



CLIENT ADVISOR

SJC Upholds “Under God” In Pledge

In a recent decision, Massachusetts’ highest court ruled that the pledge of allegiance including the words “under God” did not violate the state constitutional rights of atheists. The pledge has previously been upheld by federal courts against challenges under the U.S. Constitution.

In *Doe v. Acton-Boxborough Reg. High. Sch. Dist.*, No. SJC-11317 (May 9, 2014), the court considered whether the pledge, including the words “under God,” creates a religious classification that violates the equal rights amendment, Article 106, to the Massachusetts Constitution. The plaintiffs argued that by placing their children in an environment where the pledge is recited, and forcing them to decide whether to participate or not, the state was making the children feel less patriotic than their classmates. Plaintiffs emphasized that inclusion of the words “under God” in the pledge expresses governmental support for a belief in God, to the exclusion of those who do not believe.

Classifications based on religion are automatically “suspect” for the purpose of constitutional analysis, but the court ruled that the pledge does not create any classification, because reciting it is voluntary. The court observed that the U.S. Supreme Court in the 1943 case of *West Virginia Board of Education v. Barnett*,

held it unconstitutional to require students to salute the flag and recite the pledge. In view of the pledge’s voluntariness, students can refrain from reciting it for any reason, not just a religious one, and thus no religion based classification is created.

This decision closely follows a U.S. Supreme Court decision allowing a town to open public meetings with Christian prayers offered by clergy. *Greece, N.Y. v. Galloway*, (No. 12-696, May 5, 2014). The majority emphasized that the prayers were rooted in tradition, the government did not control the message and the attendees at the meeting were not coerced into participation in the religious message. The recent SJC decision may not shed much light on similar questions in Massachusetts as the SJC took great pains to characterize the pledge as a patriotic not a religious exercise, distinguishable from prayer. However, the court did recognize the ability of children to ignore unwanted religious messages.

Schools should heed the reminder that recitation of the pledge is voluntary, and that singling students out for their choice would be unlawful. If you have questions about Free Speech, Free Exercise and Establishment of Religion issues, please consult us.



Feng Shui Has Its Limits

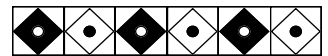
In clear violation of Feng Shui principles, our office keeps files of bargaining history a long time, even files from the mid-80’s stored in someone’s attic. A town we represent recently won an arbitration involving a police sergeant who wanted injured leave status for an alleged psychological injury, in order to have over six months of sick leave restored. That veteran sergeant is grandfathered to receive a 100% buy back of unused sick leave, meaning that upwards of \$40,000 was at stake in the case.

The arbitrator ruled that the contract plainly limited injury leave to physical injuries, and that the bargaining history documents and testimony from rounds of bargaining in 1985 and 1987 confirmed that the Union consciously agreed to that limitation.

Some rounds of bargaining are simple, focused on wages and a few other items. For dealings on significant language or benefits, keeping files can help win a case.

STUDENT DISCIPLINE

The Board of Elementary and Secondary Education approved new Student Discipline Regulations on April 29, 2014. The new regulations, located at 603 CMR 53.00 are effective July 1, 2014, and are designed to assure that students who are expelled or suspended have the opportunity to receive services that allow the student to make academic progress. School districts should update policies to reflect the new regulations.



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