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QUESTION

Recently, issues involving public education have taken an alarming turn in the State of Unrest. Surprisingly, some may even have constitutional implications.

Prior to 1954, the public schools in the capital city of Turmoil had been racially segregated. After protracted litigation, Turmoil was ordered to desegregate its schools by a Federal District Court, and it remained under a court order involving intra-district busing until the court relinquished jurisdiction in 1999. Hard feelings from that protracted battle remain throughout the state, including resentment from state legislators representing other parts of the state, who bristled at the financial costs incurred in the busing program. As one state senator from the town of South Chicken Gristle recently commented, “all our state education dollars are being wasted on communistic busing and social experiments in Turmoil, and I can’t get indoor plumbing for the one-room schoolhouses in my district.” Even after the end of the busing program, Turmoil’s schools received larger state subsidies and have lower student test scores than any other district in Unrest.

Dissatisfaction with the schools in Turmoil extended to some of the residents of the capital city itself. State Senator Arnie Rooms represents a largely African-American constituency and has long complained that the city’s schools ignored the educational needs of his constituents, and had demonstrated “cultural insensitivity” to his community. (He acknowledges that he has nursed a latent fury with the school district since enduring the taunting of schoolmates during the classroom readings of “Little Black Sambo” when he was a student in the 1940’s. He has also accused the district of returning to segregated neighborhood schools when it ended busing in 1999, although no high school then had a student body that was more than 48% African American, or 53% Latino.) He believes that only by breaking up the district and allowing communities to have autonomy and to control their own schools can progress be made in improving students’ educational performance, “particularly of disadvantaged and minority students.” In a speech on the floor of the legislature, Senator Rooms cited social science research by Dr. Paul Murkey of the University of Turmoil, which indicated that minority student performed better on standardized tests when they received instruction in classrooms of students who were primarily of the same ethnic and socio-economic background.

Senator Rooms introduced a bill to break up the Turmoil school district into three smaller districts, and, in coalition with the Senator from South Chicken Gristle and other rural legislators, obtained its passage by the unicameral legislature and the Governor’s signature.

The three new districts are geographically contiguous, but not compact. The map approved by the legislature shows that each district has geographic extensions or “tentacles” into the territory of the others (not unlike the 17th Congressional District in Illinois). (In each instance, the geographic extension of a district incorporates neighborhoods which are predominantly of the same ethnicity as the majority of that district’s residents.) In terms of the ethnic composition of the school age populations, the South Turmoil Reorganized Educational School System (STRESS) is 87% African American, the Western Area Turmoil Education Region (WATER) is 80% Latino, and the Lakewood Interscholastic Family-friendly Turmoil Education District (LIFTED) is 78% white Anglo. Regardless of ethnicity, any parent in any of

the three districts is free to petition to enroll his or her child in a school in either of the other districts. (In the first year of operation, 100% of the petitions have been granted.) Any parent who has successfully petitioned to transfer a student to a new school district is automatically enfranchised to vote in the school board elections of the district whose school the child attends, and is prohibited from voting in the school district in which the family actually resides. (However, if a parent has children in more than one district, that parent may vote in the school board elections of each of the districts.)

The three school boards are entirely independent of one another, and each is authorized to establish and implement policies for its schools, so long as those policies do not conflict with state law. They are also authorized to set property tax rates within their geographic territory.

Funding for the schools is a combination of state grants and local property tax revenues. The state provides grants to each district based entirely on the number of pupils enrolled. The property tax base of the three districts varies substantially, however. As a result, the LIFTED board has matched the state grant dollar-for-dollar with local revenues, doubling the available funds. By contrast, the STRESS and WATER boards have only been able to raise local revenues equal to 10% of the state grant. As a result, per-pupil spending in the LIFTED district is nearly twice as high as the spending in the other two districts. (School buildings in the LIFTED district are, on average, 22 years newer than buildings in STRESS and WATER.)

Parents from each of the three districts have filed lawsuits in state court challenging the new districting arrangement on both state and federal constitutional grounds. The trial court dismissed the lawsuit.

At a high school in the LIFTED district, disputes have arisen surrounding student organizations and protests. A group of gay and lesbian students and their supporters formed a chapter of Lambda, and sought and received recognition as a student club by the school's principal. (Lambda is a secular organization dedicated to "reducing homophobia, discrimination and hate crimes by encouraging self-acceptance, cooperation, and nonviolence.") Official recognition by the school entitles a group to the use of school facilities for club meetings and functions, as well as a \$200 budget for expenses. Once a month, the members of the chapter wear pink triangle insignia to school as armbands, pins, or T-shirts to symbolize their support for the organization's goals.

The official recognition of Lambda and the wearing of the insignia incensed some other students. They formed their own club, "Darn Straight," and sought and received similar recognition by the school authorities. Darn Straight, which unlike Lambda was not affiliated with any national organization, proclaimed itself as dedicated to "maintaining the traditional family, promoting Christian teachings, and opposing the gay agenda." On the days when Lambda members wore the pink triangles, Darn Straight members wore their own organization's T-shirts: on the front, the T-shirt said, "Be Ashamed, Our School Embraced What God Has Condemned," and on the back, it said "Homosexuality is Shameful. Romans 1:27."

