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Defending Academic Freedom: **Advice for Teachers**

Michael D. Simpson

Over 40 years ago, the U.S. Supreme Court famously observed:

> The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection."[1]

That sentiment is particularly appropriate for social studies and history teachers, who should be free to expose students to controversial ideas and to teach critical thinking skills. But are you free? Do you have the constitutional right—call it academic freedom—to teach what you want and to discuss controversial issues in the classroom? The short answer is "no." Indeed, after a 2006 Supreme Court decision, it's pretty clear that teachers can be required to read from a script written by their employer. Happily, in practice, most school boards don't try to exercise that degree of control. And there are actions teachers can take to keep it that way. But first, an abbreviated history of academic freedom in the courts.

Simply put, the question boils down to "who decides?" Who decides what is taught in K-12 classrooms? Obviously, there are three groups of stakeholders who have a strong interest in exercising that authority: teachers, parents, and school boards. But ultimately, who has the legal right to make the call, to decide what will be taught and what will not be taught? The U.S. Supreme Court has referred to "academic freedom" in 36 cases dating back to 1952, but it has never squarely answered the question,[2] and for the last four decades, the lower federal courts have struggled with the issue, often reaching confusing and inconsistent results.

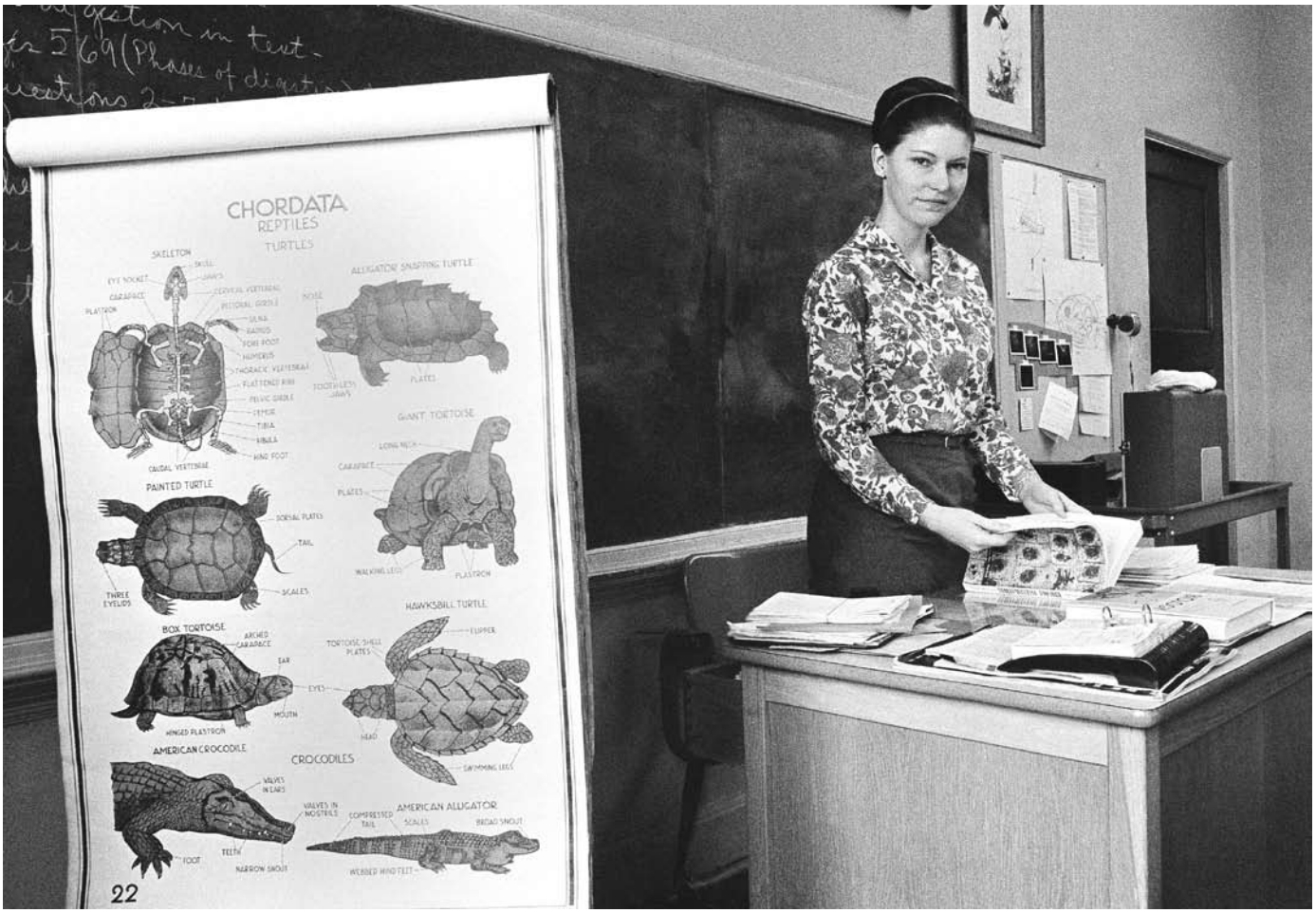
Teachers' Rights

In the heady days of the 60s and 70s, a number of federal courts recognized expansive free speech rights for high school teachers in the classroom. In one early case, for example, the First Circuit Court of Appeals ruled in 1969 that a high school English teacher couldn't be fired for distributing to students an article containing the word "motherf*****" and discussing it in class.[3] Two years later, a Massachusetts federal court reached the same conclusion regarding a high school teacher's use of the word "f***" with students.[4] In one of the cases involving a high school history teacher, a federal appeals court held that a Texas school board violated the First Amendment rights of Janet Cooper by firing her for using a controversial role-playing technique to teach about the post-Civil War Reconstruction period.[5]

In what may be the zenith of teacher academic freedom cases—and the coda as well—a federal court in Texas ruled in 1979 that a high school teacher was unconstitutionally fired for distributing surveys to students that dealt with such controversial topics as sexual intercourse, euthanasia, mind-altering drugs, and artificial reproductive methods. The court wrote, "[A] teacher has a constitutional right protected by the First Amendment to engage in a teaching method of his or her own choosing, even though the subject matter may be controversial or sensitive."[6]

