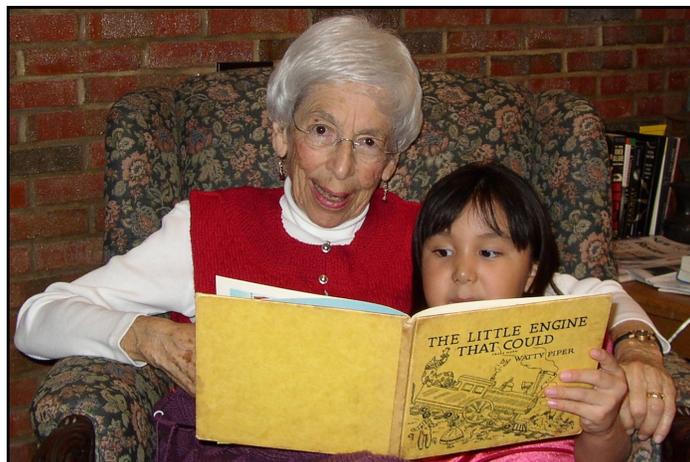




LESSONS IN LIBERTY

*A Guide to Religion
and Constitutional Law
in North Carolina Schools*

Dedicated to Natalie Fiess



This booklet is dedicated in loving memory to Natalie Zilboorg Fiess (pictured above with her granddaughter Lydia), with a special thanks to the late Shirley and Doug Johnson of Oberlin, Ohio, longtime ACLU members whose support created the Natalie Fiess Fund for the Preservation of Civil Liberties and Religious Freedom (the “Fiess Fund”). The Fiess Fund has supported the publication and dissemination of four informational booklets to North Carolina government officials, school board members, and the attorneys who advise them.

Please note: The information provided in this booklet is current as of May 2013. This booklet is designed as a reference tool on a variety of civil liberties issues. It is not intended to be a substitute for legal advice from an attorney.

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The First Amendment to the U.S. Constitution
states in relevant part,

***“Congress shall make no law respecting an establishment
of religion, or prohibiting the free exercise thereof.”***

These two clauses are commonly referred to as the Establishment Clause
and the Free Exercise Clause.

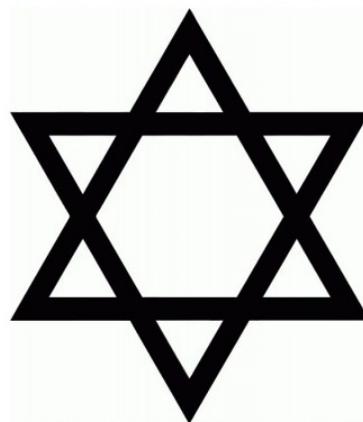
RELIGIOUS SPEECH OR PRACTICE BY STUDENTS

RELIGIOUS HOLIDAYS

SCENARIO: *Sylvia is Jewish, and her mother informed the school two weeks in advance that Sylvia would miss a day of school to observe the Jewish holiday of Purim. Sylvia has already missed the full amount of allowable absences.*

Question: *Should Sylvia be penalized for missing another day of school?*

Quick Answer: *No, in no event should a school penalize a student for being absent to observe religious holidays.*



EXPLANATION:

In accordance with the Free Exercise Clause of the First Amendment, schools must accommodate students' religious beliefs. They may neither engage in overt discrimination nor adopt policies that are fair in form but discriminatory in practice.¹ Thus, schools may not discipline students who are absent for religious reasons.

Although Sylvia has already missed the maximum number of excused absences, the school cannot penalize her for the additional classwork missed because of her observance of Purim. Such a policy would violate Sylvia's right to freely exercise her religion, as guaranteed by the First and Fourteenth Amendments. However, the school may re-

quire Sylvia to complete make-up assignments or examinations.

