

BREAKOUT MATERIAL – MICHELLE BIRSCHBACH

Professing Your Christian Faith

When Water Cooler Talk Can Land You in Hot Water

Freedom of religion is a constitutionally protected right in the United States. It is not, however, an absolute right. This breakout session will provide an introductory exploration into the potential legal ramifications of religious expression in the workplace, in schools as well as in other public venues.

1 Peter 3:15-16: ¹⁵But in your hearts revere Christ as Lord. Always be prepared to give an answer to everyone who asks you to give the reason for the hope that you have. But do this with gentleness and respect, ¹⁶keeping a clear conscience, so that those who speak maliciously against your good behavior in Christ may be ashamed of their slander.

WELS beliefs are clear:

1. We believe that not only the church but also the state, that is, all governmental authority, has been instituted by God. “The authorities that exist have been established by God” (Romans 13:1). Christians will, therefore, for conscience’s sake obey the government that rules over them (Romans 13:5) unless that government commands them to disobey God (Acts 5:29).
5. We believe that Christians are citizens of both realms and serve God by faithfully fulfilling their duties in both (Romans 13:6, 7).
9. We reject any views that hold that citizens are free to disobey such laws of the state with which they disagree on the basis of personal judgment.

The First Amendment to the U.S. Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Religious freedom includes two complementary protections: the right to religious belief and expression and a guarantee that the government neither prefers religion over non-religion nor favors particular faiths over others.

This Breakout Session will explore the legal implications of witnessing:

- In the workplace (as an employee)
- In public schools
- In public venues/forums

Disclaimer: These materials and this breakout session is for discussion purposes only and by its very nature is general and summary in its content. The information provided is not intended as particular legal advice for a particular purpose or situation. No attorney –client privilege is hereby created. Each state and/or municipality has its own specific rules and particular laws that may apply.

Employees in the Workplace: Witnessing through Speech

Employees in the public sector (i.e., who work for governmental entities), have First Amendment rights in the workplace subject to certain restrictions. Employees who work in the private sector do not, as a rule, have First Amendment protection for their speech in the workplace. However, anti-discrimination laws apply in either situation.

- A company that allows employees to engage in non-work related conversations (i.e., politics, family, sports, etc.) may not prohibit voluntary religious discussions between employees either. The same rules apply as would to any other private conversation.
- Other employees may not stop religious exchanges simply because they overhear a religious conversation.
- Two legal limitations to keep in mind:
 - An employee must not allow religious discussions to interfere with work.
 - If a coworker indicates directly or indirectly that she does not wish to discuss matters of religion, the Christian employee should immediately stop discussing it with him or her. Religious conversations at work should take place privately and voluntarily.
- The decision regarding religious conversations with clients or customers, however, rests with the private employer and not with the employee.

Employees in the Workplace: Witnessing through ACTION

Employers must reasonably accommodate employees' sincerely held religious, ethical and moral beliefs or practices unless doing so would impose an undue hardship on the employer.

- A reasonable religious accommodation could be an adjustment to the work environment that allows employees to practice their religion or sincerely held ethical or moral beliefs. (i.e., flexible scheduling, voluntary substitutions, swaps, job reassignments and lateral transfers).
- In addition to allowing absences from work for religious observances, an employer may be required to allow exceptions to dress or grooming codes
- It is the employee's responsibility to inform the employer of the need for a religious accommodation.

Public Schools: Parents

Parents have the right and the responsibility to direct their children's education - even when the children are in a public school. As a parent, you often have the right, generally to:

- Opt your children out of curriculum that would require them to violate your family's religious beliefs.
- Review the curriculum and teaching materials for any of your child's classes.
- Opt your child out of any extracurricular activity.
- Be notified if your child is enrolled in a course that includes sex education, family planning, homosexual themes, diversity issues, or extreme violence.
- Access your child's record, including grades, disciplinary, and counseling proceedings.
- Remove your child on days of religious observance.
- Receive the same tax credits and vouchers to attend religious schools that are also available for attending non-religious schools.
- Choose the school environment that best fits your child's needs, whether public school, charter school, private school, or homeschool.

Generally, if the school does not have a compelling reason to require the participation, the school must allow the student to "opt out" of the activity, class, or assignment at the parent's request.

Public Schools: Students

Students have certain free speech rights:

- Students have the right to choose a religious topic to complete a class assignment, when a choice is given - as long as the assignment otherwise meets the teacher's academic objectives and requirements.
- If a school receives federal financial assistance, the Federal Equal Access Act requires the school to permit access to Christian students—from elementary to high school—who wish to form a Bible club. The clubs must be student initiated and student led.
- Prayer that is student initiated is still permitted in public schools. The First Amendment does not prohibit a student's personal expression of prayer in school. Rather, the Free Exercise Clause protects a student's right to pray, even in public schools.
- Students cannot harass other students that do not wish to participate.
- Since students do have freedom of speech in school, they should be permitted to discuss their religious beliefs in the classroom as long as their comments are pertinent to the discussion at hand.

Public Schools: Teachers, Aides, Etc.

Teachers, aides, and arguably parents and chaperones, (i.e., those that have a position or certain level of perceived control), generally, are not permitted to express personal religious beliefs with students, in school or at a school sponsored setting. Courts have determined that Establishment Clause considerations generally trump a teacher's free speech and free exercise rights when the two conflict.

- Since the teacher exercises pedagogical control of the classroom, she must permit students to discuss religion when it is relevant to the topic at hand. However, when this is done, all viewpoints should be equally welcomed and the teacher's viewpoint should not be articulated.
- In general, teachers may not read the Bible or tell Bible stories, conduct devotional exercises, or pray in the classroom.
- Teachers may not witness to students even in private conversation while on school grounds or school sponsored event.
- On the other hand, teachers may include objective information about religion wherever it naturally falls in the course curriculum.
- Teachers are always permitted to teach about religion or to answer students' questions (either in or out of class) about religion as long as they do so in an objective, neutral, and academic manner.

Public Forums

The public forum doctrine is used with respect to the First Amendment to determine the constitutionality of speech restrictions implemented while physically located on government property.

There are three categories of government property for purposes of access for expressive activities:

1. Traditional, or quintessential, public forums (examples: Streets, parks, and sidewalks) are considered open to public discourse by tradition and are designated as traditional public forums. Generally, no prohibition against communicative activity.
2. Limited, or designated, public forums (example: municipal meeting rooms) are nonpublic forums that have been specifically designated by the government as open to certain groups or topics. Reasonable time, place and manner regulations are permissible and any content-based prohibition must be narrowly drawn to effectuate a compelling state interest.

3. Nonpublic forums (examples: jails, public schools, and military bases) are nonpublic forums and can be restricted based on the content (i.e., subject matter) of the speech, but not based on viewpoint.

The nature of a place, the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable.” In determining what is reasonable, the Court stated that “[the] crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.”

Irrespective, nearly all local municipalities have some local ordinances with requirements that must be followed – even if it is as simple as obtaining a license.

Notes: