

An Argument for Teachers' Free Speech Rights

Tanner Dayhoff

University of Colorado – Denver

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Public school teachers are employees of the taxpayers, and many taxpayers argue that they should have control over the actions of those people that their taxes employee. While this contention holds some merit, no one should be deprived of the rights guaranteed to all Americans by the Constitution of the United States. Of the most important of these rights are those guaranteed by the First Amendment, which includes the freedom of speech. Edwin C. Darden, a lawyer for The Center for Public Education, states: "It is important to remember that speech, as defined by the Constitution, is not just words. It also includes non-verbal and symbolic expression: clothes, off-campus web sites, dance performances, and art." (Darden, 2006) Unfortunately, in America there are many instances in which teachers are being told by their "superiors" ways in which they can (and cannot) exercise their freedom of speech rights. Not only is this a clear violation of teachers' rights, it also suppresses the opportunities that American students have to learn the democratic ideals of our country from positive role models participating in our democratic society. Fortunately for educators, there are several instances of cases brought before the courts in which the courts have ruled that educators are indeed guaranteed the same rights as other civilians, despite being government employees. The following is an argument in favor of the free speech rights of teachers, and several examples of why limiting these rights can be detrimental to teachers and students they serve.

The Declaration of Independence, written by the forefathers of the United States of America and submitted on July 4<sup>th</sup>, 1776, states that "...all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." (Jefferson, 1776) This single statement has been the basis for almost

all actions taken by Americans since the Declaration of Independence was drafted by Thomas Jefferson in June of 1776. The unalienable rights guaranteed to all Americans and written into the Constitution of the United States of America include, but are not limited to: the freedom of religion, speech, and press; the freedom to bear arms; the freedom from self-incrimination without the due process of law; and, the freedom to establish just laws not otherwise specified in the Constitution. Such unalienable rights have been fought for during American history in many events, including the Revolutionary War, the Civil War, and the Civil Rights Movement. Furthermore, Americans have historically defended these rights for oppressed and decimated populations, and have found themselves in many wars of morality, including WWII. So a question that begs to be asked, (that seems almost unfathomable to have to be asked,) is why these rights are not guaranteed to all Americans? Or in this instance, why do teachers, key members of American society, have to fight for their freedom of speech, when these rights have been defended by Americans since the creation of the United States in 1776?

Teachers from all eras and all regions of the United States have had to defend their freedom of speech rights. Teachers have been faced with many instances in which they have been told what they can or cannot wear at school, what they can or cannot teach in the curriculum, what they can or cannot display in their classroom, and what they can or cannot do or comment on within the community. Furthermore, when teachers don't follow these rules, they have been faced with termination of employment, and often times have been ostracized within their community. The First Amendment "prohibits laws (or actions) that infringe on the freedom of religion, speech, press and assembly," (Alexander & Alexander, 2009) and this provision in the United States Constitution should apply to all Americans. Any attempts by school boards, administrators, or communities to limit teachers' free speech rights are a clear

violation of teachers' First Amendment Rights. Teachers, just like all other Americans, should have the right to express themselves through their words, clothing, associations, and actions.

Oppressing the rights of adults that have such an influence on America's students stifles the potential learning of the democratic ideals that we aspire to instill in our young citizens. Acclaimed author William Arthur Ward once said "The mediocre teacher tells. The good teacher explains. The superior teacher demonstrates. The great teacher inspires." Assuming that there is truth to this statement, which would be better for America's students: (1) a teacher that tells and explains, or (2) a teacher that demonstrates and inspires? If students across America are going to learn to be active participants in our society, they must have positive role models that are actively engaging in critical issues in America. Students need to have teachers that are willing to model taking a stance on a topic, peacefully protest against their opponents, and support their stance with research. Students need to have teachers that are willing to express their culture and religious background through dress and customs. Students need to have teachers that are willing to model cognitive discourse through words, instead of violence. Without these types of role models, we risk having generations of students learn that it is okay to simply follow the majority's influence, and to never challenge the norm or strive for more. Darden (2006) was correct when he wrote: "Part of the mission of public schools is to teach children what democracy is all about. Tax-supported schools are also, by their actions, examples of democracy in action. It would be the height of contradiction to teach about the First Amendment and then not follow it." As a society, it would be undemocratic to suppress the speech of our teachers.