While schools are not required to close on a particular religious holiday, they may choose to do so for the purpose of administrative convenience, for example, when a large number of students are expected to be absent. As long as the school's purpose in creating an all-school holiday is religiously neutral, the school does not endorse or advance a particular religion or religion generally, and the school's recognition of that religious holiday does not result in an excessive entanglement with religion, the school is not in violation of the Establishment Clause of the First Amendment.²

RELIGIOUS STUDENT GROUPS

SCENARIO: *A group of students asks permission to form a lunchtime Bible study club.*

Question: *Should the school grant permission?*

Quick Answer: *Yes, but only if other non-curriculum related clubs are allowed to meet during that time and the time is declared non-instructional.*



EXPLANATION:

If a secondary school creates a limited open forum during lunchtime, it must offer equal access to all student groups and cannot prohibit student religious clubs from meeting during that time.³ A school creates a limited open forum “whenever [a] school grants an offering to or opportunity for one or more noncurriculum-related student groups to meet on school premises during noninstructional time.”⁴ Noninstructional time is defined as “time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.”⁵ However, if lunchtime is designated non-instructional time, a student Bible club may not meet in the lunchroom where other students may be subjected involuntarily to religious worship.⁶ There is some discrepancy regarding whether activity

periods and study halls are considered non-instructional time and thus whether student religious groups may hold meetings during those periods.⁷

However, a school may choose to bar all non-curriculum-related student groups from meeting during lunch or study hall. This bar would apply to all student groups, including religion-based clubs.⁸ Regardless of school policy on student clubs, students are always permitted individually to quietly pray before eating lunch.⁹ In fact, students may pray on their own during the school day as long as their behavior neither disrupts school activities nor inhibits the rights of others to freedom of conscience.¹⁰

RELIGIOUS SPEECH OR PRACTICE SPONSORED BY SCHOOLS

STUDENT-LED SCHOOL-SPONSORED PRAYER OR OTHER RELIGIOUS EXPRESSION

SCENARIO: *The school choir incorporates religious songs into its repertoire.*

Question: *Is this permissible?*

Quick Answer: *Within certain guidelines, religious music may be sung or played in public schools.*



EXPLANATION:

An educational program that includes religious music is constitutional, unless it either endorses religion or could be reasonably perceived as endorsing religion.¹¹ Thus, in order to be valid under the First Amendment, a school choral program must have neither the purpose nor the effect of communicating a message that “religion or a particular religious belief is *avored or preferred*.”¹² Because choral music is often based on religious themes and/or text, it is not unreasonable for the choir’s selection of music to include religious pieces.¹³ However, if there is no “clearly secular purpose” for the selected religious songs, the school would be in violation of the Establishment Clause.¹⁴ A permissible secular reason for choosing a piece of sacred music might be its usefulness to teach certain music skills (e.g., intonation, harmonization).¹⁵ Similarly, a school may decide to perform in churches and other religious locations for secular reasons such as acoustics and seating capacity.¹⁶

While it may be permissible to perform religious songs in a concert setting, it would violate the Establishment Clause if the choir sang nonsecular music at the school graduation ceremony.¹⁷ Including such religious activities in the graduation program not only would have the principal effect of advancing a particular religion, it would also foster excessive entanglement between the government (i.e., the school) and religion.¹⁸

Finally, an after-school gospel choir club may be permissible under certain circumstances. If a school provides access to its facilities to various student groups, it may not discriminate on the basis of religion.¹⁹

SCENARIO: *The players on Maplewood High School's football team decide to hold a school-sponsored prayer before each game.*



Question: *Should the coach allow them to do so? Can the coach join in the prayer?*

Quick Answer: *No and no. School-sponsored prayer at school sporting events violates the Establishment Clause, and the coach is prohibited from leading or participating in such prayer.*

EXPLANATION:

School-sponsored prayer in the public school setting is unconstitutional. The same rule applies whether the prayer occurs in the classroom, at a graduation, or at a high school football game.²⁰ When a teacher, coach, or school administrator endorses religious conduct as part of an educational or extracurricular exercise, the government becomes excessively involved in religion. Furthermore, school officials cannot defend school-sanctioned religious conduct by pointing to the fact that dissenters may be excused from participating.²¹ Any time the government puts its stamp of approval on religious activity, it creates an atmosphere of coercion in which students who hold different views must choose between participating against their will and protesting in embarrassment.²²

