PS for 12/28/89

Censorship of Religious Songs

An indignant parent appeared before the Mayfield City School Board in Cleveland, Ohio recently because the 4th grade daughter Kristen had been prohibited from singing "Jesus Put a song in My Heart" at a purely voluntary school talent show. School officials had censored the song, stating that it was their understanding of the law that "religion was not allowed in the public schools."

However, the parent, Loren Loving Vail, turned out to be an attorney. She presented the School Board with a legal memorandum showing that, while constitutional law prohibits government- or school-initiated religious activities, it does not prohibit pupil action.

Mrs. Vail demanded that the school board adopt a policy of "accommodating neutrality" in matters of religion in the schools and thereby "support, encourage and uphold the family value structure." Her memorandum asserted that, while the law prohibits the school from leading prayer, the law does not say the student cannot bow his head in prayer.

In this case, the student had initiated the religious song, so Mrs. Vail asserted that the school's prohibition violated her constitutional rights under the First Amendment. Mrs. Vail's brief gave two reasons to support her argument.

First, she said, the school violated the Free Speech Clause of the First Amendment, citing the U.S. Supreme Court case of *Tinker v. Des Moines School District*, which ruled that students "do not shed their constitutional rights to freedom of speech at the schoolhouse gate." She also asserted that the school violated the student's right to freedom of speech because it discriminated on the subject matter of the song because it happened to be religious.

Secondly, Mrs. Vail asserted that the school violated the student's rights under the Establishment Clause of the First Amendment, which requires that schools accommodate religion and not "inhibit or evidence hostility" toward religion. Mrs. Vail told the Board that prohibiting any semblance of religion in the school was "hostile" to religion because it sent a clear message to the students that their religion was either wrong or that it was inappropriate during the week.

She asserted that this position of hostility toward religion undermined the family value system, especially of those families who are teaching their children to live by the family's moral values every day of the week. Mrs. Vail also cited *Abington v. Schempp*, in which the Supreme Court held that "the state may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion, thus "preferring those who believe in no religion over those who do believe."

In her concluding remarks to the School Board, Mrs. Vail advised that, because of the school's violations of the student's constitutional rights and liberties, the school should be liable to the student for compensatory damages under 42 U.S.C. Sec. 1983. In lieu of pursuing damages, Mrs. Vail demanded that her client daughter be allowed to sing the song in the next school talent show, and that the board adopt the policy statement as set forth in the Eighth Circuit case of *Florey v. Sioux Falls School District*.

*Florey* upheld the constitutionality of a school policy which set forth a position of "accommodating neutrality" in matters of religion. The *Florey* case found that Christmas programs in public schools were constitutional if the religious songs were presented in a "prudent and objective manner and only as part of the cultural and religious heritage of the holiday."

Parental support for Mrs. Vail's argument was apparent from the standing ovation she received from the approximately 100 persons who attended the Board meeting. However, Mayfield Superintendent Robert G. Stabile approved the principal's censorship rule, saying, "We even call this time of year the 'Winter Holiday' instead of Christmas."

The American Civil Liberties Union, which first backed the school's decision to censor Kristen, now says it will take a second look based on Mrs. Vail's presentation to the school board. The ACLU's patronizing, anti-religious mindset was evident when the ACLU's Cleveland representative said to a reporter, "If, for instance a child in school is singing a song to himself or saying a prayer, that can't be prohibited."

The School Board has referred Mrs. Vail's demands to a constitutional expert for an opinion. The Board may find that Mrs. Vail is a formidable attorney to tangle with because she made legal history last year in winning a $3 million judgement in the case of the wrongful death of a stillborn child.

The case (which is now on appeal) broke new legal ground because it is the first time that damages have been awarded for pain and suffering of the unborn baby in the utero. The unborn baby's life was valued at $1.5 million and the parents were awarded the other $1.5 million for their emotional distress.