

# Happy (and Legal) Holiday Celebrations

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With several holidays just around the corner, now is a good time to remember that the First Amendment prohibits public school corporations from endorsing, sponsoring, and/or promoting a particular religious belief or practice. At this time of the year, holiday decorations and holiday programs can make everyone feel “wonderful,” but care must be taken to not offend the Establishment Clause.

Nearly four years ago, one Indiana school corporation was sued by a student and parent, alleging that the annual Christmas program violated the First Amendment. For 45 years, the Concord Community School Corporation hosted a program entitled, a “Christmas Spectacular.” Approximately 600 students participated in the program each year by either performing or designing and creating costumes, sets, and props. The first half of the program, which was usually 60 minutes, consisted of a variety of musical and dramatic performances by students that were secular in nature.

The second half of the program, however, consisted of a live nativity scene performed by students and several biblical readings. This segment normally lasted about 30 minutes. The student and parent objected in particular to the live nativity scene, and asserted the program violated the Establishment Clause. Because of the lawsuit, the school corporation altered the second half of the program by including songs related to other cultural celebrations, including Hanukkah and Kwanzaa, eliminating the biblical readings, shortening the nativity scene performance, and using mannequins for the scene. After years of litigation, the Seventh Circuit Court of Appeals concluded the altered version of the Christmas program did not violate the Establishment Clause. The court looked at the entire program, noting that “the Santas, jingle bells, and winter wonderlands of the first half promoted the secular aspects of the holiday season.” As to the second half of the program, the court found that the changes to the second half of the program reduced the religious impact of the celebration. The court thus concluded that “a reasonable audience member, sitting through the 90-minute [program],

would not understand the production to be ratifying a religious message.” (For a complete understanding of the case, see [Freedom From Religion Foundation, Inc. v. Concord Community Schools, 885 F.3d 1038](#) (7th Cir. 2018).)

The message from the Seventh Circuit as well as other courts is that a holiday program does not have to consist of just secular performances. Religious music and dramatic performances may be part of a holiday program, but care must be taken to ensure that the religious portions do not dominate the program. Additionally, if religious songs and performances are part of the program, those religious selections should include several religious celebrations and not just one particular religion. The same principles apply with respect to holiday decorations. Displays in public spaces of a school building should be secular in nature or include a variety of religious symbols.

Happy Holidays to all!



70<sup>th</sup> Annual Fall Conference Photo Collage