While that may be rousing language and music to any teacher's ears, it is—as lawyers say—no longer good law. Since 1980, the law has evolved, or rather devolved, to the point where it is fair to say that K-12 teachers have no constitutional right to decide what to teach or how to teach it. As we will see, teachers don't even have the right to express their personal views in the classroom. In the last 30 years, there have been more than 100 court decisions involving a claim of "academic freedom," and with the exception of a few outlier cases, the teachers have always lost.[7] Here's a representative sampling:

- Peggy Boring was a high school drama teacher from North Carolina who was demoted for selecting a controversial play for her students to



Biology teacher Susan Epperson (shown at her desk in Little Rock Central High School, Aug. 13, 1966), backed by the Arkansas Education Association, challenged Arkansas's ban on the teaching of the theory of evolution. (AP Photo)

perform. The play, *Independence*, included a lesbian character and her sister who was pregnant and unwed. Boring sued and the federal appeals court ruled in 1998 that the play was a part of the curriculum, and Boring had no right under the First Amendment to select controversial plays.[8] "A public high school teacher," the court said, has no "First Amendment right to participate in the makeup of the school curriculum."

- Cissy Lacks was a 23-year veteran English teacher in suburban St. Louis when she was fired in 1995 for allowing her students to use "street language," including profanity, in the plays they wrote and performed in her creative writing class. A federal district court in 1996 held that the school board violated her right to academic freedom, and awarded her $826,000 in damages and reinstatement. The Eighth Circuit Court of Appeals reversed, holding that the First Amendment did not protect her "student-centered teaching method," a technique that allows students initially to express themselves in creative works without censorship, despite testimony that this method was an effective means of getting reticent students to write.[9]

- Colorado teacher Al Wilder was fired mid-year after a 25-year career for showing a controversial R-rated movie to his logic and debate class of 17- and 18-year olds without getting his principal's prior approval as required by the "controversial materials" school policy. In rejecting his academic freedom claim, the Colorado Supreme Court held, "It cannot be left to individual teachers to teach what they please." A teacher, the court added, "has no First Amendment right to use non-approved controversial learning resources in his classroom without following the District's [controversial materials] policy."[10]

- Texas high school history teacher Timothy Kirkland was non-renewed in retaliation for recommending books for outside reading that were not on the school district's approved

reading list, including works by Orwell, Hemingway, and Kafka. The Fifth Circuit found no First Amendment violation, observing, "Although the concept of academic freedom has been recognized in our jurisprudence, the doctrine has never conferred upon teachers the control of public school curricula."[11]

- Other courts have reached the same conclusion.[12]

Most of the old cases won by teachers relied on the Supreme Court's 1969 *Tinker* decision, the celebrated student armband case where the Court notably held, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school house gate."[13] How quaint those words sound now and how outdated they seem these days when the "school house gate" has been replaced by the school house metal detector.