In *Santa Fe Independent School District v. Doe*,²³ the Supreme Court held that student-led, student-initiated prayer at school sporting events violates the Establishment Clause.²⁴ The Court reasoned, in part, that in the context of a school-sponsored function conducted on school property, an objective observer would perceive the team prayer as state-approved religious practice.²⁵ Under this ruling, the football coach at Maplewood High School should neither permit the players to pray as a group nor join in the prayer.²⁶ It would be permissible, however, for the players and the coach to individually pray silently on their own before the games.

TEACHER/SCHOOL OFFICIAL PRAYER OR OTHER RELIGIOUS EXPRESSION

SCENARIO: *During the morning moment of silence, Ms. Martin asks the students to pray for a student who is sick.*

Question: *Is it constitutionally permissible for Ms. Martin to do that?*

Quick Answer: *No. Teachers may not use this time, intended for reflection, to engage or encourage students to engage in religious expression.*



EXPLANATION:

The Establishment Clause strictly forbids school-sponsored prayer during school hours or at school-sponsored events.²⁷ This is true even if students not wishing to pray are permitted to leave the classroom and go to another room²⁸ or if the prayer is non-denominational.²⁹

However, a moment of silence is constitutionally permissible if (1) the moment is free from any direction by school officials; (2) there is no state coercion or element of preference for a particular religion, or for religion in general; and (3) students are left to meditate, reflect, or pray as they see fit.³⁰ In 1995, the North Carolina General Assembly passed a law

that allows, but does not require, such a practice in its public schools.³¹ This law, which allows schools to begin each day with a moment of reflection for students and teachers, is constitutional because its purpose is secular in nature and it does not involve state participation in a religious activity.³² In addition, this law specifically states that the period of silence shall be free from any influence on the part of any school employee. By asking students to use the time of quiet reflection to pray for another student, Ms. Martin has violated the Establishment Clause.³³ Students are free to pray for fellow students; however, they must do so privately, of their own volition.

The Establishment Clause strictly forbids school-sponsored prayer during school hours or at school-sponsored events.

SCENARIO: *Ms. Tucker teaches third grade in a public school. Every day before school begins and before the class is seated, she reads to herself from her prayer book, which she stows in her desk during the day.*



Question: *Is Ms. Tucker within her rights?*

Quick Answer: *Yes, with limitations.*

EXPLANATION:

Because of their role as “state actors” (i.e., people who, whether as employees or volunteers, are acting in an official governmental capacity), teachers face certain restrictions regarding the circumstances in which they may express religious views or engage in religious conduct. While instructing students or engaging in other official school functions, such as overseeing athletic events and graduation ceremonies, teachers are considered to be state actors³⁴ and therefore are strictly forbidden, while engaged in official school activities, from conveying a preference for one religion over another or religion over non-religion.³⁵ Therefore, Ms. Tucker may not expound on her religious views

during class, may not lead her class in prayer, may not confront students during free time about their beliefs, and may not read the Bible as a religious text during story hour. A reasonable observer could conclude that Ms. Tucker’s intent in these situations is to institutionalize certain religious values at the expense of the students’ rights to practice or not practice religion according to their own values and upbringings.³⁶ During her free time, however, Ms. Tucker may discuss her views with other teachers, read religious texts in the teachers’ lounge, and say a blessing before she eats, as long as she is not subjecting anyone to her views involuntarily and the school is not involved in her religious practices.

