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The constitutionality of public school community service programs

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The constitutionality of public school community service programs. (Special Section: Issues in School Finance)

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Abstract: The Third Circuit has affirmed the constitutionality of mandatory community service programs for students in public schools. The ruling came in the Steirer case where two students in Bethlehem, PA, challenged the right of their school to require them to perform community service work.

In light of federal legislation that has facilitated student participation in school-sponsored community service programs, some schools now include community service activity among their graduation requirements.

The idea of community service is inextricably woven into the fabric of our society: the Declaration of Independence states, "With a firm reliance on the protection 6f Divine Providence, we mutually pledge to each other our lives, our fortune, and our sacred honor." During the Civil War, President Lincoln signed into law the Homestead Act and Morrill Act, and national legislation for community service continued into the twentieth century with Great Depression work programs. In the 1930s, the American community was assisted by the Civilian Conservation Corps, the Public Works Administration, and the Works Progress Administration. The legacy of community service was strengthened by the creation of the Peace Corps in 1961 and then, three years later, the Volunteers in Service to America program (Divine, Breen, Frederickson, and Williams 1991).

One of the current community service legislation programs most relevant to students is the National and Community Service Act of 1990, Public Law 101-610. This program includes school-based service activities (for elementary, secondary, and postsecondary institutions), conservation and youth corps, and a voucher program that exchanges service for training, education, or home purchase assistance (Congressional Digest 1993). Another community service program, the National Service Trust Act, approved by Congress in 1993, grants monetary awards and job assistance to students aged sixteen or older who perform community service before, during, and after college (Congressional Digest 1993).

Bethlehem, Pennsylvania, and School-sponsored Community Service

In 1990, the Bethlehem, Pennsylvania, School Board adopted a graduation requirement for high school students that required the students to perform sixty

hours of community service during high school. Special education students were exempt from participation. The program had these objectives: (1) to show that interest in the community can have positive effects, (2) to assist students,to understand citizenship responsibilities, and (3) to develop pride in helping others. For their community service, students could choose from more than seventy local organizations. The Bethlehem School Board insisted that none of the groups could discriminate on the basis of race, religion, or gender and that an organization's motivation could not be based on the desire to indoctrinate students in any particular ideology. Students also had the option to develop their own school-approved community service program (Sendor 1993).

The constitutionality of the community service graduation requirement was challenged by two Bethlehem students and their parents in Steirer by Steirer v. Bethlehem Area School District (1993). Both students had voluntarily performed community service on their own time, but they objected to the mandate from the school district to participate in community service. The students and parents based their action on two legal theories, maintaining that (1) the graduation requirement violated the free speech clause of the First Amendment by forcing them to engage in a particular form of expression; in this instance, the belief was altruism, and (2) the graduation requirement violated the Thirteenth Amendment because participation in the program constituted involuntary servitude.

The Third U.S. Circuit Court confirmed the district court's ruling in favor of the Bethlehem School District. The chief judge of the circuit court identified three issues in this case: (1) school district control in determining the curriculum, (2) freedom of expression in the free speech clause of the First Amendment, and (3) whether the community service requirement amounted to slavery as described in the Thirteenth Amendment.

It is important to study the Steirer case because it established a precedent that helps to answer questions that students, parents, school boards, and administrators may have about community service programs. In determining a conclusive ruling in Steirer, the circuit court looked to an established body of case law dealing with the school-related issues of curriculum and freedom of student expression as well as the separate issue of involuntary servitude. The following analysis of these issues surveys the development of case law that was instrumental in reaching a decision in this case.

School District Control of the Curriculum

There is an established legal tradition of deferring to local school boards in the area of daily school operations, including curriculum, hiring of personnel, and purchase of resources and materials. States control public education by virtue of the reserved-powers clause of the Tenth Amendment. State constitutions and statutes and the regulations of state executive agencies are the means to control public education in each state. Local school districts are agents of the state and therefore are responsible for maintaining and administering educational policy. States can convey authority to local school districts through express authority (power conferred by statute) and implied authority (rights and responsibilities not actually stated in a statute or constitution). The landmark Kalamazoo decision (1874) established that local school boards have implied powers and can establish

high schools. In general, courts have been liberal in recognizing and interpreting the implied powers of local school boards when curricular issues are considered (Reutter 1985).

