



Religious Expression in Art in the Public Schools


by Amy J. Borman and Karen E. Wabeke

When Julie Millin, an art teacher at Tomah High in Madison, Wisconsin, asked her class to draw landscapes in January 2008, she had no idea it would lead to a national debate over religious expression in public schools. In response to the assignment, one student submitted a landscape drawing showing a path leading up to a cross on a hill. Also included in the picture were the words “John 3:16 A sign of love,” referring to a passage from the Holy Bible that says “For God so loved the world that he gave his one and only Son, that whoever believes in him shall not perish but have eternal life.” Based on a class policy that prohibits any violence, blood, sexual connotations or religious beliefs in student artwork, Ms. Millin asked the student to remove the Biblical reference from the drawing. When he refused, she gave him a zero on the project.

In March 2008, the Alliance Defense Fund, a Christian legal advocacy group, filed a federal lawsuit on behalf of the student. The suit challenged the constitutionality of Tomah High’s student art policy in light of individuals’ First Amendment right to free speech. Although Tomah and the ADF reached a settlement in May 2008, whereby the school has revised its art policy to allow for religious beliefs to be reflected in student artwork, the controversy highlights the thorny problem of free artistic expression in state-sponsored settings.

The First Amendment to the U.S. Constitution prohibits the government from stifling the free exercise of religion or abridging freedom of speech and it also prohibits government from establishing or condoning any form of religion. These two competing interests often clash, just as they collided at Tomah High. Both the United States Supreme Court and the U.S. Department of Education have provided some guidance on the subject for schools to consider when faced with similar issues.

The Court held in 1990, for example, that a group of Christian students in Omaha, Nebraska had the right to meet for Bible study on school property and after school hours where other non-religious groups were given similar meeting space (*Board of Education. v. Mergens*). The Court wrote:



[t]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect. We think that secondary school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis.

The U.S. Department of Education promulgated guidelines in 1998 to assist public schools with these difficult issues. Relative to artistic expression, the guidelines advise as follows.

- Teachers and school administrators, when acting in those capacities, are representatives of the state and are prohibited from soliciting or encouraging religious activity or soliciting or encouraging anti-religious activity.
- Public schools may not provide religious instruction but may teach about religion and the role of religion in history and may also consider religious influences on art, music, literature, etc.
- Students may express their beliefs about religion in the form of homework, artwork and other written and oral assignments free of discrimination based on the religious content of their submissions.

In spite of these guidelines, many public schools adopt policies that may be in violation of the U.S. Constitution.

Case law has further defined the proper role for schools in addressing religiously-themed student artwork. For example, it is an established principle that students have the right to “express ... religious views in assignments” so long as the work conforms to the requirements of the assignment (*Z.H. v. Oliva; Settle v. Dickson Ct. School Board*). Teachers retain the authority to mark a student’s grade down where religiously-themed schoolwork fails substantively or pedagogically to satisfy the objective standards of the assignment. Schools may also exclude student artwork from display where the religious messages or symbols in the artwork would become part of a permanent display (*Fleming v. Jefferson Co. School Dist. R-1*).

The interplay between artistic expression, religious freedom and the various clauses of the United States Constitution is interesting and intricate. Case law and proper legal guidance can assist you in drafting your policies. For more information on religious expression in schools or for assistance in drafting your school policies, please contact Ms. Borman or Ms. Wabeke. Their biographies appear on the following page

Colleen L. Maloney, a summer law clerk, assisted with this article. She will be graduating from Ohio State’s law school in May 2009.

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Background Check

featuring

Amy J. Borman and Karen E. Wabeke

Firm member Amy J. Borman returned to her native Midwest from New York City in 1985. She and her husband Bob have raised three children in the Toledo area. Dena (25), an Indiana University School of Music graduate, is a high school choral conductor in the Chicago Public Schools; Gabe (23) is a University of Maryland graduate and currently a paralegal at the U.S. Department of Justice, Antitrust Division in Washington D.C. and Ethan (18) graduated from the Toledo School for the Arts this spring. He will be attending Berklee College of Music in Boston this fall. Mr. Borman has multiple degrees, including one from New York University and he is a school counselor at Saint John's Jesuit High School.



Ms. Borman attended Wittenberg University and the University of Michigan where she obtained her bachelor's and master's degrees in music, respectively. She earned her law degree from the University of Toledo. Obviously, her interests lie in the arts. She is active in the arts organizations as well as professional women's organizations and educational advocacy endeavors.

In her practice, Ms. Borman advises businesses and educational institutions in all matters of compliance with laws. Ms. Borman provides guidance to educational clients nationwide and has been a guest speaker at businesses, universities and schools throughout the United States and Europe.

Ms. Borman can be reached at our Toledo or Columbus offices (419-241-6000; 614-280-1770).

Karen E. Wabeke joined the Firm as an associate in 2007 after graduating from the University of Michigan Law School. She received her undergraduate degree from Wellesley College in 2004 with a major in history. While in college, Ms. Wabeke was involved with Best Buddies, a nonprofit organization dedicated to enhancing the lives of people with intellectual disabilities.

A Toledo-area native, Ms. Wabeke loves spending time with her parents and brother, who live in Sylvia. Tom and Mary Wabeke are retired educators. Mrs. Wabeke taught at Glendale-Feilbach Elementary School while Mr. Wabeke retired from Start High School.

Ms. Wabeke actively volunteers in the community, serving on the Vestry of Trinity Episcopal Church in Toledo and the board of directors of FOCUS (Family Outreach Community United Services), a local nonprofit that offers transitional and permanent housing, life skills programs and job development training to help individuals overcome homelessness. She also enjoys photography and her two cats, Clarence and Camille.



Ms. Wabeke currently practices education, environmental and adoption law. She can be reached at our Toledo office by calling 419-241-6000.