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Court Nixes Use of Church for Public School Graduation

Despite two earlier rulings allowing the practice in the same case, the United States Court of Appeals in Chicago, by a 7-3 vote last week, ruled that a Wisconsin high school district acted improperly in conducting its graduation ceremonies in an evangelical Christian church.

In what is commonly referred to as the “Establishment Clause”, the First Amendment to the United States Constitution prohibits governmental sponsorship, endorsement, or support of any religious beliefs or non-belief. In the case of *Doe v. Elmbrook School District* (Case No. 10-2922, July 23, 2012), the U.S. Court of Appeals for the 7th Circuit held that it amounted to an improper establishment of religion for that district to conduct its high school graduation ceremonies in a church which contained numerous and obvious religious symbols and proselytizing items to which participants in the ceremony would be subjected. The majority opinion emphasized the presence of Latin crosses in the sanctuary and on the church roof and the

evangelical literature in the lobby and in the pews. The court concluded that the display of such materials conveyed a sectarian message of endorsement of particular religious beliefs and had a coercive effect, similar to subjecting graduation attendees to religious exercises such as prayers. There was no evidence that school officials selected the location for the purpose of proselytizing their individual beliefs. But the majority found neither this fact, nor the favorable features of the church location such as its space and comfort, to be determinative. This is because, while a governmental action might be invalidated due solely to a religious purpose or motivation, so could a non-religiously motivated action which has the predominant though unintended effect of promoting religion. Although the majority opinion went to great lengths to emphasize that its ruling was based on the particular facts present in this case and was not meant to create an absolute rule against public school graduations in houses of worship, it is hard to imagine many situations where religious iconography and literature would not be so apparent as to pass muster under this court's reasoning.

Given the strong dissents and the controversial nature of the

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decision, there is a good possibility that this case will be reconsidered by the United States Supreme Court. However, unless and until that happens, and absent exigent circumstances, we recommend that all Illinois public schools avoid the use of any house of worship for any function involving students, especially where attendance is compulsory or nearly so. This advice applies even though such locations may offer many legitimate advantages such as increased capacity, temperature control, or the preferences of the majority of parents or students. While the court's reasoning would not necessarily extend to temporary or rental use of church-owned properties such as meeting halls or sports fields where religious iconography and literature are not so obvious or may easily be concealed, we strongly recommend consulting with legal counsel to assess the circumstances.

If we can be of further assistance, please contact one of our attorneys in our Flossmoor office – (708) 799-6766 or in our Oak Brook office – (630) 928-1200.