under Title IX. At the higher education level, after a university professor in Ohio was punished because he declined to address a transgender student by their preferred pronouns, the Sixth Circuit Court of Appeals decided in his favor and noted that pronouns "convey a powerful message implicating a sensitive topic of public concern."[48]

Guidance and the new Title IX regulations by the Biden administration are causing even more confusion.[49] Ultimately, if school districts—or the federal agencies responsible for enforcing Title IX—interpret the new rule to mean that it is sexual harassment to not use an individual's preferred pronouns, particularly regarding how students address their classmates, First Amendment litigation will certainly follow.

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Notes

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2. Southeastern Legal Foundation, "Henderson v. Springfield Public Schools: Educators Push Back Against Unconstitutional 'Anti-Racism' Training," https://www.slfliberty.org/case/henderson-v-springfield-public-schools.

3. *Henderson v. School District of Springfield R–12*, 650 F. Supp. 3d 786, 792 (W.D. Mo. 2023).

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7. See, for example, Wisconsin Institute for Law & Liberty, "WILL & ADF Secure Groundbreaking Legal Victory in Parental Rights Case," press release, October 3, 2023, https://will-law.org/will-adf-secure-groundbreaking-legal-victory-in-parental-rights-case; Alliance Defending Freedom, "School Board Scraps Policy After ADF Lawsuit," press release, December 22, 2022, https://adflegal.org/article/school-board-scraps-policy-after-adf-lawsuit; America First Legal, "America First Legal Amends Lawsuit, Sues Mesa Public Schools on Behalf of Mother Whose Daughter's Gender Was Transitioned Without Parental Knowledge or Consent, and After New Evidence Proving the Scale of Deception," press release, February 13, 2024, https://aflegal.org/america-first-legal-amends-lawsuit-sues-mesa-public-schools-on-behalf-of-mother-whose-daughters-gender-was-transitioned-without-parental-knowledge-or-consent-and-after-new-evidence-proving; Justin Faulconer, "Mother's Lawsuit Against Appomattox Schools Says Division Failed Notify Her of Child's Gender Issue," *Lynchburg News and Advance*, November 2, 2023, https://newsadvance.com/news/local/mothers-lawsuit-against-appomattox-schools-says-division-failed-notify-her-of-childs-gender-issue/article_baa9ec8e-78cb-11ee-8ee0-730b20a92ec5.html; Wisconsin Institute for Law & Liberty, "WILL and Parent Sue to Obtain Document Withheld by School District," press release, July 25, 2023, https://will-law.org/will-seeks-school-document-withheld-from-parents; Alliance Defending Freedom, "Parents Unite Against Discriminatory Public-School Policies in Virginia," press release, December 22, 2021, https://adflegal.org/press-release/parents-unite-against-discriminatory-public-school-policies-virginia; Parents Defending Education, "OCR Complaint: Middleton-Cross Plains Area School District," February 24, 2024, https://defendinged.org/complaints/ocr-complaint-middleton-cross-plains-area-school-district; Parents Defending Education, "OCR Complaint: Illinois Mathematics and Science Academy," February 7, 2024, https://defendinged.org/complaints/ocr-complaint-illinois-mathematics-and-science-academy; and Wisconsin Institute for Law & Liberty, "WILL Files Federal Complaint Against WI School District, Demanding Action Following Troubling Locker Room Incident," press release, June 14, 2023, https://will-law.org/will-files-federal-complaint-against-wi-school-district-demanding-action-following-troubling-locker-room-incident.

8. *Keyishian v. Board of Regents of University of State of New York*, 385 US 589, 603 (1967).

9. *Mayer v. Monroe County Community School Corp.*, 474 F.3d 477, 480 (7th Cir. 2007).

10. *Mayer v. Monroe County Community School Corp.*, 474 at 479.

11. *Mayer v. Monroe County Community School Corp.*, 474 at 479.

12. *Garcetti v. Ceballos*, 547 US 410, 423 (2006).

13. See *Pickering v. Board of Education*, 391 US 563 (1968).

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15. Foundation for Individual Rights and Expression, "FIRE Amicus Brief in Support of Plaintiffs-Appellants and Reversal—Damiano v. Grants Pass School District No. 7," https://www.thefire.org/research-learn/fire-amicus-brief-support-plaintiffs-appellants-and-reversal-damiano-v-grants-pass.

