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SUPREME COURT CASES THAT IMPACTED PUBLIC EDUCATION

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## Literature Review Abstract of Supreme Court Cases That Impacted Public Education

Chairperson: William P. McCaw, Ed.D.

Each day in our schools, leaders are faced with a myriad of challenges, including challenges associated with legal issues and disputes. Continuous litigation will surface when students and parents believe that their constitutional rights have been violated. Courts will look at previous Supreme Court decisions to help guide them in determining their ruling.

In the history of litigation impacting education, four areas have had a profound outcome on guiding school districts in developing policies backed by Supreme Court rulings. These four areas are: free speech, random drug testing, search and seizure, and prayer. Specific Supreme Court cases in each category will be discussed in order to help clarify and understand the path school districts must follow to avoid costly lawsuits and unnecessary legal disputes. Each case will review education law literature while explaining Supreme Court rulings backed by the U.S. Constitution.

The practical implication of this professional paper is to assist education stakeholder groups, including school administrators, school board members, policy committees, teachers, parents, students, and community members, in gaining awareness of how schools operate under the confines of school law through knowledge and understanding of student rights on school property under the U.S. Constitution.

The theme that will continually arise and be decided at the Supreme Court, is that students do not shed their constitutional rights at the schoolhouse door.

## **Litigation Theme 1: Freedom of Speech**

First Amendment: 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.

### **Case 1: *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)**

**Argued November 12, 1968**

**Issue:** Does wearing armbands in protest of the Vietnam War violate the First Amendment?

In December 1965, a group of students in Des Moines held a meeting in the home of 16-year-old Christopher Eckhardt to plan a public showing of their support for a truce in the Vietnam War (*Tinker v. Des Moines*, 1969, Facts of the case, para. 1).

They decided to wear black armbands throughout the holiday season and to fast on December 16 and New Year's Eve (*Tinker v. Des Moines*, 1969, Facts of the case, para. 1). The principals of the Des Moines school learned of the plan and met on December 14 to create a policy that stated that any student wearing an armband would be asked to remove it, with refusal to do so resulting in suspension (*Tinker v. Des Moines*, 1969, Facts of the case, para. 1).

On December 16, Mary Beth Tinker and Christopher Eckhardt wore their armbands to school and were sent home (*Tinker v. Des Moines*, 1969, Facts of the case, para. 1). The following day, John Tinker did the same with the same result (*Tinker v. Des Moines*, 1969, Facts of the case, para. 1). The students did not return to school until after New Year's Day, the planned end of the protest (*Tinker v. Des Moines*, 1969, Facts of the case, para. 1).

Through their parents, the students then sued the school district for violating the students' right of expression and sought an injunction to prevent the school district from disciplining the

students (*Tinker v. Des Moines*, 1969, Facts of the case, para. 2). The district court dismissed the case and held that the school district's actions were reasonable to uphold school discipline (*Tinker v. Des Moines*, 1969, Facts of the case, para. 2). The U.S. Court of Appeals for the Eighth Circuit affirmed the decision without opinion (*Tinker v. Des Moines*, 1969, Facts of the case, para. 2).

It is interesting that the Supreme Court became involved in this landmark decision, best known as the Black Armbands Case. The courts have traditionally shied away from considering cases which involve conflict with school officials, believing that a school board could best settle its affairs without the courts' "second guessing" its decisions or hampering the autonomy of local school officials (Deane, 1974, p. 1).

Writing for a 7-2 majority, Justice Abe Fortas issued the now-famous declaration that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (Iannacci, 2017, para. 9). Student speech can't be censored, he wrote, unless it "materially disrupts classwork or involves substantial disorder or invasion of the rights of others" (Iannacci, 2017, para. 9).

**Decision:** On February 24, 1969, The U.S. Supreme Court ruled 7-2 for Tinker.

**Case 2: Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988)**

**Argued October 13, 1987**

**Issue:** Can school officials censor school-sponsored newspapers? Does it violate a students' First Amendment rights?

*Spectrum* was the official school newspaper produced by students in a journalism class at Hazelwood High School, near St. Louis (Hafen, 1988, p. 692). The paper had a reputation for addressing controversial topics, but in May of 1983 the school principal found certain *Spectrum*

stories on teenage pregnancy and divorce inappropriately sensitive and personal, and deleted the pages containing the stories (Hafen, 1988, p. 692).

The student authors filed suit, claiming infringement of their first amendment rights, and eventually won an appeal to the Eighth Circuit (Hafen, 1988, p. 692). The court held that *Spectrum* was a public forum and applied the standards established in *Tinker* (Hafen, 1988, p. 692). Because the court of appeals found no factual justification for the principal to forecast either a disruption or possible tort liability, it saw no basis for overcoming *Tinker* presumptions favoring student speech (Hafen, 1988, p. 692).

In an opinion by Justice White, the Supreme Court reversed, finding that the school had not designated the paper a public forum and holding that educators have presumptive control over “school-sponsored publications, theatrical productions, and other expressive activities” whenever such activities are faculty-supervised and involve a school’s educational mission in a way that implies school sponsorship (Hafen, 1988, pp. 692-693).

**Decision:** On January 13, 1988, The U.S. Supreme Court ruled 5-3 for Hazelwood School District.

**Case 3: *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986)**

**Argued March 3, 1986**

**Issue:** Can school officials regulate student speech on school grounds, when the speech contains lewd remarks? Does it violate a students’ First Amendment rights?

At a school assembly of approximately 600 high school students, Matthew Fraser made a speech nominating a fellow student for elective office (*Bethel School District v. Fraser*, 1986, Facts of the case, para. 1). In his speech, Fraser used what some observers believed was a graphic sexual metaphor to promote the candidacy of his friend (*Bethel School District v. Fraser*,

1986, Facts of the case, para. 1). The school assembly in *Fraser* was part of the school curriculum (Dever, 1985, p.1184). The Supreme Court has recognized that high school authorities must be able to plan their school curriculum in such a way as to transmit local and community values (Dever, 1985, p.1184).

The day after the speech, the assistant principal charged Fraser with violating the school's disruptive conduct rule (Dever, 1985, p. 1169). He was suspended for three days, and his name was removed from the list of eligible graduation speakers (Dever, 1985, p. 1169). When the superintendent of the school district denied Fraser's appeal, Fraser filed a lawsuit alleging that the school district had violated his first amendment rights (Dever, 1985, p. 1169).

The district court relied on *Tinker's* material and substantial disruption standard and held for Fraser, declaring his punishment null and void, and awarding him damages, costs, and attorney's fees (Dever, 1985, p. 1169).

On appeal to the Ninth Circuit, the school district presented three arguments to support its claim that the disciplinary action did not abridge Fraser's constitutional rights (Dever, 1985, p. 1169): (1) Fraser's speech materially and substantially disrupted the school's educational process; (2) Fraser's indecent language justified the disciplinary actions; and (3) the school district could discipline Fraser for the objectionable language because Fraser made the speech at a school-sponsored function (Dever, 1985, p. 1169). The court of appeals considered and rejected each argument (Dever, 1985, p. 1169).

The court found that the school district's evidence failed to establish that Fraser's speech materially and substantially interfered with the educational process (Dever, 1985, p. 1169). The evidence included, complaints by several teachers that student discussion of Fraser's speech had disrupted their classes the next day and written statements submitted by other teachers

complaining that Fraser's speech was inappropriate for a school assembly (Dever, 1985, p. 1170).

The court of appeals, however, held that the school district had failed to distinguish the disruption in *Tinker* from the disruption caused by Fraser's speech (Dever, 1985, p. 1170). The court of appeals also rejected the school district's argument that Fraser's indecent language justified disciplinary action (Dever, 1985, p. 1170).

Chief Justice Burger distinguished between political speech which the Court previously had protected in *Tinker v. Des Moines Independent Community School District* (1969) and the supposed sexual content of Fraser's message at the assembly (*Bethel School District v. Fraser*, 1986, Conclusion, para.1).

Burger concluded that the First Amendment did not prohibit schools from prohibiting vulgar and lewd speech since such discourse was inconsistent with the "fundamental values of public school education" (*Bethel School District v. Fraser*, 1986, Conclusion, para.1).

**Decision:** On July 7, 1986, the U.S. Supreme Court ruled 7-2 for Bethel School District No. 403.

**Case 4: *Morse v. Frederick*, 551 U.S. 393 (2007)**

**Argued March 19, 2007**

**Issue:** Can school officials regulate student speech at school-sponsored events when the speech promotes illegal drug use? Does it violate a students' First Amendment rights?

The incident arose in Juneau, Alaska, as the Olympic Torch relay was passing by on its way to the Olympic Games in Salt Lake City (Bathon & McCarthy, 2008, p. 77). Because the relay was to pass near a local high school, the students were released to see the torch relay (Bathon & McCarthy, 2008, p. 77). Joseph Frederick had been detained that morning because his



car was stuck in the snow, so he arrived at school late and went directly across the street to join his classmates (Bathon & McCarthy, 2008, pp. 77-78). Just as the torch was passing, Frederick and some friends held up a fourteen-foot banner with the words “BONG HITS 4 JESUS” inscribed on the banner using duct tape (Bathon & McCarthy, 2008, p. 78).

The principal crossed the street and confiscated the banner after Frederick refused to lower it (Bathon & McCarthy, 2008, p.78). The principal suspended Frederick for ten days, and upon review the superintendent concluded that Frederick “was not disciplined because the principal of the school disagreed with his message, but because his speech appeared to advocate the use of illegal drugs” (Bathon & McCarthy, 2008, p.78).

Frederick filed suit, and the District Court of Alaska granted summary judgment for the school (Bathon & McCarthy, 2008, p.78). The Court found that the school officials did not violate the student’s First Amendment rights (Bathon & McCarthy, 2008, p. 78). On appeal, the Ninth Circuit reversed, finding that the school could not demonstrate that the banner created a substantial disruption (Bathon & McCarthy, 2008, p.78). The Ninth Circuit held that the principal violated Frederick’s clearly established free-expression rights (Bathon & McCarthy, 2008, p. 78). The school then appealed the case to the Supreme Court (Bathon & McCarthy, 2008, p. 78).