SCENARIO: *A group of high school students approached Ms. Ramos, a school employee, and asked if she would help lead the student Christian club. Ms. Ramos agrees and assists in planning activities and occasionally leads the group meeting.*

Question: *Are Ms. Ramos' actions appropriate?*

Quick Answer: *Ms. Ramos may supervise the meeting but may not participate in or direct any of the club's activities.*



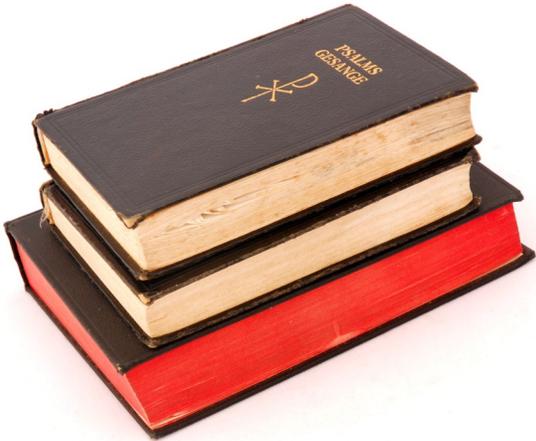
EXPLANATION:

According to the federal Equal Access Act, secondary schools that receive federal financial assistance are prohibited from sponsoring student clubs.³⁷ Sponsorship is defined as promoting, leading, or participating in a club's activities.³⁸ The Act does permit, "[t]he assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes," if the school requires all student clubs to have a faculty custodian. Custodial purpose entails ensuring order and good behavior but does not entail surveillance or administration of activities.³⁹ The Act specifically states that employees or agents of a school may be present at student-led religious meetings only in a non-participatory capacity.⁴⁰ Therefore, Ms. Ramos may be able to act as a faculty custodian to the Christian club but would not be permitted to help plan activities or participate in the group's meetings. Ms. Ramos is also not permitted to assist the group in her personal capacity because the Act also prohibits any non-school person from directing, controlling, or regularly attending the activities of student groups.⁴¹

Employees or agents of a public school may be present at student-led religious meetings only in a non-participatory capacity.

RELIGION IN CLASS CURRICULUM

SCENARIO: *Ms. Rhiner offers an elective class for seniors in World Religions. Among other things, her students read the Torah, the Bible, the Qur'an, and a sacred Hindu text, the Bhagavad Gita.*



Question: *Is it appropriate for public school students to read such texts?*

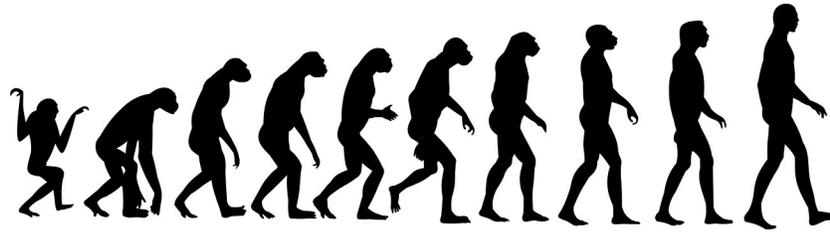
Quick Answer: *Yes.*

The class is appropriate as long as it neither advances religious beliefs nor attempts to teach religion-based morality or ethics.

EXPLANATION:

The Supreme Court has held that the study of religion is permissible as part of a “secular program of education.”⁴² Some examples of such programs include comparative religions, the history of religion, and the Bible as literature. The class is appropriate as long as it neither advances religious beliefs nor attempts to teach religion-based morality or ethics. Although the Supreme Court has affirmed that the teaching of moral and ethical values is a valid secular purpose, the use of a sacred religious text in such teaching transforms a secular exercise into a religious one. Therefore, in order to be constitu-

tional, any teaching of moral values must not be based on religion.⁴³ Accordingly, the Supreme Court has also prohibited the posting of sacred religious texts on school walls, concluding that such signs are “plainly religious in nature” and serve neither a secular purpose nor “such educational function.”⁴⁴ In both cases – teaching moral values by way of religious materials and posting religious texts on classroom walls – the Court concluded that it is impossible to separate a secular lesson from a spiritual one when the vehicle for learning is a sacred religious text.⁴⁵



SCENARIO: *The local board of education requires that schools teach Creationism whenever evolution is taught.*

Question: *Is this constitutional?*

Quick Answer: *No, public schools may not teach Creationism, either by itself or along with evolution.*

EXPLANATION:

Public schools may not structure science curricula to advance a particular religious viewpoint.⁴⁶ The Supreme Court has held that presenting “creation science” as an alternative to the scientific theory of evolution would do just that.⁴⁷ While the Supreme Court has acknowledged that a variety of scientific theories about the origins of humankind can be appropriately taught in the science classroom, the local board of education cannot require that “creation science” be taught whenever evolution is taught.⁴⁸ Neither may the board prohibit the teaching of evolution when “creation science” is not also taught.⁴⁹ Courts have held that “Creationism” in all its forms (e.g., Abrupt Appearance Theory or Intelligent Design Theory) is inescapably religious and is not “science.”⁵⁰

Courts have also held that it is inappropriate for schools to adopt anti-evolution policies, such as requiring disclaimers about evolution to be placed on biology textbooks, as such a requirement would have the effect of favoring those who oppose the teaching of evolution for religious reasons.⁵¹

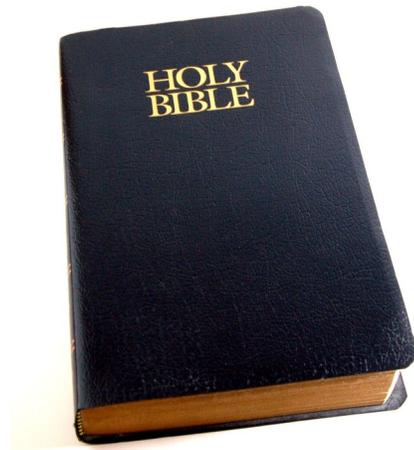
Public schools may not structure science curricula to advance a particular religious viewpoint.

ACCESS TO SCHOOLS BY OUTSIDE RELIGIOUS GROUPS

SCENARIO: *A local church requests access to a local high school during the day to distribute Bibles to the students during class change.*

Question: *May the school permit the group to distribute the Bibles?*

Quick Answer: *Only under very limited circumstances.*



EXPLANATION:

In order to avoid violating the Establishment Clause, schools may permit outside groups to distribute religious materials to high school students only under very limited circumstances. Private entities may not enter classrooms to hand out religious materials, nor may they request that a teacher hand out such materials, as this may have a coercive effect on students.⁵² Rather, private entities may passively distribute Bibles or other religious materials from a fixed location, where students are free to take or leave the materials without coercion, and provided no school employees participate in the distribution.⁵³ Such materials should not be distributed at all in elementary schools, because of the impressionability of elementary-age children.⁵⁴ Because young children may not be able to distinguish between the government-sponsored speech of the school's staff and the private speech of the organizations disseminating religious materials, distribution in elementary schools risks the appearance of government endorsement of religion.⁵⁵ The term "elementary schools" has been defined under North Carolina law as including grades 1-8.⁵⁶ Accordingly, current law suggests that even passive distribution is unconstitutional in

North Carolina middle schools.

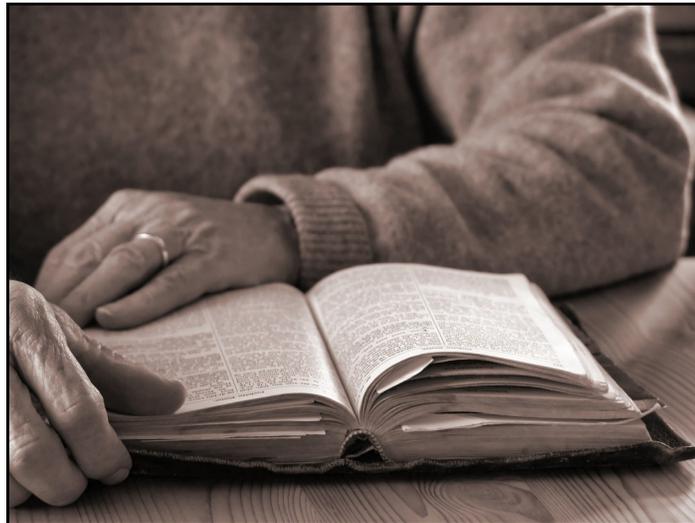
In *Peck v. Upshur County Board of Education*, the Fourth Circuit Court of Appeals held that passive distribution of Bibles in secondary schools is not coercive if tables displaying them are set up for one day, are located outside the classroom where students would not feel pressured into taking a Bible, and bear an explicit disclaimer renouncing any sponsorship by the school.⁵⁷ *Peck* noted approvingly that the Upshur County School Board took "pains to disassociate itself from the private speech" entailed by the passive Bible distribution.⁵⁸ In addition to those outlined above, these steps also included allowing Bible distribution only as part of "an equal access policy" as well as "setting strict guidelines which forbid any school teacher or employee from participating in any way in making the Bibles available."⁵⁹

