

LEGAL UPDATES

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Is the Devil in the Details of the Recently Passed “Right-to-Pray” Amendment to the Missouri Constitution?

In the August 7 primary election, Missouri voters overwhelmingly approved an amendment to the state Constitution that is designed to protect the freedom of religious expression in public spaces generally and in public schools in particular. It takes effect 30 days after passage, or September 8, 2012.

Although characterized as the “right-to-pray” amendment, its scope is far broader. As a result, Amendment 2 is likely to present challenges in implementation to public school faculty members and administrators. Because the rights it clarifies or grants in the area of religious liberty relate to the rights of the citizens of the state vis-a-vis actions of the state, its provisions are not applicable to private educational institutions.

In addition to requiring all public schools to display “in a conspicuous and legible manner” the Bill of Rights of the U.S. Constitution, the amendment contains key provisions applicable to the public school setting, such as:

Students have the right to the free exercise of prayer or other religious expression without interference as long as it is private and voluntary, whether individually or corporately and in a manner that is not disruptive.

Students may not be coerced to participate in any prayer or religious activity.

Students may express their beliefs about religion in written or oral assignments free from discrimination based on the religious content of their work.

Students shall not be compelled to perform or participate in academic assignments or educational presentations that violate their religious beliefs.

The third and fourth provisions listed above were not part of the ballot language. Therefore, public schools may not be on notice of their applicability to the academic year that is just starting. These provisions, however, are the ones that could present the biggest challenges, particularly the right to refuse an assignment based on religious beliefs. Most of any such refusals that may arise will have to be addressed on a case-by-case basis, so establishing general guidelines for their resolution is problematic. Nevertheless, we believe it is safe to articulate a few principles that might be useful:

It is reasonable to require the religious belief to be sincerely held. Thus, if an objection to an assignment on this basis is raised, it would be appropriate to ask for supporting evidence as to the holding of that belief (e.g., a written statement from a parent or the student's religious leader).

Performing the assignment or engaging in the educational activity must actually constitute a violation of the student's religious beliefs. In this regard, it arguably would not be a violation to simply require a student to master an understanding of, but not necessarily agree with, a theory, concept or practice that may contradict the student's religious belief.

In the event of a valid religious objection to an assignment, the school should endeavor to accommodate that objection by offering an alternative assignment that approximates the learning objective as closely as possible.

What This Means to You

If you are a private school, Amendment 2 does not apply to you. Public schools should determine the parameters required to make a religious belief request so that all students are treated equally. In addition, public schools should notify faculty of the change in the law to ensure consistent compliance.

The American Civil Liberties Union (ACLU) filed a legal challenge to the amendment on August 8, 2012. The challenge focused on the right of prison inmates and not students. We will issue subsequent alerts as the case progresses.

Contact Info

If you have questions, please contact your Husch Blackwell attorney, Joe Cornelison at 816.983.8280 or Hayley Hanson at 816.983.8377.

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