The Supreme Court found that Frederick was subject to the policies of the school because the event was equivalent to a school “social event or class trip” (Bathon & McCarthy, 2008, p. 78). Thus, the Court rejected the claim that Frederick’s speech was off-campus and therefore not subject to typical school policies (Bathon & McCarthy, 2008, p. 78). Both Morse and the Supreme Court interpreted the message as promoting drug use because the reference to a bong hit “would be widely understood by high school students and others as referring to smoking

marijuana” (Bathon & McCarthy, 2008, p. 78).

Chief Justice John Robert’s majority opinion held that although students do have some right to political speech even while in school, this right does not extend to pro-drug messages that may undermine the school’s important mission to discourage drug use (*Morse v. Frederick*, 2007, Conclusion, para. 1). The majority held that Frederick’s message, though “cryptic,” was reasonably interpreted as promoting marijuana use - equivalent to “[Take] bong hits” or “bong hits [are a good thing]” (*Morse v. Frederick*, 2007, Conclusion, para. 1). In ruling for Morse, the Court affirmed that the speech rights of public school students are not as extensive as those adults normally enjoy, and that the highly protective standard set by *Tinker* would not always be applied (*Morse v. Frederick*, 2007, Conclusion, para. 1).

**Decision:** On June 25, 2007, The U.S. Supreme Court ruled 5-4 for Deborah Morse, Et Al.

### **Litigation Theme 2: Random Drug Testing**

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### **Case 1: Board of Education of Independent School District No. 92 of Pottawatomie County**

***v. Earls*, 536 U.S. 822 (2002) Argued March 19, 2002**

**Issue:** Can school districts require random drug testing for students who participate in extracurricular activities? Does it violate a students’ Fourth Amendment rights?

In the fall of 1998, the School District of Tecumseh, Oklahoma, in an effort to fight the use of illegal drugs by students, adopted the Student Activities Drug Testing Policy (“Drug Testing Policy”), which requires all students who participate in any extracurricular activity,

including the Academic Team and the Future Farmers of America, to submit to drug testing (Kim, 2002, pp. 973-974).

The Drug Testing Policy requires students to take drug tests (through urine samples) before starting an extracurricular activity, submit to random testing during participation in that activity and submit to tests at any time upon reasonable suspicion (Kim, 2002, p. 974).

Respondent Earls, a student at Tecumseh High School, participated in several extracurricular activities that the Drug Testing Policy covered, including the marching band and the National Honor Society (Kim, 2002, p. 974). Earls brought suit that challenged the District's Drug Testing Policy as violating the Fourth Amendment's protection against unreasonable searches (Kim, 2002, p. 974).

The District Court, applying *Vernonia*, rejected the respondent's claim that the Drug Testing Policy violated the Fourth Amendment and granted summary judgment for the school district (Kim, 2002, p. 974). The Court of Appeals reversed and held that the Drug Testing Policy violated the Fourth Amendment (Kim, 2002, p. 974).

The Supreme Court reversed (Kim, 2002, p. 974). In an opinion delivered by Justice Clarence Thomas, the Court held that, because the policy reasonably serves the School District's important interest in detecting and preventing drug use among its students, it is constitutional (*Board of Ed. of Pottawatomie Cty. v. Earls*, 2002, Conclusion, para. 1). The Court reasoned that the Board of Education's general regulation of extracurricular activities diminished the expectation of privacy among students and that the Board's method of obtaining urine samples and maintaining test results was minimally intrusive on the students' limited privacy interest (*Board of Ed. of Pottawatomie Cty. v. Earls*, 2002, Conclusion, para. 1). "Within the limits of the Fourth Amendment, local school boards must assess the desirability of drug testing

schoolchildren (*Board of Ed. of Pottawatomie Cty. v. Earls*, 2002, Conclusion, para. 1). In upholding the constitutionality of the Policy, we express no opinion as to its wisdom (*Board of Ed. of Pottawatomie Cty. v. Earls*, 2002, Conclusion, para. 1). Rather, we hold only that Tecumseh's Policy is a reasonable means of furthering the School District's important interest in preventing and deterring drug use among its schoolchildren," wrote Justice Thomas (*Board of Ed. of Pottawatomie Cty. v. Earls*, 2002, Conclusion, para. 1).

**Decision:** On June 27, 2002, The U.S. Supreme Court ruled 5-4 for Board of Education of Independent School District No. 92 of Pottawatomie County.

**Case 2: *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995)**

**Argued March 28, 1995**

**Issue:** Does requiring student athletes to submit to random and suspicionless drug testing violate students' Fourth Amendment rights?

In the small town of Vernonia, OR, the local school played a pivotal role in the community's identity, and high school athletes were held in high regard (Kallio, 2007, p. 1). However, in the mid-to-late 1980s teachers and administrators noticed changes in student behavior (Kallio, 2007, p. 1). Students were increasingly rude and outbursts of profane language became common (Kallio, 2007, p. 1). The number of discipline referrals more than doubled, and increasing numbers of students were suspended for unacceptable behavior (Kallio, 2007, p. 1).

The District first attempted to alleviate the drug problem through special classes and presentations on the dangers of drugs (Shutler, 1996, p. 1274). Second, in conjunction with the City Council, the District hired a police officer to patrol the area near the high school for drug activities (Shutler, 1996, p. 1274). Third, the District brought in a drug-sniffing dog to search

student lockers for drugs (Shutler, 1996, pp. 1274-1275). None of these measures proved effective, however, and the drug and disciplinary problems continued (Shutler, 1996, p. 1275).

This led the District to investigate drug testing programs by studying such programs in other districts and soliciting legal advice (Shutler, 1996, p. 1275). The District held an “input night” for parents regarding the proposed drug testing, and attending parents gave their unanimous support (Shutler, 1996, p. 1275).

Under the drug testing policy, students wishing to participate in interscholastic athletics must sign a consent form with their parents agreeing to participate in the random, suspicionless drug testing program (Shutler, 1996, p. 1275).

Under the district’s policy, all student athletes were required to provide a urine sample at the beginning of the season for the particular sport in which they participated (Essex, 1995, p. 3). The District assigned numbers to all athletes participating in the sport and placed those numbers in a “pool,” where a student, supervised by two adults, drew 10 % of the numbers each week for testing (Shutler, 1996, pp. 1275-1276). School officials notified those selected and tested them on the same day, if possible (Shutler, 1996, p. 1276).

If a sample tests positive, the District administers a second test as soon as possible to confirm the result (Shutler, 1996, p. 1277). If the second sample tests negative, the District takes no further action (Shutler, 1996, p.1277). If the second sample tests positive, the school principal notifies the student’s parents and conducts a hearing with the student and his parents (Shutler, 1996, p. 1277). At this hearing, the principal presents the student with two options: (1) participation in a drug assistance program and a weekly drug test for six weeks or, (2) suspension from athletics for the remainder of the current season as well as the following season (Shutler, 1996, p. 1277).

In the fall of 1991, respondent James Acton, a seventh-grader, signed up for football at a District grade school (Shutler, 1996, p. 1277). The District denied him participation because James and his parents refused to sign the drug testing consent form, believing it to be a violation of James' privacy and civil rights (Shutler, 1996, p. 1277). The Actons filed suit in state court on James' behalf seeking declaratory and injunctive relief from enforcement of the Policy on the grounds that it violates the Fourth and Fourteenth Amendments of the United States Constitution and Article I, section 9 of the Oregon Constitution (Shutler, 1996, p. 1277).

Supreme Court Justice Scalia, writing for the majority, said that the Vernonia School District's program was reasonable and constitutionally permissible for three reasons (Essex, 1995, p. 3). First, students, especially student athletes, have low expectations for privacy in communal locker rooms and restrooms where students must produce their urine samples (Essex, 1995, p. 3). "School sports are not for the bashful," Scalia wrote. He stated further that it was clear from the court's earlier cases that school officials could generally exercise a degree of supervision and control that could not be exercised over free adults (Essex, 1995, p. 3). Second, Justice Scalia said the testing program was designed to be unobtrusive, with students producing their samples in relative privacy and with the samples handled confidentially by an outside laboratory (Essex, 1995, p. 3). Finally, the program served the district's interest in combating drug abuse (Essex, 1995, p. 3).

**Decision:** On June 26, 1995, The U.S. Supreme Court ruled 6-3 for Vernonia School District 47J.

### **Litigation Theme 3: Search and Seizure**

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### **Case 1: *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)**

**Argued March 28, 1984      Reargued October 2, 1984**

**Issue:** Do searches of a student or student's property conducted on school grounds violate the Fourth Amendment?

On March 7, 1980, a teacher at the Piscataway High School in Middlesex County, N.J., discovered the respondent T.L.O. and another girl smoking in a lavatory (Aizenstein, 1985, pp. 900-901).

T.L.O. was a fourteen-year-old freshman at that time (Aizenstein, 1985, p.901). Although the possession of cigarettes was not a violation of school rules, smoking in the lavatory was prohibited (Aizenstein, 1985, p. 901). Consequently, the teacher escorted the two girls to a meeting in the principal's office with the Assistant Vice Principal Mr. Theodore Choplick (Aizenstein, 1985, p. 901).

At the meeting with Mr. Choplick, T.L.O.'s companion admitted that she had violated the school rule prohibiting smoking in the lavatory (Aizenstein, 1985, p. 901). T.L.O., however denied that she had been smoking in the lavatory and claimed that she did not smoke at all (Aizenstein, 1985, p. 901). Mr. Choplick moved T.L.O. to his private office and demanded to see her purse (Aizenstein, 1985, p. 901). When the school official opened up the purse, he found a pack of cigarettes (Aizenstein, 1985, p. 901). Mr. Choplick also noticed a package of cigarette

rolling papers while reaching into the purse for cigarettes (Aizenstein, 1985, p. 901). Knowing that rolling papers are often associated with marijuana use, the school official continued to search the purse thoroughly (Aizenstein, 1985, p. 901). This search revealed a small amount of marijuana, marijuana paraphernalia, a large sum of money, and two letters indicating that T.L.O. was involved in marijuana dealing (Aizenstein, 1985, p. 901). Mr. Choplick turned all of the evidence of the drug dealing over to the police (Aizenstein, 1985, p. 901).

