

EMPLOYEES IN THE CULTURE WARS: What are the responses?



Kevin Lungwitz
The Lungwitz Law Firm, P.C.
February 10, 2023

1

1

Everything is political. Political things are toxic.

- | | | |
|---------------|-------------------|--------------------------------|
| • COVID | • War/peace | • Bathrooms |
| • Vaccines | • Climate change | • Sex |
| • Masks | • Taxes | • Sexual/gender identification |
| • Books | • Social Security | • Marriage |
| • Education | • Abortion | • Pollution |
| • Science | • Birth control | • Homelessness |
| • History | • Civil rights | • Transportation |
| • Elections | • All laws | • Friends/families |
| • Health care | • Music | • Thanksgiving |
| • Religion | • Sports | • Christmas |
| • Immigration | • Food | • News |
| • Guns | | |

2

2

Early culture wars in First Amendment cases

3

3

Early culture wars in 1A cases

- Can students wear arm bands in a non-disruptive manner to protest a war? (Yes. *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 505, 89 S.Ct. 733 (1969)).
- Can a student remain seated for the pledge of allegiance? (Yes. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178 U.S. (1943).
- Can a school district regulate the speech of a student (or employee) that bears its imprimatur? (Yes. *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 108 S.Ct. 562 (1988)).

4

4

Early culture wars in 1A cases

- Can a student be disciplined for off-campus, lewd speech? (Depends. *Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021)).
- Can a teacher exercise 1A rights as a citizen on a matter of public concern? (Yes. *Connick vs. Myers*, 461 U.S. at 140-41, 103 S.Ct. 1684 (1983); see *Pickering v. Board of Educ.*, 391 U.S. 563, 568, 88 S.Ct. 1731 (1968))
- Does a governmental employee have 1A protection for speech related to their job? (No. *Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951 (2006))

5

5

Early culture wars in 1A cases

- Can a coach pray on the football field after a game? (Yes. *Kennedy v. Bremerton School Dist.*, 597 U.S. _____ (2022))
- Can students exchange religiously embossed gifts in a non-disruptive manner at a Winter Break party during class? (Yes. *Morgan v. Swanson*, 659 F.3d 359 (5th Cir. 2011 *en banc*))

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Employees in the Culture Wars: What are the responses?

First appeared as part of the conference materials for the
38th Annual School Law Conference session
"Culture Wars in the School District: Employees"