Arguments have broken out on the school grounds and occasionally in classrooms on the days that the two groups wore their respective insignia. The arguments have occasionally

become heated, and often involved dozens of students, but violence was always averted. On several occasions, the arguments spilled into the classrooms, particularly during Social Studies classes, although one occurred in Trigonometry class (and prevented the administration of a scheduled quiz). School authorities became alarmed at these confrontations, and also received vehement protests from parents of all persuasions on the issue. Students who were members of Lambda attended Darn Straight meetings, and attempted to become voting members of the organization, saying they wanted to cool tempers and “promote dialogue.” Concerned that these new members might become a majority (or at least influence club decisions), Darn Straight amended its by-laws to provide for the exclusion of non-members from club meetings and to prohibit club membership for anyone who was also a member of Lambda. In explaining the by-law changes, the club insisted that adherence to its views on the unacceptability of homosexuality was “central to our organization’s purpose.”

In response, the LIFTED school board issued new regulations. [The regulations are set forth in the **Appendix**.] Lambda certified that it was in compliance with the regulations, and retained its official recognition. Darn Straight failed to make such a certification, and its recognition was withdrawn. As a result, it can no longer hold meetings, sell T-shirts, or distribute literature on school grounds. A student wearing the previously-described T-shirt was suspended from school for three weeks when, after a conversation in the Assistant Principal’s office, he refused to go home and change to another shirt. Darn Straight and affiliated parents have sued the school board, claiming that the regulations and the decision to revoke its recognition violate their state and federal constitutional rights. The suspended student has also sued to challenge the constitutionality of his suspension. The trial court dismissed each action.

Meanwhile in the STRESS School District, the Board of Education has become dissatisfied with the holdings of the school libraries it inherited from the predecessor school board. It received complaints from numerous parents and citizens, including Senator Rooms, that some of the books were “culturally insensitive” or “inappropriate.” In response, the board ordered an inventory of all books in the libraries of its schools, and after reviewing the lists, ordered the removal and destruction of 120 titles it deemed to be “demeaning” or “potentially upsetting.” Among the books to be removed from elementary school libraries was “Little Black Sambo,” and among the books removed from high school libraries was “Strom: The Complicated Personal and Political Life of Strom Thurmond.” The ACLU, on behalf of itself and individual students and parents, has sued to enjoin the removal and destruction of the books, claiming violation of the federal and state constitutions. The suit was dismissed by the trial court.

And the WATER board of education has not avoided controversy either. It has established, as a high school graduation requirement, successful completion of a course in Chicano Studies. The year-long course includes segments on history, political organizing, immigration policy, literature (some of which is available only in Spanish), and a two-week segment on “Our Catholic Heritage,” which includes both religious history and also an overview of the religious doctrines of the Roman Catholic Church. During this portion of the course, a crucifix was prominently displayed at the front of the classroom. A non-Latino high school student and his parents objected to the requirement and to the contents of the course, but were told by the principal that unless he completed the course he would not be allowed to graduate. They sued the school district, with the student claiming a violation of his religious freedom and

the parents claiming a violation of their parental rights. All the suits were dismissed by the trial court.

You are a clerk to a Justice of the Unrest Supreme Court. She knows that you were particularly successful in your law school course on Constitutional Rights, and has asked you for a memo discussing the state and federal constitutional issues raised by each lawsuit. You may assume that each of the plaintiffs has satisfied the standing requirements to bring such an action.

APPENDIX

UNREST STATE CONSTITUTION (portions)

Article I-1

Statement of rights.

All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed.

Article I-3

Due process of law; equal protection.

No person shall be deprived of life, liberty, or property, without due process of law, nor be denied equal protection of the laws.

Article I-4

Religious freedom.

All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious beliefs; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Article I-5

Freedom of speech and press.

Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth when published with good motives, and for justifiable ends, shall be a sufficient defense.

Article I-22
Elections to be free.

All elections shall be free; and there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise.

Article III-1
Legislative authority; how vested.

The legislative authority of the state shall be vested in a Legislature consisting of one chamber.

Article VII-1
Legislature; free instruction in common schools; provide.

The Legislature shall provide an efficient system for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof.

LIFTED SCHOOL DISTRICT REGULATIONS (portions)

Regulation 711. Student Organizations.

- (A.) Only recognized organizations may use school facilities and receive subsidies from school funds.
- (B.) Membership and meetings of organizations recognized or seeking recognition by the school district must be open to all students.

Regulation 909. Freedom of Expression and Respect for Others.

- (A.) All students are free to express their opinions, and are encouraged to do so, provided they do so in appropriate circumstances and with full respect for the rights of others.
- (B.) Every student must refrain from statements and expressive conduct that may create a hostile learning environment for students whose status, such as race, gender, religion, or sexual orientation, renders them particularly vulnerable.
- (C.) Any clothing, insignia, or accessories worn or visibly carried by a student on school grounds must be consistent with subsection (B) of this regulation.
- (D.) Violation of this regulation by any student may result in a suspension for up to three weeks.

END OF EXAMINATION