

ADF to Schools: Christmas Trees Are Legal

Alliance Defending Freedom (ADF) sent a letter Wednesday to New Hampshire School Administrative Unit 29 that explains the legality of using the term “Christmas” after SAU 29’s superintendent censored the word on a privately produced flier that informed the community of a “Christmas tree” lighting event.

“Calling Christmas trees what they are is not unconstitutional,” said ADF Senior Counsel Jeremy Tedesco. “But it is unconstitutional to censor private speech simply because it is religious in nature.”

SAU 29 Superintendent Robert Malay decided that John Fletcher, the commander of the local American Legion post, needed to replace the words “Christmas Tree” with “Holiday Tree” on his fliers advertising the town of Marlborough’s annual Christmas tree lighting, which the post sponsors together with the Monadnock Lions Club. In protest, Fletcher distributed the fliers with white-out covering the word “Christmas” instead of using “holiday” as a substitute word.

The fliers for the non-school event have been the same for years with the only change being the date. Many members of the community who disapprove of Malay’s actions are reportedly planning to attend a board meeting Thursday night to voice their concerns.

District policy allows the distribution of private fliers providing information about “non-school programs offered by non-profit organizations” that are “deemed to have educational, recreational or social value to students,” but the policy also says the fliers “must be secular.”

“After public outcry regarding the censorship of this

innocuous reference to what Congress has recognized as a 'legal public holiday,' SAU 29 issued a statement suggesting that Superintendent Malay's decision was prompted by concerns about violating the Establishment Clause. But the Establishment Clause requires no such thing ...," the ADF letter explains. "In fact, SAU 29's policy explicitly singles out religion in a forbidden manner, stating that flyers 'must be secular.' This fosters 'a pervasive bias or hostility to religion [that] undermine[s] the very neutrality the Establishment Clause requires,'" as the U.S. Supreme Court stated in a 1995 decision.

"Simply put, using the word *Christmas* in a flyer advertising a *Christmas* tree lighting and the appearance of Santa Claus is only sensible and plainly not unconstitutional," the letter observes.

"We are asking the district to amend its policies so that they no longer restrict religious expression in an unconstitutional manner," said Tedesco. "Failure to do so is not only antithetical to our nation's principles, but it also exposes the district to potential liability under federal law."