Sadly, to the extent that *Tinker* once could be read as supporting the right of academic freedom for teachers, it was implicitly overturned by the Supreme Court's 2006 decision in *Garcetti v. Ceballos*,[14] a devastating case on a 5-4 vote. *Garcetti* held that, when a public employee speaks in the course of performing his/her job duties, the First Amendment affords no constitutional protection whatsoever; the First Amendment simply does not apply. That is so, the Court reasoned, because such "speech" doesn't belong to the employee; rather, the speech belongs to the *employer*. He who pays the piper calls the tune, and the employee is nothing more than a pitchman for the boss's product. The government employer has hired its employees to deliver the employer's message, and the employer can lawfully tell its employees what to say (and what not to say).

One post-*Garcetti* case really drives this point home. Deborah Mayer was a middle school teacher in Monroe County, Indiana. While discussing current events with her class as she did every Friday, the subject of the Iraq War came up. One of her students asked whether she supported the war. She answered briefly that she did not. Some parents heard about her anti-war statement and complained to her principal, and Ms. Mayer was nonrenewed at the end of the school year.

She sued, and the Seventh Circuit Court of Appeals accepted as true her allegation that the real reason for her non-renewal was her brief anti-war statement in the classroom. Applying *Garcetti*, however, the court squarely held that, because Mayer was speaking in her role as a teacher, the First Amendment did not apply. In clarion language that sends shivers down the spine of those who believe that the classroom should be a "marketplace of ideas," the court said:

> The school system does not "regulate" teachers' speech as much as it hires that speech. Expression is a teacher's stock in trade, the commodity she sells to her employer in exchange for a salary. [The First Amendment] does not entitle primary and secondary teachers, when conducting the education of captive audiences…, to advocate viewpoints that depart from the curriculum…. [School children] ought not be subject to teachers' idiosyncratic perspectives.[15]

Game, set, match. Judges can't write more clearly than that. The U.S. Supreme Court refused to review the decision. While the *Mayer* case is not the only post-*Garcetti* decision refusing to grant any First Amendment protection to teacher classroom speech, it certainly is the last nail in the academic freedom coffin, at least until there is an ideological change on the Supreme Court.[16]

There is one important caveat: the fact that a teacher's classroom speech is not protected under the First Amendment does not mean that it is a proper basis for discipline or discharge. Teachers who have tenure (continuing contract status), or who work under a collective bargaining agreement that gives them job protection, can't be fired except for "just cause." Generally, that means that the teacher has to engage in serious misconduct to justify dismissal, and a casual comment in the classroom hardly rises to that level. Indeed, if Deborah Mayer had been tenured (she was not), then it is likely that an arbitrator or labor board would have overturned her dismissal. At the same time, however, a tenured teacher who ignores a specific directive about classroom instruction—an order not to teach *Romeo and Juliet*, for example, because of its mature themes—risks a charge of insubordination. As we have seen, even a tenured teacher has no right to ignore such a directive.

Parental Rights

So if teachers don't have the right to decide what is taught in K-12 classrooms, do parents? That's an easy one; the answer is "no." The 1980s and 90s witnessed an explosion in so-called "parental rights" litigation through which parents sought to wrest control of curricular content from school officials. It was, by all accounts, an unmitigated failure. These lawsuits generally advocated three legal theories: First, relying on two Supreme Court decisions from the 1920s,[17] parents asserted that they had a constitutional right to control the "education and upbringing" of their children, including the right to decide what ideas they are exposed to in school. Taking a page from the playbook of the disestablishmentarians, who had successfully challenged religious practices in public schools, Christian conservatives also argued that certain textbooks and curricular content promoted the "religion" of "secular humanism" and thus ran afoul of the First Amendment's requirement of church/state separation. Finally, they claimed that exposing their children to information and points of view that conflicted with their sincerely held religious beliefs violated their First Amendment right to the Free Exercise of their religion. Recognizing the chaos that would ensue if each parent were able to insist on a "designer curriculum" for

his/her child, the courts have soundly rejected these creative arguments. Here's a sampling of some of the "parental rights" cases:

- Parents can't force a school district to stop using *The Learning Tree*[18] or the *Impressions* Reading Series[19] as a part of the curriculum, even though the books allegedly "indoctrinated children" in values directly opposed to their Christian beliefs.

