

# EMPLOYEES IN THE CULTURE WARS: What are the responses?



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## **Everything is political. Political things are toxic.**

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|---------------|-------------------|--------------------------------|
| • COVID       | • War/peace       | • Bathrooms                    |
| • Vaccines    | • Climate change  | • Sex                          |
| • Masks       | • Taxes           | • Sexual/gender identification |
| • Books       | • Social Security | • Marriage                     |
| • Education   | • Abortion        | • Pollution                    |
| • Science     | • Birth control   | • Homelessness                 |
| • History     | • Civil rights    | • Transportation               |
| • Elections   | • All laws        | • Friends/families             |
| • Health care | • Music           | • Thanksgiving                 |
| • Religion    | • Sports          | • Christmas                    |
| • Immigration | • Food            | • News                         |
| • Guns        |                   |                                |

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# Early culture wars in First Amendment cases

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## Early culture wars in 1A cases

- Can students wear arm bands in a non-disruptive manner to protest a war? (Yes. *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 505, 89 S.Ct. 733 (1969)).
- Can a student remain seated for the pledge of allegiance? (Yes. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178 U.S. (1943).
- Can a school district regulate the speech of a student (or employee) that bears its imprimatur? (Yes. *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 108 S.Ct. 562 (1988)).

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## Early culture wars in 1A cases

- Can a student be disciplined for off-campus, lewd speech? (Depends. *Mahanoy Area Sch. Dist. v. B.L.*, 141 S.Ct. 2038 (2021)).
- Can a teacher exercise 1A rights as a citizen on a matter of public concern? (Yes. *Connick vs. Myers*, 461 U.S. at 140-41, 103 S.Ct. 1684 (1983); see *Pickering v. Board of Educ.*, 391 U.S. 563, 568, 88 S.Ct. 1731 (1968))
- Does a governmental employee have 1A protection for speech related to their job? (No. *Garcetti v. Ceballos*, 547 U.S. 410, 126 S.Ct. 1951 (2006))

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## Early culture wars in 1A cases

- Can a coach pray on the football field after a game? (Yes. *Kennedy v. Bremerton School Dist.*, 597 U.S. \_\_\_\_\_ (2022))
- Can students exchange religiously embossed gifts in a non-disruptive manner at a Winter Break party during class? (Yes. *Morgan v. Swanson*, 659 F.3d 359 (5th Cir. 2011 *en banc*))

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38<sup>th</sup> Annual School Law Conference session  
"Culture Wars in the School District: Employees"