Fortunately, the courts have sided with educators in many cases that have dealt with free speech rights. Possibly the most widely referred to case was *Pickering v. Board of Education* in 1968. In this case Marvin Pickering, a teacher in Illinois, was dismissed from his job after he sent a letter to his local newspaper about a proposed tax increase. The letter was critical of the past policies and financial management by the school district, it contained falsities in its claims against named officials, and it was published after the public vote on the tax increase. The Board decided the letter harmed the operation of the school district's mission by creating controversy and conflict among school staff. According to an Illinois state law, Pickering's actions were grounds for dismissal, but Pickering believed he had a right to express his views. Prior to Pickering, government employees, particularly teachers, were expected to be apolitical. If they engaged in politics, it was grounds for termination of their employment. This case eventually made it to the Supreme Court of the United States, where Pickering asked why teachers lost their rights as citizens just because they were employed by a government body. He also argued there were avenues or topics where teachers should expect protection for their speech. Finally, he challenged that there must be balance for constitutional rights between being a private citizen and public employee. Justice Marshall delivered the opinion of the Court, and he wrote that: "a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment." (*Pickering v. Board of Education*, 1968) Justice Marshall explained that Pickering's speech was protected because: (1) he spoke out on a matter of public concern, (the public voted on the tax increase); (2) none of his claims were direct attacks on any individuals; (3) the Board's claim that it would cause controversy was false - no one really cared; and (4) Pickering's false claims had no teeth to them - they did not have the power to cause change, only anger the Board. This ruling of the Supreme Court of the United

States paved the way for teachers to be able to express their opinions and thoughts about public matters in a public forum. *Pickering v. Board of Education* established teachers' First Amendment rights, and it provided millions of students the ability to see their teachers as active participants in our democratic society.

In *Seemuller v. Fairfax County School Board*, Donald Seemuller was accused in his school's student newspaper of being "a chauvinistic P.E. teacher," and in response he submitted a letter to the editor of the school's newspaper. Seemuller's letter of response was so laced with satire that it caused outrage within the community, and because of his letter, he received a "needs improvement" rating for "Professional Responsibility" in his final evaluation for the year. As a result the Fairfax County School Board awarded Seemuller no professional raise for the subsequent school year. Seemuller sued the Board for violating his First Amendment Rights of free speech, and won. In writing the opinion of the United States Court of Appeals, Fourth Circuit, Senior Circuit Judge Butzner wrote: "From Greek and Roman antiquity until the present time, commentators on public affairs have colored their writing with satire – sometimes humorous, sometimes gentle, some caustic... A teacher's letter criticizing the board of education was spiced with satire, but he was not deprived of the First Amendment's protection... Seemuller's published response to the complaint also commented on a matter of public concern." (*Seemuller v. Fairfax County School Board*, 1989) Despite being crude in his exercise of his speech rights and incognizant of his influence on his students, the courts upheld Seemuller's First Amendment rights as an American.

In one more example, the courts ruled in favor of teachers' First Amendment rights after Bessie Givhan was dismissed after she "allegedly made "petty and unreasonable demands" in a manner variously described by the principal as "insulting," "hostile," "loud," and "arrogant.""

(*Givhan v. Western Line Consolidated School District*, 1979) In *Givhan v. Western Line Consolidated School District* (1979), Justice Rehnquist delivered the opinion of the Court, and wrote: “The First Amendment forbids abridgment of the “freedom of speech.” Neither the Amendment itself nor our decisions indicate that this freedom is lost to the public employee who arranges to communicate privately with his employer rather than to spread his views before the public.” This ruling was important because it stated that a public employee may communicate with his or hers employer, and not be dismissed as a result of their comments, because of their free speech rights. This ruling was vital for teachers seeking to create a change in the public school system, when they may otherwise have been afraid to share their views with administrators. All of the above mentioned cases illustrate that while teachers are paid by taxpayers, taxpayers do not get to determine the extent to which teachers benefit from their First Amendment rights.

In sum, while public school teachers are governmental employees and have responsibilities to the taxpayers that fund their salaries, educators are also members of the public, and deserve to be given all of the rights that are guaranteed by the Constitution of the United States. Many upstanding Americans have fought domestically and abroad for the rights established in the Constitution, and their hope in defending those rights was that all Americans would be able to freely pursue life, liberty, and happiness, regardless of their nationality, race, beliefs, sexuality, affiliations, and profession; American teachers should benefit from American rights. Furthermore, any attempt by school boards, administrators, or the public to quell teachers' free speech rights in turn quells the opportunities of students to learn about democratic ideals from positive role models. Fortunately for teachers and Americans, the courts, including

the United States Supreme Court, have upheld teachers' free speech rights. Regardless of profession, all Americans deserve to benefit from the rights outlined in the U.S. Constitution.



References

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