- Parents don't have the right to have their children excused from a mandatory health education course[20] or diversity training devoted to issues of sexual orientation and gender harassment,[21] despite the claim that such instruction directly conflicts with their strongly held religious beliefs.

- Parents can't sue school districts for exposing their children to mandatory AIDS education[22] or for surveying students on matters relating to sex,[23] even though such instruction impinged on their religious values regarding chastity and morality.

- Parents can't force a school district to stop using certain textbooks because they advance the "religion" of secular humanism and ignore the existence, history and contributions of Christianity; the Establishment Clause does not require "equal time for religion" in school textbooks.[24]

- Minority parents don't have the right to force a school district to stop assigning *The Adventures of Huckleberry Finn* as mandatory reading despite the fact that the book is rife with insulting and racially derogatory terms.[25]

- Christian parents don't have the right to have their children excused from classroom instruction they find religiously repugnant, specifically, the reading to a second grade class of the book *King and King*, the story of two princes who meet, fall in love, and get married.[26]

- Christian parents who have religious objections to a school's curriculum don't have the right to force the school district to pay for sending their children to a private religious school.[27]

- A state legislature can't prohibit public schools from teaching the theory of evolution.[28]

The courts are unanimous, and the message is clear: parents don't have a constitutional right to determine what is taught in the classroom or even to have their children excused from instruction they find objectionable. By process of elimination, that means that school boards ultimately have the power to decide what is taught in K-12 classrooms.

Chief Justice Warren Burger has cogently explained the uniquely democratic nature of decision-making in public education: "[L]ocal control of education involves democracy in a microcosm.... If the parents disagree with the educational decisions of the school board, they can take steps to remove the board members from office."[29] This sentiment was echoed by Seventh Circuit Chief Judge Frank Easterbrook in the *Mayer* case discussed earlier. In ruling that teachers have no First Amendment rights in the classroom, he wrote that the power to decide what is taught "should be reposed in someone the people can vote out of office, rather than tenured teachers."[30]

The Lesson Here

In light of this harsh reality, how can you challenge your students with stimulating (and controversial) material and still keep your job? There are a number of actions you can take to insure that your classroom remains a marketplace of ideas.

First, ask your local bargaining representative to negotiate protection for "academic freedom" into your collective bargaining agreement (CBA). Teachers have the right to bargain in about 40 states, and this issue certainly should be brought to the table. Arbitrators—who typically interpret and enforce CBA's—are much more sympathetic to teachers' claims of academic freedom than state and federal courts. Indeed, NEA affiliates in Hawaii and Delaware, for example, have won important arbitration decisions upholding academic freedom. In both cases, the arbitrator relied on pertinent clauses in CBA's to strike down school district policies prohibiting teachers from showing R-rated movies in class.[31] Model contract language recommended by NEA is set forth in the side bar.

Second, through your association representatives, you should urge the school board to adopt a comprehensive, written policy for handling parental complaints about the content of classroom instruction and efforts to censor textbooks or library books. The policy should require that any complaint be made in writing and should empower a committee with a majority of teachers to decide whether the challenged work is pedagogically sound. There are a number of online resources available to assist in devising such a policy.[32]

Third, be sure you fully comply with any school policy regarding the use of "controversial" materials in the classroom. Several courts have held that teachers can't be scape-goated for teaching from the approved curriculum when controversial content causes parental protests.[33] As the Wilder court held, failure to obey even a vague or ambiguous policy can lead to termination. If the policy requires prior approval, be able to explain and defend the educational suitability of the controversial material or technique. If the administrator decides to squelch your creativity, challenge the decision through any available appeal, such as a grievance or hearing before the school board, and mobilize collegial and community support.