T.L.O. and her mother later proceeded to police headquarters where T.L.O. confessed to selling marijuana in the high school (Aizenstein, 1985, p. 901). On the basis of T.L.O.'s confession and the evidence obtained from her purse, the State brought delinquency charges against T.L.O. in juvenile court (Aizenstein, 1985, p. 901). T.L.O. moved to suppress her confession to smoking in the lavatory contending that Mr. Choplick's search of her purse violated the fourth amendment (Aizenstein, 1985, p. 901). The juvenile court denied the motion to suppress (Aizenstein, 1985, p. 901).

The Supreme Court of New Jersey approved the standard used by the juvenile court to determine whether Mr. Choplick's search violated the fourth amendment (Aizenstein, 1985, p. 902). The court stated that since possession of cigarettes did not violate school rules, Mr. Choplick's desire to obtain evidence that would impeach T.L.O.'s claim that she did not smoke did not justify his search (Aizenstein, 1985, p. 902).

After the original oral argument in March of 1984, the Supreme Court restored the case to the calendar for reargument (*New Jersey v. T.L.O.*, 1985, Conclusion, para. 1). In addition to the previously argued question, the Court requested that the parties brief and argue the additional question of whether the assistant principal violated the Fourth Amendment in opening T.L.O.'s purse (*New Jersey v. T.L.O.*, 1985, Conclusion, para. 1).



The Court heard reargument on October 02, 1984 (*New Jersey v. T.L.O.*, 1985, Conclusion, para. 2). The Court held that while the Fourth Amendment's prohibition on unreasonable searches and seizures applies to public school officials, they may conduct reasonable warrantless searches of students under their authority notwithstanding the probable cause standard that would normally apply to searches under the Fourth Amendment (*New Jersey v. T.L.O.*, 1985, Conclusion, para. 2). The Court held that the search of T.L.O.'s purse was reasonable under the circumstances (*New Jersey v. T.L.O.*, 1985, Conclusion, para. 2).

The Supreme Court, Justice White writing for the majority, reversed the decision of the New Jersey Supreme Court that the school official's search of T.L.O.'s purse was unconstitutional (Aizenstein, 1985, p. 903). The Court held that a school official is justified in conducting a search "when there are reasonable grounds for suspecting that the search will turn up evidence" that a law or school policy has been violated by a student (Aizenstein, 1985, p. 903).

**Decision:** On January 15, 1985, The U.S. Supreme Court ruled 6-3 for New Jersey.

**Case 2: Safford Unified School District #1 v. Redding, 557 U.S. 364 (2009)**

**Argued April 21, 2009**

**Issue:** Does strip searching of students by school officials violate that student's Fourth Amendment right?

In October 2003, Safford Middle School assistant principal Kerry Wilson, requested that thirteen-year-old Savana Redding come to his office (Stader, Greicar, Stevens & Dowdy, 2010, p. 109). Once in the office, he showed her a day planner, unzipped and open flat on his desk (Stader et al., 2010, p. 109). The planner contained several knives, lighters, a permanent marker, and a cigarette (Stader et al., 2010, p. 109). Savana admitted that the day planner was hers, but

she indicated that she had loaned the planner to her friend, Marissa Glines, a few days before (Stader et al., 2010, p. 109). Wilson showed Savana four white prescription-strength ibuprofen pills and over-the-counter blue naproxen pill found in the planner (Stader et al., 2010, p. 109).

Wilson informed Savana that he had received information from another student that Savana was distributing the pills to fellow students during lunch (Stader et al., 2010, p. 109). Savana denied distributing pills to her peers and agreed to allow Wilson to search her belongings (Stader et al., 2010, p. 109). Wilson requested that an administrative assistant, Helen Romero, come into the office to assist with and witness the search of Savana's backpack (Stader et al., 2010, p. 109). No additional contraband was found in this search (Stader et al., 2010, p. 109).

Wilson then instructed Ms. Romero to escort Savana to the school nurse's office to conduct a search of Savana's clothes for any banned substances (Stader et al., 2010, pp. 109-110). Once in the nurse's office, Savana was instructed to remove her jacket, socks, and shoes, leaving her in stretch pants and a T-shirt (Stader et al., 2010, p. 110). Neither the T-shirt nor the pants had pockets (Stader et al., 2010, p. 110). Savana was instructed to remove both the pants and the shirt and then told to pull her bra out and to the side and shake it (Stader et al., 2010, p. 110). She was also asked to pull out the elastic band on her underpants (Stader et al., 2010, p. 110). This second search also did not reveal any additional contraband (Stader et al., 2010, p. 110).

Savana's mother brought suit against the school district (Stader et al., 2010, p. 110). A divided Ninth Circuit Court of Appeals held that the strip search was unjustified (Stader et al., 2010, p. 110). The U.S. Supreme Court granted certiorari, which is used by the U.S. Supreme Court to order the Ninth Circuit of Appeals to deliver the written record of the case, to consider two questions (Stader et al., 2010, p. 110): (a) Did the search of Savana's bra and undergarments

by school officials, acting on reasonable suspicion that she brought forbidden prescription and over-the-counter drugs to school, violate the Fourth Amendment (Stader et al., 2010, p. 110)? and (b) Is the official who ordered the search entitled to qualified immunity (Stader et al., 2010, p. 110)?

