

Johnson v. Poway Unified School District

Background

Mr. Johnson displayed these 7' wide banners in his math classroom for over two decades until 2007, when the school board directed him to remove them from the walls.



This case centers on the classroom of Mr. Bradley Johnson, who has been a math teacher for over thirty years at a public high school in Poway, a community in California's San Diego County. In late 2006, Ms. Dawn Kastner, the newly-hired principal, was told by another teacher about two large banners prominently displayed in Mr. Johnson's classroom.

The banners were each approximately seven-feet wide and two-feet tall. One had red, white, and blue stripes and stated in large block type: "IN GOD WE TRUST"; "ONE NATION UNDER GOD"; "GOD BLESS AMERICA"; and "GOD SHED HIS GRACE ON THEE." The other stated: "All men are created equal, they are endowed by their CREATOR," with the word "creator" on its own line in oversized, all-caps font.

Principal Kastner discussed the banners with Mr. Johnson, and suggested that he replace his banners with posters that displayed the quoted passages in their

historical context. Mr. Johnson declined, explaining that the banners had been up in his classroom since 1982 and he believed it was his "right to have them up." In early 2007, the Poway School Board ordered Mr. Johnson to take down his banners.

In response, Mr. Johnson removed the banners and then filed a federal civil rights lawsuit against the Poway Unified School District and several school officials, raising three claims: First, that the school district's actions violated his First Amendment right to Free Speech; second, that ordering removal of the banners showed hostility toward religion in violation of the Establishment Clause; and, third, that he was denied equal protection under the law because the school district treated him differently than other teachers, who had been allowed to display items in their classrooms, such as Tibetan prayer flags and posters of the Dalai Lama and Malcolm X.

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U.S. District Court Opinion

The federal trial court (called the district court) ruled in favor of Mr. Johnson and ordered the school district not to interfere if Mr. Johnson decided to hang up his banners again. According to the district court, the question raised by Mr. Johnson's lawsuit was: "May a school district censor a high school teacher's expression because it refers to Judeo-Christian views while allowing other teachers to express views on a number of controversial subjects, including religion and anti-religion?" The trial court concluded that "it may not."

Where the government designates a place for speech by a particular group of people or on particular topics, it creates a limited public forum and any restrictions on speech in that forum must be "viewpoint neutral." In other words, the government cannot restrict speech in a limited public forum based on the message being advocated by the speaker.

Here, the district court found that the Poway school district created a limited public forum for teachers by giving them discretion and control over the material displayed in their classroom, and

allowing them to display non-disruptive items reflecting personal opinions and values on non-curricular subjects, including politics and religion. The court then reasoned that the school district committed viewpoint discrimination by ordering Mr. Johnson to remove the posters from that limited public forum based on their Judeo-Christian viewpoint, while allowing displays promoting other religions and anti-religious viewpoints, such as Tibetan prayer flags with an image of Buddha, posters of Gandhi, and the lyrics of John Lennon's song "Imagine."

The court rejected the school district's claim that it feared Mr. Johnson's banners violated the Establishment Clause. The court explained that the banners merely highlighted historic and patriotic themes acknowledging God's existence rather than advocating for the existence of God. The court also rejected the school district's argument that Mr. Johnson was not entitled to any First Amendment protection because he was speaking as a teacher for the government (as opposed to a public citizen).



Tibetan prayer flags hanging in the classroom of Ms. Lori Brickley, a biology teacher at the same high school as Mr. Johnson.

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Ninth Circuit Court of Appeals Opinion

The U.S. Court of Appeals for the Ninth Circuit reversed the district court, ruling that Poway Unified School District did not violate Mr. Johnson's constitutional rights when it ordered him to take down his banners. According to the court of appeals, the question presented was "whether a public school district infringes the First Amendment liberties of one of its teachers when it orders him not to use his public position as a pulpit from which to preach his own views on the role of God in our Nation's history to the captive students in his mathematics classroom." The court concluded that "it does not."

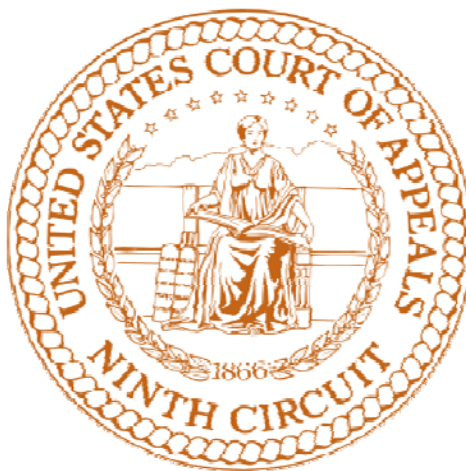
The appeals court explained that although the government's regulation of speech ordinarily turns on the forum in which the speech takes place, a different test applies when the government acts as both sovereign and employer. With regard to public schools, a teacher speaks for the government—and not himself—"when at school or a school function, in the general presence of students, in a capacity one might reasonably view as official." Under those circumstances, the government may take appropriate steps to ensure that its educational message is not "garbled or distorted" by the teacher.

In hanging his banners, Mr. Johnson spoke as an employee—not as a public citizen. Thus, Poway School District had the right to order Mr. Johnson to take down the banners. It made no difference that the school district allowed its teachers some freedom in decorating

their classrooms because the school district has the right to control its own message.

The appeals court also concluded that the school district did not violate his right to equal protection of the law by permitting some messages (like the Tibetan prayer flags) but not Mr. Johnson's banners. Although the Constitution's Establishment Clause requires government neutrality between religions and between religion and non-religion, it does not prohibit the government from making any reference to religion.

Here, Poway School District did not favor non-religion by ordering Mr. Johnson to remove his banners. Rather, it legitimately sought to avoid potential Establishment Clause violations by cutting off government speech that raised "at least the possibility" of being perceived as unconstitutional pro-religion speech. By contrast, even though the other complained-of displays may have had some religious connotation, there was nothing to suggest that they were used to endorse or inhibit religion.



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Discussion Topics

- If you were the judge, would you have ruled in favor of Mr. Johnson or Poway School District? Why?
- In your view, do Mr. Johnson's banners convey a religious message? What about the Tibetan prayer flags? Do you consider posters hanging on classroom walls to reflect only a teacher's personal views or an opinion endorsed by the school?
- When should judges intervene in a school board's operation of public schools? What are other checks on a school board's authority?
- Should teachers share their personal views on religion with students? Should teachers ever discuss religion with their students? Does it matter whether a student initiated the conversation? Or whether the conversation relates to the curriculum? Or the age of the students?
- Read the following quotes. Discuss how these ideas influenced the decisions by the district court and the Ninth Circuit. Court of Appeals

"Just as the Constitution would not protect Johnson were he to decide that he no longer wished to teach math at all, preferring to discuss Shakespeare rather than Newton, it does not permit him to speak as freely at work in his role as a teacher about his views on God, our Nation's history, or God's role in our Nation's history as he might on a sidewalk, in a park, at his dinner table, or in countless other locations."

--*Johnson v. Poway School Dist.*
(9th Cir. 2011)

"The classroom is peculiarly the marketplace of ideas. The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, (rather) than through any kind of authoritative selection."

--*Tinker v. Des Moines Indep.*
Cmty. School Dist.
(U.S. Supreme Ct. 1969)