Fourth, even though it may smack of self-censorship, you will be less likely to get into trouble if you steer clear of materials containing extensive profanity or sexually explicit language. These sorts of materials simply raise a red flag. A creative educator should be able to teach controversial and challenging ideas without utilizing language that some may find offensive. Finally, heed Justice Burger's advice and become politically active. If you suffer under a repressive school board, then vote 'em out of office.

Forty years ago, a more progressive Supreme Court held in *Tinker*:

> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students.... In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved.[34]

Tragically, even though the courts have refused to recognize or respect the vital role that teachers play in maintaining the classroom as a marketplace of ideas, teachers and their professional associations still have alternative means to achieve that end. As the High Court has recognized, the stakes are exceedingly high:

> No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.... Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.[35]

Notes

1. *Keyeshian v. Board of Regents*, 385 U.S. 589, 603 (1967).
2. Indeed, in two of its decisions involving challenges to university affirmative action student admission programs, the Court has characterized "academic freedom" as a right that inheres in the institution itself, rather than any individuals. *Regents of University of California v. Bakke*, 438 U.S. 265, 312 (1970) ("Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body." *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003) (same)).
3. *Keefe v. Geanakos*, 418 F.2d 359 (1st Cir. 1969).
4. *Mailloux v. Kiley*, 323 F.Supp. 1387 (D. Mass.) *aff'd*, 448 F.2d 1242 (1st Cir. 1971).
5. *Kingsville Indep. School Dist. v. Cooper*, 611 F.2d 1109 (5th Cir. 1980) (Cooper was awarded $15,000 in damages, more than double her annual salary of $7,020).
6. *Dean v. Timpson Independent School District*, 486 F.Supp. 302, 307 (E.D. Tex. 1979).
7. In several cases decided prior to *Garcetti v. Ceballos*, the Sixth Circuit Court of Appeals recognized First Amendment protection for in-class and curricular speech by high school teachers, *Cockrel v. Shelby County School Dist.*, 270 F.3d 1036 (6th Cir. 2001); *Evans-Marshall v. Board of Educ. of Tipp City Exempted Village School Dist.*, 428 F.3d 223 (6th Cir. 2005). On October 21, 2010, however, the Sixth Circuit overturned this line of cases and, relying on *Garcetti*, specifically held that high school teachers enjoy no First Amendment protection for in-class, curricular speech. *Evans-Marshall v. Board of Educ. of Tipp City Exempted Village School Dist.*, 2010 WL 4117286 (6th Cir. 2010).
8. *Boring v. Buncombe County Bd. of Education*, 136 F.3d 364 (4th Cir.) (*en banc*), *cert. denied*, 525 U.S. 813 (1998)
9. *Lacks v. Ferguson Reorganized School Dist.* R-2, 147 F.3d 718, *rehearing denied*, 154 F.3d 904 (8th Cir. 1998) *cert. denied*, 526 U.S. 1012 (1999).
10. *Board of Education of Jefferson County School Dist. R-1 v. Wilder*, 960 P.2d 695 (Colo. 1998). The court's decision prompted a stinging dissent by Justice Gregory J. Hobbs, Jr. (a former sixth-grade teacher) who expounded on the abiding value of academic freedom: "When we strip teachers of their professional judgment, we forfeit the educational vitality we prize. When we quell controversy for the sake of congeniality, we deprive democracy of its mentors."
11. *Kirkland v. Northside Indep. Sch. Dist.*, 890 F.2d 794, 800 (5th Cir.1989).
12. E.g., *Edwards v. California University of Pennsylvania*, 156 F.3d 488, 491 (3rd Cir. 1998) (opinion by Judge, now Justice, Samuel Alito: "we conclude that a public university professor does not have a First Amendment right to decide what will be taught in the classroom"; *California Teachers Association v. Davis*, 271 F.3d 1141 (9th Cir. 2001) (rejecting First Amendment challenge to California's Proposition 227, which requires teachers to teach non-English speaking students only in English); *Loeffelman v. Board Of Educ. of Crystal City School Dist.*, 134 S.W.3d 637 (Mo.App. E.D. 2004) (teacher has no First Amendment right to make comments in class opposing interracial relationships); *LeVake v. Indep. School Dist.* No. 656, 625 N.W.2d 502 (Minn. App. 2001) (high school biology teacher has no First Amendment right to teach criticisms of the theory of evolution contrary to the approved curriculum); *Calef v. Budden*, 361 F.Supp.2d 493 (D.S.C. 2005) (math teacher's acts of wearing anti-war button, calling the president "stupid" and an "idiot," and expressing harsh criticism of American military policy was not protected under the First Amendment).
13. *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 510-11 (1969).
14. 547 U.S. 410 (2006)
15. *Mayer v. Monroe County Community School Corp.*, 474 F.3d 477, 479-80 (7th Cir.), *cert. denied*, 128 S. Ct. 160 (2007).
16. In each of the following recent cases, the court held that the school employee was speaking pursuant to his/her official duties and therefore had no First Amendment protection: *Veggian v. Camden Bd. of Educ.*, 600 F.Supp.2d 615 (D.N.J. 2009) (school employee's report of an alleged grade fixing scheme); *Omokehinde v. Detroit Bd. of Educ.*, 563 F.Supp.2d 717 (E.D.Mich. 2008) (school employee's internal protests to her supervisor regarding district's alleged misuse of Title I parental involvement funds and selection of outside vendors); *Carone v. Mascolo*, 573 F.Supp.2d 575 (D.Conn. 2008) (high school teacher's complaint to her supervisor about missing textbooks); *Woodlock v. Orange Ulster B.O.C.E.S.*, 281 Fed.Appx. 66, 2008 WL 2415726 (2nd Cir. 2008) (special education counselor's repeated complaints to school administration about the violent and threatening behavior of a special ed student); *Porr v. Daman*, 299 Fed.Appx. 84, 2008 WL 4831426 (2nd Cir. 2008) (teacher's comments about fire safety issues at the school). To be sure, there is *dicta* in *Garcetti*, suggesting that the Supreme Court at some point in the future may extend constitutional protection to "classroom instruction" and "academic scholarship," at least for higher education faculty. Indeed, a recent decision by a federal district court in Ohio (which is part of the Sixth Circuit) held that, *Garcetti* notwithstanding, a medical school professor's classroom instruction is entitled to First Amendment protection. *Kerr v. Hurd*, 694 F.Supp.2d 817 (S.D.Ohio 2010).
17. *Meyer v. Nebraska*, 262 U.S. 390 (1923) (striking down state law banning the teaching of foreign languages on the ground that such a law violates parents' right "to control the education of their [children]"); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (recognizing a constitutional right of parents to send their children to private school)
18. *Grove v. Mead School Dist.* No. 354, 753 F.2d 1528 (9th Cir. 1985).
19. *Fleischfresser v. Directors of School Dist.* 200, 15 F.3d 680 (7th Cir. 1994).
20. *Leebaert v. Harrington*, 332 F.3d 134 (2d Cir. 2003) (The court declared, "If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's choice of subject matter.")
21. *Morrison ex rel. Morrison v. Board of Educ. of Boyd County, Kentucky*, 419 F.Supp.2d 937 (E.D.Ky. 2006).
22. *Brown v. Hot, Sexy and Safer Productions,* Inc., 68 F.3d 525 (1st Cir. 1995).
23. *Fields v. Palmdale School Dist.*, 427 F.3d 1197 (9th Cir. 2005).
24. *Smith v. Board of School Commissioners of Mobile County*, 827 F.2d 684 (11th Cir. 1987).
25. *Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022 (9th Cir.1998).
26. *Parker v. Hurley*, 514 F.3d 87 (1st Cir.) *cert. denied*, 129 S.Ct. 56 (2008).