In an 8-1 decision, with Justice Thomas dissenting, the Court held that the search of Savana Redding's bra and underpants for forbidden prescription and over-the-counter drugs did violate the Constitution (Stader et al., 2010, p. 110). However, the court also held that the assistant principal who ordered the unconstitutional search was entitled to qualified immunity from liability (Stader et al., 2010, p. 110).

**Decision:** On June 25, 2009, The U.S. Supreme Court ruled 8-1 for Safford Unified School District #1, Et Al.

#### **Litigation Theme 4: School Prayer**

First Amendment: 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.

#### **Case 1: *Engel v. Vitale*, 370 U.S. 421 (1962)**

**Argued April 3, 1962**

**Issue:** Does a school district's requirement for students to recite nondenominational prayer violate their First Amendment rights?

In November 1951, the New York State Board of Regents proposed what is considered a truly non-sectarian prayer for daily recitation in the public schools of the state (Pfeffer, 1962, p. 150). It issued a "policy statement" that asserted that American people have always been

religious, that a program of religious inspiration in the school will assure that the children will acquire “respect for lawful authority and obedience to law [and that] each of them will be properly prepared to follow the faith of his or her father, as he or she receives the same at mother’s knee or father’s side and as such faith is expounded and strengthened by his or her religious leaders” (Pfeffer, 1962, p. 150).

The “policy statement” then said: “We believe that at the commencement of each school day the act of allegiance to the flag might well be joined with this act of reverence to God: ‘Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our country’ ” (Pfeffer, 1962, p. 150). The announcement aroused a storm of controversy (Pfeffer, 1962, p. 150).

The Regents’ proposal was not mandatory; it was merely a recommendation which local school boards were free to adopt or not (Pfeffer, 1962, p. 151).

In New York City, after a stormy public hearing, the Board of Education decided not to institute recitation of the prayer in the public schools of the city, but compromised instead for the daily recitation of the fourth stanza of the patriotic hymn “America” (Pfeffer, 1962, p. 151). (“Our fathers’ God, to Thee, Author of Liberty, to Thee we sing. Long may our land be bright with freedom’s holy light, protect us by Thy might, great God our King”) (Pfeffer, 1962, p. 151).

No survey appears to have been taken to determine how many school boards did adopt the Regent’s prayer (Pfeffer, 1962, p.151). A reasonable estimate is that not more than ten percent of them did so (Pfeffer, 1962, p.151). However, among those that did was the school board in New Hyde Park, a Long Island suburb of New York (Pfeffer, 1962, p.151). William Vitale served as president of the school board. Michael Engel was a student at a school in Long Island that adopted the prayer in 1958 (*Engel v. Vitale*, 1962, para. 5). His father, Steven Engel,

joined with several other parents of students in the district to protest the prayer (*Engel v. Vitale*, 1962, para. 5). They argued that the school-sponsored prayer violated the establishment clause of the First Amendment, which states that “Congress shall make no law respecting an establishment of religion” (*Engel v. Vitale*, 1962, para. 5). When the Board of Regents refused to consider their petition to stop the prayer, the group of parents filed suit (*Engel v. Vitale*, 1962, para. 5).

All the New York courts ruled against them, holding the practice to be valid so long as no compulsion was used to cause any child to participate in the recitation (Pfeffer, 1962, p. 151).

“We think,” said Justice Black for the majority, “that by using its public school system to encourage recitation of the Regents’ prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause (Pfeffer, 1962, p. 152). Specifically, the policy breached the constitutional wall of separation between church and state (*Engel v. Vitale*, 1962, Conclusion, para. 2).

**Decision:** On June 25, 1962, The U.S. Supreme Court ruled 6-1 for Engel. Justice Frankfurter was ill, and Justice White was not yet on the bench when the case was argued (Pfeffer, 1962, pp. 151-152).

**Case 2: *School District of Abington Township, Pennsylvania v. Schempp*, 374 U.S. 203**

**(1963) Argued February 26-27, 1963**

**Issue:** Does school district-mandated reading of Bible verses in schools violate students’ First Amendment rights?

In *Abington v. Schempp* the Schempp family enjoined the Abington public school district and the Pennsylvania superintendent of public instruction to stop enforcing a Pennsylvania law that called for the reading of 10 verses from the Bible without comment at the opening of each

public school on each school day (Collie, 1983, p. 57). The law allowed any student to be excused from the reading on written request from a parent or guardian (Collie, 1983, p. 57). In addition, Abington Senior High School followed the Bible reading with the Lord's Prayer and the Pledge of Allegiance (Collie, 1983, p. 57).

The Schempp family--the husband, wife, and two of their three children--took legal action to halt school prayer activities in the school district.

The federal district court held that the Pennsylvania law was in violation of the establishment clause of the First Amendment, as applied to the states under the due process clause of the 14<sup>th</sup> Amendment (Collie, 1983, p. 57). The school district then appealed the decision to the U.S. Supreme Court (Collie, 1983, p. 57).

