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Protecting religious freedom in schools

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This year marks 50 years since the U.S. Supreme Court decided *School District of Abington Township v. Schempp* (1963), one of the “school prayer” cases that held that a state law requiring daily Bible readings in public schools is unconstitutional under the Establishment Clause, as applied to the states. Along with *Engel v. Vitale* (1962), a case decided the year before that struck state-written prayers recited each morning, the *Schempp* decision explained the way the Establishment Clause operates to ensure religious liberty differently than the Free Exercise Clause. A violation of the Establishment Clause does not depend on a showing that government forced religious practice. Instead, the Court recognized: “When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.” Government should avoid even the symbolic union with religion.

While the rule in *Schempp* and other constitutional principles governing religion in the public schools are firmly settled, there is always a steady stream of controversies over religion in the public schools. It makes for lively discussion, as I recently experienced while serving on a panel about religion in the public schools at the American Bar Association mid-year meeting in Dallas, Texas. The session was sponsored by the State and Local Government Law Section of the ABA and organized by an attorney with decades of experience representing government. It was another effort to expand understanding of the religion clauses in a highly sensitive setting. Other panelists included a public university attorney and a litigator who represents school districts and officials in Texas, each of whom brought substantial experience to the discussion.

There is no doubt that many difficult situations are avoided by having the right policies in place and good relationships between school administrators, students, parents and the community. After all, there is plenty of room for religious speech in public schools, firmly protected under current law. Students may pray silently during the school day or aloud with others during non-instructional time. Student religious clubs must be permitted to meet on the same terms as similar non-religious clubs. So, why are there so many conflicts? Sometimes it is a lack of education. But, during the course of our discussion, several attorneys spoke with firsthand knowledge of the challenges that are often more cultural than legal, when an issue arises about prayer at

school events or the treatment of religion in the curriculum.

In some cases, well-meaning Christians simply do not understand how the Establishment Clause works to protect religious freedom. Unfortunately, many times battle lines are drawn quickly and harshly, with those who want to share their faith claiming to be victims of hostility, even in communities where their beliefs dominate. In a small Texas town, for example, cheerleaders and their parents sued their public school last fall because the superintendent, responding to a complaint and relying on the advice of counsel, would no longer permit them to display banners with Scripture verses that players run through before games. It should not have been a surprise that someone would question the practice in light of the Supreme Court’s decision in *Santa Fe vs. Doe* (2000), which held that student prayers broadcast on the school public address system at football games was unconstitutional. The cheerleaders, clad in school uniforms and taking center stage on school property during a school-sponsored event, displayed religious messages to the crowds.

The cheerleaders, however, argue the school’s decisions violate their constitutional rights to free speech and free exercise of religion. A state judge awarded the cheerleaders an injunction, allowing them to continue the practice temporarily, and set a trial date in June. Texas Attorney General Greg Abbott weighed in, expressing his opinion that the banners were permissible because the school “neither made the decision to include a religious message on the cheerleaders’ banner, nor provided any direction as to the content of the cheerleaders’ message.” The governor also chimed in to support the cheerleaders, raising the stakes and making it harder to work out a solution.

Despite wide agreement that public schools have a responsibility to avoid government sponsorship of religion and protect the religious liberty of their students, it seems difficult for some communities to avoid using the machinery of the public schools to promote religion. There are better alternatives. When the same issue arose in Georgia a few years ago, the community learned about the rights of students and responsibilities of the school. Instead of suing the school, individuals responded by holding signs with religious messages in the stands, and others made greater efforts to communicate their faith in ways that did not speak for the school. That’s a constructive solution that protects the religious liberty rights of all people.