



EDUCATION LAW NOTES

Federal and Virginia Developments in School Law

Bradford A. King, Attorney at Sands Anderson

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Religious Instruction or Unconstitutional Endorsement?

During a world history class unit on "the Muslim World," a La Plata, Maryland school teacher presented a PowerPoint slide entitled "Islam Today," contrasting "peaceful Islam" with "radical fundamental Islam." The slide included the statement: "Most Muslim's [sic] faith is stronger than the average Christian." Students were required to fill-in-the-blanks on a worksheet addressing the growth and expansion of Islam, beliefs and practices of Islam, and links between Islam, Judaism, and Christianity. Included in the assignment was the statement: "There is no god but Allah and Muhammad is the messenger of Allah," a portion of a declaration known as the *shahada*.

Student Caleigh Wood and her father objected to the comparative statement and the *shahada* assignment as violating her Christian beliefs. Wood declined to complete the assignment, which she argued promoted Islam. She received a lower percentage grade for the course (but not a lower final letter grade). Wood sued the Charles County Board of Education (along with certain educators) alleging they violated: (1) the Establishment Clause of the First Amendment to the United States Constitution by impermissibly endorsing and advancing the Islamic religion and (2) the Free Speech Clause of the First Amendment (her right to be free from government compelled speech) by requiring her to complete the *shahada* assignment.

On February 11, 2019, a panel of the United States Court of Appeals for the Fourth Circuit affirmed a ruling by the United States District Court for the District of Maryland granting

summary judgment for the Maryland school district defendants. *Wood, et al. v. Board of Education of Charles County, et al.*, No. 18-1430 (4th Cir. February 11, 2019). The Court held that the comparative faith statement and *shahada* assignment did not impermissibly establish religion or inhibit Wood's free speech rights.

Courts apply the "Lemon Test" (named after the 1971 United States Supreme Court decision in *Lemon v. Kurtzman*, 403 U.S. 602) to determine the constitutionality of government action under the Establishment Clause. Under the *Lemon Test*, to withstand First Amendment scrutiny government conduct must (1) be driven in part by a secular purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) not excessively entangle church and state. The conduct violates the Establishment Clause if it fails any of the three factors.

Applying the *Lemon Test*, the *Wood* Court held that the comparative faith statement and *shahada* assignment violated none of the prongs. The Justices emphasized that the context of the challenged action is crucial, recognizing that viewing the religious component of the activity in isolation would inevitably lead to invalidation under the First Amendment

The Court first evaluated whether the comparative faith statement and *shahada* assignment had some secular purpose considering the academic framework in which they were presented. "Manifestly, if courts were to find an Establishment Clause violation every time that a

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student or parent thought that a single statement by a teacher either advanced or disapproved of a religion, instruction in our public schools would be reduced to the lowest common denominator. . . . School authorities, not the courts, are charged with the responsibility of deciding what speech is appropriate in the classroom."

The Court of Appeals emphasized that the United States Supreme Court recognizes the secular value of studying religion on a comparative basis. "In this case, the comparative faith statement was part of an academic unit in which students studied Middle Eastern empires and the role of Islam. The unit did not focus exclusively on Islam's core principles, but explored 'among other things, formation of Middle Eastern empires including the basic concepts of Islamic faith and how it along with politics, culture, economics, and geography contributed to the development of those empires.'" Nothing in the record supported an argument that the teacher's comparative faith statement was made with a subjective purpose of advancing Islam over Christianity or for any other predominantly religious purpose. Regarding the *shahada* assignment, the Court of Appeals wrote "[t]he worksheet included a variety of factual information related to Islam and merely asked the students to demonstrate their understanding of the material by completing the partial sentences. *This is precisely the sort of academic exercise that the Supreme Court has indicated would not run afoul of the Establishment Clause.*"

The Court then held that the comparative faith statement and *shahada* assignment had neither the primary effect of advancing or hindering religion under the second *Lemon Test* factor. The statement and assignment did not suggest that students should adopt those beliefs as their own or participate in a religious activity (such as graduation prayer). The Court contrasted the case to one in which Islamic beliefs were posted on a classroom wall without explanation. In *Wood*, the challenged materials were integrated into the school curriculum and directly relevant to the secular lessons taught. "These types of

educational materials, which identify the views of a particular religion, do not amount to an endorsement of religion. A reasonable observer, aware of the world history curriculum being taught, would not view the challenged materials as communicating a message of endorsement." Writing further, the Court said "as a matter of common sense, an objective observer would not perceive a singular statement such as the comparative faith statement, or a long question about a religion's core principle on a fill-in-the-blank assignment, as an endorsement of religion."

Finally, the challenged activities did not excessively entangle government and religion. The materials were neither obtained from or benefited a religious institution, and there was no evidence that use of the materials resulted in invasive monitoring of activities to prevent or advance religion. The Muslim unit constituted only five days of a year-long curriculum. The Court found no unconstitutional entanglement, and therefore no violation of any of the *Lemon Test* prongs.

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U.S. Court of Appeals for the Fourth Circuit, Maryland

The Court also dismissed Wood's free speech claims. "Although a student's right against compelled speech in a public school may be asserted under certain circumstances, that right has limited application in a classroom setting in which a student is asked to study and discuss materials with which she disagrees. In the present case, the record is clear that the *shahada* assignment did not require Wood to profess or accept the tenets of Islam. . . . The *shahada* assignment required Wood to write only two words of the *shahada* as an academic exercise to demonstrate her understanding of the world history curriculum."

School administrators should be comforted that *academic* religious instruction, in contrast to in-school proselytizing, is permissible without violating the First Amendment.