16. Alliance Defending Freedom, "Damiano v. Grants Pass School District 7," https://adflegal.org/case/damiano-v-grants-pass-school-district-7.

17. *Pickering*, 391 US at 563.

18. *Pickering*, 391 US at 568.

19. See *Connick v. Myers*, 461 US 138, 147 (1983).

20. *Garcetti*, 547 US at 418.

21. *Pickering*, 391 US at 572.

22. Foundation for Individual Rights and Expression, "FIRE Amicus Brief in Support of Plaintiffs-Appellants and Reversal—Damiano v. Grants Pass School District No. 7," 2. See *Settlegoode v. Portland Public Schools*, 371 F.3d 503, 516 (9th Cir. 2004); and *Connick*, 461 US at 162.

23. Foundation for Individual Rights and Expression, "FIRE Amicus Brief in Support of Plaintiffs-Appellants and Reversal," 2–3.

24. Foundation for Individual Rights and Expression, "FIRE Amicus Brief in Support of Plaintiffs-Appellants and Reversal," 7.

25. U.S. Const. amend. I, § 1.

26. *Kennedy v. Bremerton School District,* 597 US ___, 41 (2022).

27. *Kennedy*, 597 US at 31.

28. *Kennedy*, 597 US at 32. See also *Board of Education v. Mergens*, 496 US 226, 496 (1990), which reasons that "the proposition that schools do not endorse everything they fail to censor is not complicated."

29. *Kennedy*, 597 US at 2.

30. On a related topic, prayer to open public meetings is permitted and does not violate the First Amendment. In *Town of Greece v. Galloway*, the Court held that prayer at the opening of town board meetings did not compel its citizens to engage in a religious observance. Ultimately, prayer to open public meetings that comports with tradition and does not "coerce participation by nonadherents" does not violate the First Amendment. *Town of Greece v. Galloway*, 572 US 565, 593 (2014).

31. *Garcetti*, 547 US.

32. See *Kennedy*, 597 US at 527–28.

33. *Tinker v. Des Moines Independent Community School District*, 393 US 503, 505 (1969).

34. *Mahanoy Area School District v. B.L.*, 141 S. Ct. 2038, 2044 (2021).

35. *Mahanoy Area School District*, 141 S. Ct. at 2046.

36. *Morse v. Frederick*, 551 US 393 (2007).

37. *Morse*, 551 US at 403.

38. *Bethel School District v. Fraser*, 478 US 675 (1986).

39. *Bethel School District*, 478 US at 678.

40. *Hazelwood School District v. Kuhlmeier*, 484 US 260, 272 (1988).

41. *Hazelwood School District*, 484 US at 261.

42. Alliance Defending Freedom, "In Landmark Victory, VA Supreme Court Vindicates High School Teacher Fired over Pronoun Policy," press release, December 14, 2023, https://adflegal.org/press-release/landmark-victory-va-supreme-court-vindicates-high-school-teacher-fired-over-pronoun.

43. *Vlaming v. West Point School Board*, 895 S.E.2d 705 (Va. 2023).

44. *Vlaming*, 895 at 24.

45. See, for example, Wisconsin Institute for Law & Liberty, "WILL & ADF Secure Groundbreaking Legal Victory in Parental Rights Case"; America First Legal, "America First Legal Amends Lawsuit, Sues Mesa Public Schools on Behalf of Mother Whose Daughter's Gender Was Transitioned Without Parental Knowledge or Consent, and After New Evidence Proving the Scale of Deception"; and Justin Faulconer, "Mother's Lawsuit Against Appomattox Schools Says Division Failed Notify Her of Child's Gender Issue."

46. *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*, 368 US 510, 534–35 (1925).

47. Wisconsin Institute for Law & Liberty, "Kiel Title IX Controversy," https://will-law.org/kiel-title-ix.

48. *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021).

49. US Department of Education, "U.S. Department of Education Releases Final Title IX Regulations, Providing Vital Protections Against Sex Discrimination," press release, April 19, 2024, https://www.ed.gov/news/press-releases/us-department-education-releases-final-title-ix-regulations-providing-vital-protections-against-sex-discrimination. See also White House, "Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity," March 8, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-guaranteeing-an-educational-environment-free-from-discrimination-on-the-basis-of-sex-including-sexual-orientation-or-gender-identity.