In a similar case considered at the same time as the *Schempp* decision, the Board of Commissioners in Baltimore, Maryland, had enforced a 1905 rule directing schools to conduct opening exercises consisting of reading a chapter without comment from the Bible and/or recitation of the Lord's Prayer (Collie, 1983, p. 57). Although Madalyn Murray and her son William protested that such a practice violated William Murray's rights under the First and 14<sup>th</sup> Amendments, the Maryland Court of Appeals upheld the board's demurrer (Collie, 1983, p. 57).

In an opinion authored by Justice Clark, the majority concluded that, in both cases, the laws required religious exercises and such exercises directly violated the First Amendment (*School District of Abington v. Schempp*, 1963, Conclusion, para. 2). The Court affirmed the Pennsylvania decision, and reversed and remanded the Maryland decision because the mandatory reading from the bible before school each day was found to be unconstitutional (*School District of Abington v. Schempp*, 1963, Conclusion, para. 2).

**Decision:** On June 17, 1963, The U.S. Supreme Court ruled 8-1, that public schools cannot sponsor Bible readings and recitations of the Lord's Prayer under the First Amendment's Establishment Clause (*School District of Abington v. Schempp*, 1963, Conclusion, para. 1).

**Case 3: *Wallace v. Jaffree*, 472 U.S. 38 (1985)**

**Argued December 4, 1984**

**Issue:** Do school district-led prayer services held during the school day violate students' First Amendment rights?

At an early stage of this litigation, the constitutionality of three Alabama statutes was questioned (*Wallace v. Jaffree*, 1985, Case, para. 7): (1) 16-1-20, enacted in 1978, which authorized a 1-minute period of silence in all public schools "for meditation"; (2) 16-1-20.1, enacted in 1981, which authorized a period of silence "for meditation or voluntary prayer"; and (3) 16-1-20.2, enacted in 1982, which authorized teachers to lead "willing students" in prescribed prayer to "Almighty God...the Creator and Supreme Judge of the world" (*Wallace v. Jaffree*, 1985, Case, para. 7).

Any teacher or professor in any public educational institution within the state of Alabama, recognizing that the Lord God is one, at the beginning of any homeroom or any class may pray, may lead willing students in prayer, or may lead the willing students in the following prayer to God (Text: *Wallace v. Jaffree*, 1985, p. 579): "Almighty God, You alone are our God. We acknowledge You as the Creator and Supreme Judge of the world. May Your justice, Your truth, and Your peace abound this day in the hearts of our countrymen, in the counsels of our government, in the sanctity of our homes and in the classrooms of our schools in the name of our Lord. Amen" (Text: *Wallace v. Jaffree*, 1985, p. 579).

Appellee Ishmael Jaffree is a resident of Mobile County, Alabama (Text: *Wallace v. Jaffree*, 1985, p. 580). On May 28, 1982, he filed a complaint on behalf of three of his minor children; two of them were second grade students and the third was then in kindergarten (Text: *Wallace v. Jaffree*, 1985, p. 580). The complaint named members of the Mobile County School Board, various school officials, and the minor plaintiffs' three teachers as defendants (Text: *Wallace v. Jaffree*, 1985, p. 580). The complaint alleged that the appellees brought the action "seeking principally a declaratory judgment and an injunction restraining the Defendants and each of them from maintaining or allowing the maintenance of regular religious prayer services or other forms of religious observances in the Mobile County Public Schools in violation of the First Amendment as made applicable to states by the Fourteenth Amendment to the United States Constitution" (Text: *Wallace v. Jaffree*, 1985, p. 580).

The complaint further alleged that two of the children had been subjected to various acts of religious indoctrination "from the beginning of the school year in September, 1981," that the defendant's teachers had "on a daily basis" led their classes in saying certain prayers in unison; that the minor children were exposed to ostracism from their peer group class members if they did not participate, and that Ishmael Jaffree had repeatedly but unsuccessfully requested that the devotional services be stopped (Text: *Wallace v. Jaffree*, 1985, p. 580). The original complaint made no reference to any Alabama statute (Text: *Wallace v. Jaffree*, 1985, p. 580).

In *Engle v. Vitale*, 370 U.S. 421 (1962), the Court held that the Establishment Clause of the First Amendment, made applicable to the States by the Fourteenth Amendment, prohibits a State from authorizing prayer in the public schools (Text: *Wallace v. Jaffree*, 1985, p. 582). The following Term, in *Murray v. Curlett*, decided with *Abington School District v. Schempp*, 374 U.S. 203 (1963), the Court explicitly invalidated a school district's rule providing for the reading



of the Lord's Prayer as part of a school's opening exercises, despite the fact that participation in those exercises was voluntary (Text: *Wallace v. Jaffree*, 1985, p. 582).

The Court determined the constitutionality of Alabama's prayer and meditation statute by applying the secular purpose test, which asked if the state's actual purpose was to endorse or disapprove of religion (*Wallace v. Jaffree*, 1985, Conclusion, para. 1). The Court held that Alabama's passage of the prayer and meditation statute was not only a deviation from the state's duty to maintain absolute neutrality toward religion, but was an affirmative endorsement of religion (*Wallace v. Jaffree*, 1985, Conclusion, para. 1). As such, the statute clearly lacked any secular purpose as it sought to establish religion in public schools, thereby violating the First Amendment's Establishment Clause (*Wallace v. Jaffree*, 1985, Conclusion, para. 1).