The majority of elementary and secondary curricula in the United States shun voluntary service to the community. Most social studies curricula, for example, emphasize individualism and competition rather than cooperation in the community (Procter and Haas 1994). Some people also cite the irony of requiring volunteerism, which denies an individual the opportunity of free choice. In today's global society, however, social problems demand that attention be given to cooperation and empowerment in our school curricula.

The authority of the state and a local school district over students and parents must be balanced by the right of parents to be a part of the decision-making processes that affect their children. Courts have established the principle of parens patriae, which is the right of the state to be the "father or guardian" for all children regarding their development in a manner that serves the interest of the people of a state. An example of such a compelling state interest is the compulsory school attendance requirement. However, in the Wisconsin v. Yoder decision(1972), the Supreme Court allowed Amish students to end their formal public school attendance in the eighth grade because of religious beliefs.

Pierce v. Society of Sisters (1925) was a good example of judicial balance between parental and state authority in regard to educational choice. The issue centered around a state law that required parents to enroll their children in a public school. The Supreme Court ruled that enrollment in private or parochial school satisfied compulsory attendance laws. The "Pierce compromise" established the right of parents to make educational decisions and also supported the power of the state to control education. Prior to the Pierce decision, there was no national precedent to be used by the states. Similar situations seemed to be decided on an ad hoc basis with inconsistent decisions. For example, in State v. Mizner (1878), the Iowa Supreme Court held that a student was not required to take algebra because of her delicate health. A similar case in Nebraska (State ex rel. Sheibley v. School District No. 1 [1891]) showed that parental authority took precedence over the state's right to require a course. The parent wanted the student to take a grammar course instead of a rhetoric course. The school district allowed this student to take grammar. Then the father ordered his daughter not to take grammar or rhetoric; therefore, the school board expelled her. Later, the state supreme court ruled that the student did not have to take grammar or rhetoric, and she was readmitted to school. Federal and state courts have rendered holdings that affect numerous areas of public and private school curricula.

The First Amendment and Free Speech

The issue facing the third circuit in the Steirer case was whether participation in the community service program in the Bethlehem district compelled students to endorse a particular belief. The court added that if the students were required to work for an organization whose views they opposed, then their First Amendment rights would be violated. However, the students could choose from many organizations or design their own program. The students stated that they were forced to "affirm the philosophy that serving others and helping the community

are what life is all about" (Steirer 1993, 990). The court concluded that performance of community service is not a matter of expression; these students were not forced to believe in the concept of altruism.

The First Amendment protects pure speech and press rights as well as extensions of speech such as the right to withhold speech, symbolic speech, dress and grooming, and personal association rights. The concept of free speech has been altered by changing circumstances and events in our society and has been extended into varied contexts. The Steirer case may have had a different outcome had not the school district responded to national legislation that advocated student participation in community service.

Two cases exemplify how court rulings can change in light of the political tenor of the times. Before World War Two, when the need for patriotism was strong, the Supreme Court ruled that Jehovah's Witness students had to participate in a school flag salute exercise (Minersville School District v. Gobitis [1940]). This decision was reversed in West Virginia v. Barnette (1943) when the Supreme Court ruled that students who were Jehovah's Witnesses could be exempted from pledging allegiance to the flag. The Court concluded that withholding speech was just as important in school as it was in other arenas of society.

Student symbolic speech rights received constitutional protection in Tinker v. Des Moines Independent Community School District (1969). Students who wore armbands to protest the Vietnam War were singled out from students who wore other symbols of protest. Because these students did not disturb the instructional process and the school administration's action was arbitrary, their symbolic expression rights were protected.