27. *Mozert v. Hawkins County Bd. of Ed.*, 827 F.2d 1058 (6th Cir. 1987).
28. *Epperson v. State of Ark.*, 393 U.S. 97 (1968)
29. *Board of Education v. Pico*, 457 U.S. 853, 891 (1982) (dissenting).
30. *Mayer v. Monroe County Community School Corp.*, 474 F.3d 477, 480 (7th Cir.), *cert. denied*, 128 S. Ct. 160 (2007).
31. *Department of Educ. and Hawaii State Teachers Association*, 66 LA 1221 (Tsukiyama, arb. 1976); *Board of Education and Capital Educators Association*, Case Number 1439 00812 90A (Tener, arb. 1989).
32. The American Library Association has free resources online for dealing with library book censorship at www.ala.org, including an article by Barbara Jones entitled, "Libraries, Access, and Intellectual Freedom: Developing Policies for Public and Academic Libraries" (1999). An example of a school district policy can be found at www.bibb.k12.ga.us/images/media_policies.pdf, although this is not a recommended or model policy because the review committee does not include a majority of education professionals. People for the American Way has developed a toolkit for defending science education from assaults by "creationists." It is available at http://site.pfaw.org. *The Publishing Research Quarterly* (Vol. 5, Number 2/ June, 1989) has published an article entitled "Coping with Textbook Controversies: From Policy Development to Implementation." It is available for purchase from Springer New York at www.springerlink.com.
33. *Stachura v. Truszkowski*, 763 F.2d 211 (6th Cir. 1985), *rev'd on other grounds sub nom., Memphis Community School Dist. v Stachura*, 477 U.S. 299 (1986) (teacher cannot be punished because of parental protests over his teaching about human reproduction, where he utilized only approved textbook and films); *Cockrel v. Shelby County School Dist.*, 270 F.3d 1036 (6th Cir. 2001) (where school officials gave prior approval for outside speaker (on the uses for industrial hemp), they cannot use ensuing public outcry as basis for firing teacher).
34. *Tinker v. Des Moines Independent School District*, 393 U.S. 503, 511 (1969).
35. *Sweezy v. State of New Hampshire*, 354 U.S. 234, 250 (1957).