Note: If a school board permits religious literature to be passively distributed in secondary schools, it must provide an equal opportunity to other groups, religious or otherwise.

SCENARIO: *A Bible study group is one of the many community groups that meet in the local elementary school after school hours. Some parents demand that all religious groups be excluded from using school facilities in order to protect the school from unconstitutional involvement in religious activities.*

Question: *Should the school accede to the parents' demands?*

Quick Answer: *No. Schools cannot refuse to rent space to religious groups after school hours if the facility is open to other community groups.*



EXPLANATION:

As long as the school does not involve itself in the Bible study group's activities, the group's use of the school's facilities is permissible.⁶⁰ Although it is understandable that the parents would have such concerns given the Establishment Clause prohibition on government involvement in religious affairs, the Free Expression Clause of the First Amendment overrides the interest in maintaining separation of government and religion in this example. Once the school allows some community groups access, it may not exclude others based on their beliefs or expression of those beliefs. Therefore, private religious

groups – whether they study religious texts or conduct baccalaureate services – must have the same access to the facilities as non-religious groups.⁶¹ The Supreme Court's standards of equal access also apply to students' use of school facilities. If a public school makes its facilities available to student activities that are not sponsored by the school, it may not exclude student religious activities (i.e., a chess club and a Bible study club each must have the same access to the use of the school's facilities). This rule applies to use of school facilities during non-instructional time.

SCENARIO: *A local synagogue submits flyers advertising its youth group, which meets on Saturday evenings, to be distributed to students.*

Question: *Must the school distribute the flyers?*

Quick Answer: *Maybe. If the school has an established policy of distributing flyers from non-school related programs to students, it cannot discriminate against a religious group.*



EXPLANATION:

If a school has in place a system whereby community groups can submit flyers to be distributed to students, the school may not exclude religious organizations from advertising their activities or programs.⁶² When a school allows outside community groups access to its facilities, it creates a limited public forum. Accordingly, the school is prohibited from discriminating against a group based on its beliefs, viewpoints, or expression thereof. The school, as a government entity, must abstain from regulating speech when the motivating ideology or the opinion of the group is the reason for the restriction.⁶³

The school is, however, permitted to establish a purpose for the flyer distribution program and can deny access to any organization that does not fall within its purview.⁶⁴ For example, the purpose of the flyer program could be to distribute information

about community, charitable, recreational, and education-related activities, cultural and sporting events, and health issues, but to exclude those events that are profit-driven. However, schools are still prevented from excluding a group's participation in the program on the basis of the group's viewpoint on a subject that is otherwise permissible.⁶⁵ Therefore, in this example, the religious youth group flyer falls within the guidelines of the flyer distribution program, albeit from a religious perspective. Thus the local synagogue must be permitted to submit its flyers for distribution.