Although the Supreme Court has never rendered a decision on student dress and grooming rights, in approximately half the cases that have come up before the circuit courts, the courts have supported student rights, while in the remaining cases, they have supported school administrations (Jennings 1989). In Bannister v. Paradis (1970), a district court found that a student's right to wear certain clothing was a right guaranteed by the Fourteenth Amendment. Another district court held that long hair was protected when used as symbolic speech protesting the Vietnam War (Church v. Board of Education [1972]). On the other hand, a North Carolina appeals court upheld a school district's policy of requiring students to wear prescribed attire during a graduation ceremony. The court ruled that the school administration was not violating the due process rights of the students because receiving a diploma was not a property right (Fowler v. Williamson [1979]). The Fifth Circuit Court supported the decision of a school district that refused to enroll male students because they violated the school rule that prohibited long hair. The court ruled that the students' request to maintain long hair because they were musicians was irrelevant in this case. The school district had a grooming code that did not violate a state constitution, state statutes, or the due process clause of the Fourteenth Amendment. The school had not acted in an arbitrary manner in regard to these students Ferrell v. Dallas Independent School District [1968]). Numerous dress and grooming cases have resulted in rulings based on the Fourteenth Amendment or an "extension" of the First Amendment.

The right of students to express themselves via association with groups has been

adjudicated in several courts. The Supreme Court allowed a state board of education to prohibit student membership in a high school "secret" society (Passel v. Fort Worth Independent School District [1971]).

The Thirteenth Amendment and involuntary Servitude

The Thirteenth Amendment not only proscribes slavery but also prohibits involuntary servitude, except as punishment for a crime of which the party has been convicted. The courts have not reached a consensus regarding the imposition of involuntary servitude on juvenile delinquents. Some courts have allowed the use of compulsory labor as a form of punishment, while other courts have held against the use of compulsory labor (Hancock 1992). A different circuit court held that involuntary labor resulted only from labor compelled by use or threat of physical force or the threat of imprisonment (United States v. Shackney [19641).

Various courts have upheld the civic duty and parens patriae exceptions to the Thirteenth Amendment. The civic duty exception includes mandatory participation in public works projects, military service, and alternative service for conscientious objectors. In such instances, a state must show that there is a compelling state interest and that compulsory labor promotes rehabilitation. For example,,the Hawaii Board of Education's action to require mandatory student work in high school cafeterias was upheld by a federal court because this action would help defray costs (Bobilin v. Board of Education [19751).

Conclusion

The constitutionality of student participation in mandatory school-based community service programs was affirmed by the Third Circuit Court. Although this was the first time a public school community-service graduation requirement was challenged, there may be different litigation outcomes on this issue in the future in other courts.

Our society reveres the concept of the rugged individual, but we also urge people to be aware of their civic responsibilities and duties. We have come a long way since the prominent ideology in our educational system was the "privilege doctrine"--it was thought to be a privilege for students to attend school, and their constitutional rights went unnoticed.

Many factions in our society question both public and private school curricula. Statutes and case law demonstrate that adjudication has been needed to attempt viable solutions for school systems and parents/students. Although state governments have tried to develop laws that serve the interests of all people, it is difficult to satisfy all constituents. In curricular matters, schools might ask if there are viable options for students who may not want to participate in a program. Including parents in the curricular decision-making process may help to reduce disagreement.

In the area of freedom of student expression, our court system has asked some salient questions: (1) Did the student's pure or symbolic speech disrupt the instructional process (or was it foreseeable that it would)? (2) Was the student required to affirm his or her belief or disbelief in an idea or practice? and (3) Were

the actions of the school arbitrary and without a standard for behavior? Most courts have held for the school administration if yes is the answer to the first question and for the students if yes is the answer to the last two questions.

In regard to the involuntary servitude issue, the Shackney Court ruled that involuntary servitude could only result from labor compelled by the use or threat of physical force or by the threat of imprisonment. All concerned parties would then determine if the students in the Steirer case were in such a situation. Other circumstances and events may have resulted in a different decision.

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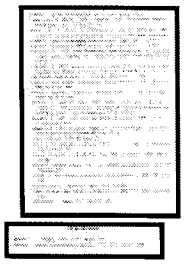

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