

‘Candy Cane Case’ Questions Children’s First Amendment Rights

A school district in Plano, Texas, has battled a case for eight years that raises the question: Does an elementary school student have a First Amendment right to free speech?

The school district has made an appeal, and arguments were heard this morning by all 17 judges on the Fifth Circuit Court of Appeals.

Morgan v. Plano Independent School District, more commonly known as the “candy cane case,” involves several students who were denied their free speech rights and discriminated against because their speech was religious in nature.

“Everyone who is a parent or grandparent or just cares about the future of this country should be concerned,” Kelly Shackelford, CEO and president of Liberty Institute, says. “If this court rules that elementary students have no First Amendment rights, then neither students nor their parents will have any recourse against religious discrimination, [which has] occurred in this case. It would be a massive shift of power away from citizens and families to the government.”

The case started eight years ago when then 8-year-old Jonathan Morgan was banned from handing out candy cane pens to his classmates because a poem about Jesus was attached. The school district also threatened a young girl for handing out tickets after school to a religious play and forbade an entire class of students from writing “Merry Christmas” on holiday cards to American troops serving overseas. They even called the police on a mother who protested the punishing of her daughter, whose “Jesus” pencils were seized.

"The argument that the school officials are making is that it's perfectly OK to engage in hostile religious discrimination against kids for speech they're engaging in during their own free time," says Hiram Sasser, one of the main attorneys on the case.

Sasser is the director of litigation for Liberty Institute, which represents the students in this case. He says the results of the case will have a great impact on the nation because if his party loses, it will change a precedent that has been set for decades.

"It's been clearly established law for decades that government officials are not allowed to discriminate against speech because it's religious in nature," Sasser explains. "Every court has always declared that the worst violation against the Constitution is discriminating against speech because you don't like what the person is expressing—in this case, religious viewpoints.

"If we lose, it will be a massive change in the law authorizing school officials to intentionally discriminate against students who say something religious, even in their free time when they're not bothering or disturbing anybody."

This case is bringing up not only what rights elementary school children have, but also people with special needs. According to Sasser, the Association of Retarded Citizens is concerned for its members who have the IQ of an elementary school child.

Liberty Institute is asking for prayers that the judges would rule in their favor—which means the law would stay the same—and the Plano school district would not have the right to censor children's speech because of its religious nature.

Liberty Institute has partnered with two former U.S. Solicitors General to help them argue on the students' behalf: Paul Clement (who will also represent the U.S. House of

Representatives in its effort to uphold the Defense of Marriage Act), and Kenneth Starr, president of Baylor University.

The school district has appealed multiple times and can take their case to the U.S. Supreme Court if the Fifth Circuit Court of Appeals rules against them. Arguments were heard at 10 a.m. CST, and Sasser predicts the verdict will be take between six and nine months.