In order to avoid unlawful entanglement with religion, the teachers should distribute flyers during non-instructional time. Nothing should suggest that the flyers are part of the curriculum, and teachers should act only in an administrative capacity by picking up the flyers and distributing them to students' cubbies or mailboxes.⁶⁶

End Notes

1. *See Wisconsin v. Yoder*, 406 U.S. 205, 220–21, 234 (1972) (invalidating compulsory school-attendance laws as applied to Amish parents who refused on religious grounds to send their children to school); *Sherbert v. Verner*, 374 U.S. 398, 403–04, 410 (1963) (holding that State could not constitutionally deny unemployment compensation to a member of the Seven-Day Adventist Church because she refused to work on Saturday, the Sabbath Day of her faith); *Braunfeld v. Brown*, 366 U.S. 599, 607 (1961) (“If the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect.”).
2. *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971); *see also Koenick v. Felton*, 190 F.3d 259, 264–69 (4th Cir. 1999) (upholding a state statute providing for public school holidays around Easter weekend).
3. *Widmar v. Vincent*, 454 U.S. 263, 271–75 (1981) (holding that if a state university makes its facilities generally available, allowing equal access to a student religious group would not violate the Establishment Clause).
4. Equal Access Act, 20 U.S.C. § 4071(b) (2006).
5. 20 U.S.C. § 4072(4) (2006).
6. *Chandler v. James*, 998 F. Supp. 1255, 1262–64 (M.D. Ala. 1997).
7. *Prince v. Jacoby*, 303 F.3d 1074, 1087–89 (9th Cir. 2002) (holding that study hall (student/staff time) does not constitute non-instructional time as some classroom instruction may take place and because attendance is mandatory.). *But see Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 220–24 (3d Cir. 2003) (holding that the morning activity period was non-instructional time even though attendance was mandatory because other non-curriculum-related groups were permitted to meet during that time).
8. *Cf. Bd. of Educ. of the Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 241 (1990).
9. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512–13 (1969).
10. *See id.*
11. *See Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 592–93 (1989).
12. *See id.* at 592.
13. *Bauchman v. West High Sch.*, 132 F.3d 542, 554 (10th Cir. 1997).
14. *See Wallace v. Jaffree*, 472 U.S. 38, 56 (1985); *see also id.* at 64 n.6 (Powell, J., concurring) (observing that conduct violates the Establishment Clause if it is “entirely motivated by a purpose to advance religion”) (citation omitted).
15. *Bauchman*, 132 F.3d at 554. *See also Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 407 (5th Cir. 1995).
16. *Bauchman*, 132 F.3d at 554.
17. *Skarin v. Woodbine Cmty Sch. Dist.*, 204 F. Supp.2d 1195, 1198 (S.D. Iowa 2002); *see also Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace*, 472 U.S. 38; *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).
18. *Skarin*, 204 F. Supp.2d at 1198.

19. Equal Access Act, 20 U.S.C. § 4071(a) (2007).
20. *Santa Fe*, 530 U.S. 290; *Lee*, 505 U.S. 577; *Abington*, 374 U.S. 203; *Engel*, 370 U.S. 421.
21. *Abington*, 374 U.S. at 224–25; *Engel*, 370 U.S. at 430.
22. *See generally Lee*, 505 U.S. at 592–97; *see also id.* at 592 (recognizing that “there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools”).
23. 530 U.S. 290.
24. *Id.* at 317.
25. *Id.* at 308.
26. *Doe v. Duncanville Ind. Sch. Dist.*, 994 F.2d 160, 165–66 (5th Cir. 1993); *see also Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 831–33 (11th Cir. 1989) (holding that practice of permitting religious invocations given prior to a public high school football game by student, parents, or school staff members violated the Establishment Clause).
27. *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).
28. *Abington*, 374 U.S. at 224–25; *Engel*, 370 U.S. at 430.
29. *Lee v. Weisman*, 505 U.S. 577, 610 (1992) (Souter, J., concurring); *Engel*, 370 U.S. at 430.
30. *Brown v. Gilmore*, 258 F.3d 265, 281 (4th Cir. 2001).
31. N.C. GEN. STAT. § 115C-47 (29) (2007).
32. *See Brown*, 258 F.3d at 282 (upholding Virginia statute that required a moment of silence to begin each school day).
33. *See e.g.*, *Wallace v. Jaffree*, 472 U.S. 38, 61 (1985) (invalidating statute authorizing public schools to conduct a moment of silence for meditation or voluntary prayer); *Abington*, 374 U.S. at 223–25 (holding that public school may not require that passages from the Bible be read at the beginning of each school day); *Engel*, 370 U.S. at 430–33 (finding public school practice of daily classroom prayer for all willing participants violated the Establishment Clause).
34. *Quappe v. Endry*, 772 F. Supp. 1004, 1014 (S.D. Ohio 1991) *aff’d*, 979 F.2d 851 (6th Cir. 1992).
35. *See Lee v. Weisman*, 505 U.S. at 586–91; *Wallace*, 472 U.S. at 53–55.
36. *See Wallace*, 472 U.S. at 51–52.
37. 20 U.S.C. § 4071(c)(2) (2007); *see also Bd. of Educ. of the Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 253 (1990).
38. 20 U.S.C. § 4072(2).
39. *See Mergens*, 496 U.S. at 253.
40. 20 U.S.C. § 4071(c)(3).
41. *Id.* § 4071(c)(5).
42. *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 225 (1963).
43. *Id.* at 223–25.
44. *Stone v. Graham*, 449 U.S. 39, 41–42 (1980).
45. *Id.* at 42.
46. *Edwards v. Aguillard*, 482 U.S. 578, 593 (1987).
47. *Id.*
48. *Id.* at 593–94.
49. *Id.* at 593.
50. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp.2d 707, 745–46 (M.D. Pa. 2005) (finding school’s policy of

