



Constitutional Challenges in Recent Cases

Two cases were decided recently that have significant impact and interest for school districts. One decision by the US Court of Appeals for the Sixth Circuit dealt with the subject of public school teachers' First Amendment rights in curricular issues. The other decision from the Ohio Supreme Court addressed some of the constitutional challenges being raised concerning criminal background checks for unlicensed school employees.

First Amendment Decision

In *Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Sch. Dist.*, the Sixth Circuit held the First Amendment right to free speech does not extend to the in-class curricular speech of primary and secondary public school teachers. The Sixth Circuit stated that speech made "pursuant to" a claimant's official duties is not protected under the First Amendment.

Evans-Marshall involved a public high school English teacher who assigned her 9th grade students a series of challenged books including *Fahrenheit 451*, *Siddhartha* and a book of choice from the American Library Association's "100 Most Frequently Challenged Books." This caused several parents to raise concerns about the curricular choices in the schools, the books in the curriculum and the books in the school libraries. When the teacher's contract was not renewed, she filed a Section 1983 action, alleging retaliation against her "curricular and pedagogical choices," and infringement on her First Amendment right "to select books and

Founded in 1890, Squire, Sanders & Dempsey L.L.P. has lawyers in 32 offices and 15 countries around the world. With one of the strongest integrated global platforms and our longstanding one-firm philosophy, Squire Sanders provides seamless [legal counsel worldwide](#).

Contacts:

[Susan M. DiMichele](#)
+1.614.365.2842

[W. Michael Hanna](#)
+1.216.479.8699

[David J. Millstone](#)
+1.216.479.8574

[Christina Henagen Peer](#)
+1.216.479.8290

[Kathleen M. Portman](#)
+1.216.479.8467

[Timothy J. Sheeran](#)
+1.216.479.8605

Squire Sanders emphasizes quality, efficiency and alignment with client goals as core standards. Our [Partnering for Worldwide Value sm](#) initiative is focused on continuously improving our service delivery to maximize the value of our services to clients. Squire Sanders wholeheartedly endorses the Association of Corporate

methods of instruction for use in the classroom without interference from public officials." The Sixth Circuit rejected her claims because the curricular and pedagogical choices were made in connection with her official duties as a teacher.

In rejecting her argument that the concept of academic freedom permitted her to select how her course was to be taught, the court found academic freedom belongs primarily in the university setting. If, however, it is applied to the primary and secondary school setting, the concept belongs only to the educational institution and not to the individual teacher. As such, academic freedom is not available to insulate a teacher's curricular or pedagogical choices from a school board's oversight.

Criminal Background Checks

The Ohio Supreme Court upheld two provisions of the criminal background check law and implementing regulations in [*Doe v. Ronan, Superintendent, et al.*](#) The court reviewed the provisions of the law that became effective in 2007 and require all school district employees and applicants to have a criminal background check. Further, it states that if there is a previous conviction for a specified list of crimes, the individual is not eligible for employment unless there is a finding of rehabilitation. Regulations for rehabilitation of unlicensed individuals were not adopted by the Ohio Department of Education until August 2009.

The plaintiff in *Ronan* claimed the new law was unconstitutional because it impaired his pre-existing contractual rights to employment with the district. Doe also claimed the law was unconstitutional because it was a retroactive law, which the Ohio Constitution prohibits. The court found the plaintiff's contract had not been impaired by the new laws, because his contract was executed only after the new law became effective. The court also held the new law's requirements were prospective, not retroactive. It explained the legislation simply imposed a new restriction upon the qualifications of persons it could employ. Since the plaintiff was not deprived of any pay, retirement credits or other benefits that accrued to him during his employment, the court held the law was not retroactive.

For further information regarding these decisions, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

Counsel's Value Challenge® and encourages and manages development and implementation of processes and tools to continually improve staffing and pricing models, training and resource optimization, knowledge management and more.

Squire Sanders publishes on a number of other topics. To see a list of options and to sign up for a mailing, visit our [subscription page](#).

Beijing · Bratislava · Brussels ·
Budapest · Caracas · Cincinnati ·
Cleveland · Columbus · Frankfurt ·
Hong Kong · Houston · Kyiv ·
London · Los Angeles · Miami ·
Moscow · New York · Palo Alto ·
Phoenix · Prague · Rio de Janeiro ·
San Francisco · Santo Domingo ·
São Paulo · Shanghai ·
Tallahassee · Tampa · Tokyo ·
Tysons Corner · Warsaw ·
Washington DC · West Palm Beach |
Independent Network Firms:
Beirut · Bogotá · Bucharest ·
Buenos Aires · La Paz · Lima ·
Panamá · Riyadh · Santiago

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

©Squire, Sanders & Dempsey L.L.P.
All Rights Reserved
2010

This email was sent by Squire, Sanders & Dempsey L.L.P.
4900 Key Tower, 127 Public Square, Cleveland, OH 44114, USA

We respect your right to privacy – [view our policy](#)

[Manage My Profile](#) | [One-Click Unsubscribe](#) | [Forward to a Friend](#)