**Decision:** On June 4, 1985, The U.S. Supreme Court ruled 6-3.

**Case 4: Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000)**

**Argued March 29, 2000**

**Issue:** Does allowing student-led, student-initiated prayer during football games violate students' First Amendment rights?

Prior to 1995, a student elected as Santa Fe High School's student council chaplain delivered a prayer over the public address system before each home varsity football game (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 895).

Respondents, Mormon and Catholic students or alumni and their mothers, filed a suit challenging this practice and others under the Establishment Clause of the First Amendment (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 895).

While the suit was pending, petitioner school district (District) adopted a different policy, which authorizes two student elections, the first to determine whether “invocations” should be delivered at games, and the second to select the spokesperson to deliver them (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 895). After the students held elections authorizing such prayers and selecting a spokesperson, the District Court entered an order modifying the policy to permit only nonsectarian, nonproselytizing prayer (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 895).

The Fifth Circuit held that, even as modified by the District Court, the football prayer policy was invalid (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 895). Held: The District’s policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 895).

On May 10, 1995, the District Court entered an interim order addressing a number of different issues (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 898). With respect to the impending graduation, the order provided that “nondenominational prayer” consisting of “an invocation and/or benediction” could be presented by a senior student or students selected by members of the graduating class (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 898). The text of the prayer was to be determined by the students, without scrutiny or preapproved by school officials (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 898). References to particular religious figures “such as Mohammed, Jesus, Buddha, or the like” would be permitted “as long as the general thrust of the prayer is non-proselytizing” (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 898).

At the 1994 graduation ceremony the senior class president delivered this invocation: (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 898). "Please bow your heads. "Dear heavenly Father, thank you for allowing us to gather here safely tonight. We thank you for the wonderful year you have allowed us to spend together as students of Santa Fe. We thank you for our teachers who have devoted many hours to each of us. Thank you, Lord, for our parents and may each one receive the special blessing. We pray also for a blessing and guidance as each student moves forward in the future. Lord, bless this ceremony and give us all a safe journey home. In Jesus' name we pray" (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 898).

In July, the District enacted another policy eliminating the requirement that invocations and benedictions be "nonsectarian and nonproselytising," but also providing that if the District were to be enjoined from enforcing that policy, the May policy would automatically become effective (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 899).

The school board developed a policy in August addressing prayer at football games. The selection process was the same for the graduation speakers. The August policy, which was titled "Prayer at Football Games," was similar to the July policy for graduations (Text: *Santa Fe Independent School District v. Jane Doe*, 2000, p. 899).

Justice John Paul Stevens, delivered the Court's opinion. The Court held that the District's policy permitting student-led, student-initiated prayer at football games violates the Establishment Clause (*Santa Fe Independent School District v. Doe*, 2000, Conclusion, para. 1). The Court concluded that the football game prayers were public speech authorized by a government policy and taking place on government property at government-sponsored school-

related events and that the District's policy involved both perceived and actual government endorsement of the delivery of prayer at important school events (*Santa Fe Independent School District v. Doe*, 2000, Conclusion, para. 1). Such speech is not properly characterized as "private," wrote Justice Stevens for the majority (*Santa Fe Independent School District v. Doe*, 2000, Conclusion, para. 1).

**Decision:** On June 19, 2000, The U.S. Supreme Court ruled 6-3.

### **Conclusion**

School districts enact board policies that frequently cite U.S. Supreme Court cases addressed in this paper. The Valdez City Schools, Alaska Policy Manual, Series 5000, are referenced below in notations 1 and 2, with U.S. Supreme Court references cited. The Sitka School District, Alaska Policy Manual, Series 5000, is referenced below in notation 3, with U.S. Supreme Court references cited.

1. BP 5145.2 Freedom Of Speech/Expression

*Breese v. Smith*, 501 P.2d 159 (Alaska 1972)

*Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988)

*Tinker v. Des Moines*, 393 U.S. 503 (1969)

*Bethel School District v. Fraser*, 478 U.S. 675 (1986)

2. BP 5145.12 Search and Seizure

*Goss v. Lopez*, 419 U.S. 565 (1975)

*New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

### 3. BP 5131.61 Student Athlete Random Drug Testing

*Board of Educ. Of Indep. Sch. Distr. No. 92 v. Earls*, 122 S. Ct 2559 (2002)

*Vernonia School District 47J v. Acton*, 515 US 646 (1995)

The courts will continue to hear and make rulings when it comes to school law, backed by the constitution of the United States.

As such, it is crucial for school leaders to become informed of school law as it is currently written and decided. Through studying relevant historic court cases, school board policy manuals, and state education statutes, education leaders will ensure they handle school issues according to school policy and state education law.

In addition, education programs should require that all aspiring teachers, principals, and superintendents take a law class, taught by a practicing attorney. These programs should require in-depth study of school law to include board policies, administrative regulations, and state education statutes, utilizing real life scenarios that occur in schools.

When school districts plan and budget for professional development, I believe time should be spent with the school attorney covering education law topics.

This includes understanding that students do not shed their constitutional rights at the schoolhouse door, and that schools and school grounds have their own rights and regulations, as well.

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