End Notes

teaching of intelligent design in high school biology class amounted to an endorsement of religion in violation of the Establishment Clause).

51. *See e.g.*, *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 348 (5th Cir. 1999).

52. *Peck v. Upshur Cnty. Bd. of Educ.*, 155 F.3d 274, 287 (4th Cir. 1998); *see also* *Stone v. Graham*, 449 U.S. 39, 42–43 (1980) (holding that posting of privately financed copies of the Ten Commandments in public school classrooms violated the Establishment Clause of the First Amendment).

53. *Peck*, 155 F.3d at 287.

54. *Id.* at 287 n.* (unnumbered footnote); *see also* *Roark v. S. Iron R-1 Sch. Dist.*, 573 F.3d 556, 561 (8th Cir. 2009) (upholding injunction prohibiting distribution of Bibles to elementary school children during school hours); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1171 (7th Cir. 1993) (holding classroom distribution of Gideon Bibles to fifth grade public school students violated the Establishment Clause of the First Amendment).

55. *Peck*, 155 F.3d at 287 n.* (unnumbered footnote).

56. *See* N.C. GEN. STAT. § 115C-75(a)(1).

57. *Peck*, 155 F.3d at 287–88.

58. *Id.* at 282 (quoting *Rosenberger v. Rector of University of Virginia*, 515 U.S. 819, 841 (1995)).

59. *Id.*

60. *Id.* at 283; *see generally* *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395

(1993) (holding that a school should allow after-hours access to its facilities to a religious group when the school had made its facilities generally available to a wide variety of public organizations); *Widmar v. Vincent*, 454 U.S. 263, 277 (1981) (holding that a university should allow a student religious group to use university facilities that were generally available for activities of student groups).

61. *Lamb’s Chapel*, 508 U.S. at 394; *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983); Equal Access Act, 20 U.S.C. §§ 4071–74 (1984). The same or “equal access” means that all guidelines regulating use of public school property must be reasonable, viewpoint neutral, and applied uniformly to both religious and non-religious groups. Such guidelines may include, for example, restrictions on access to certain hours and certain days and/or prohibitions on certain activities, such as rearranging class furniture.

62. *Child Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Schs.*, 373 F.3d 589, 594 (4th Cir. 2004).

63. *See Perry Educ. Ass’n*, 460 U.S. at 46.

64. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106–07 (2001).

65. *Lamb’s Chapel*, 508 U.S. at 393–94 (1993); *Cornelius v. NAACP Legal Def. and Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985); *Child Evangelism Fellowship*, 373 F.3d at 594.

66. *Child Evangelism Fellowship*, 373 F.3d at 601–02.

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