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Academic Freedom Model Contract Language

Here are examples of some of the provisions that should be included in a "good" academic freedom contract provision:

1. *Academic Freedom*. Academic freedom shall be guaranteed to teachers, and no special limitations shall be placed upon study, investigation, presenting and interpreting facts and ideas concerning human society, the physical and biological world and other branches of learning subject to accepted standards of professional responsibility. The right to academic freedom herein established shall include the right to support or oppose political causes and issues outside of the normal classroom activities.

2. *Classroom Presentation and Discussion*. As a vital component of academic freedom, teachers shall be solely responsible for decisions regarding the methods and materials used for the instruction of students. Accordingly, employees shall be guaranteed full freedom in classroom presentations and discussions and may introduce issues that have economic, political, scientific or social significance, or otherwise controversial material relevant to course content.

3. *Personal Expression*. No teacher shall be prevented from wearing pins or other identification or symbolism in expression of membership in the association, religious orders, political systems, or sympathy with social causes or traditions in or outside the classroom. In performing teaching functions, teachers shall have reasonable freedom to express their opinions on all matters relevant to the course content in an objective manner. A teacher, however, shall not utilize her/his position to indoctrinate students with her/his own personal, political and/or religious views.

4. *Nondiscrimination*. No teacher will be subject to discrimination or harassment in any terms or conditions of employment because of her/his personal opinion or scholarly, literary or artistic endeavors.

5. *Personal Life*. The personal life of a teacher is not an appropriate concern of the Board for purposes of evaluation or disciplinary action unless it prevents the teacher from performing her/his duties.

6. *Censorship*. Employees shall not be censored or restrained in the performance of their teaching functions solely on the ground that the material discussed and/or opinions expressed are distasteful or embarrassing to the school administration or to the school's public relations.

7. *Alteration of Grades*. Grades given a student by a teacher shall be final and not subject to alteration unless fraud, bad faith, incompetency or mistake can be shown on the part of said employee.

8. *Monitoring and Observation of Teacher*. All monitoring or observation of the work performance of a teacher shall be conducted openly and with full knowledge of the teacher. The use of eavesdropping, public address, audio systems, and similar surveillance devices shall be strictly prohibited. No mechanical or electronic device shall be installed in any classroom or brought in on a temporary basis which would allow a person to be able to listen or record the procedures in any class.

9. *Internet Usage*. Academic freedom, subject to accepted standards of professional responsibility, will be guaranteed to bargaining unit members, and no special limitations will be placed upon study, investigation, presentation and interpretation of facts and ideas, including email and Internet usage.

10. *Teacher Assessment*. The Board and the Association recognize that the ability of pupils to progress and mature academically is a combined result of school, home, economic and social environment and that teachers alone cannot be held accountable for aspects of the academic achievement of the pupil in the classroom. Test results of academic progress of students shall not be used in any way as evaluative of the quality of a teacher's service or fitness for retention.