



'Tis the Season – Election Season, That Is

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“Super Tuesday.” To a class of kindergartners, it signifies a day when they are allowed to come to school dressed as their favorite superhero. To eligible voters in Ohio, Florida, North Carolina, Illinois and our state, it is the day that citizens will file in, punch their ballot and drop it in the box to determine which candidates will take the lead in the 2016 Presidential Primary. Yes, election season is in full bloom, and with it, the need to review the rights of public school employees to exercise their right to vote and to make political speech.

First, Missouri law gives voters the right to time off to vote under particular circumstances. Section 115.639 RSMo. allows a voter to take three (3) hours off work to vote while the polls are open without loss of pay. However, under the statute the employee must have made a request to his employer for the time off work prior to election day. Further, if there are three (3) consecutive hours that the polls are open that the employee is not scheduled to work, the employee may not take the time off without pay – he must vote before or after work. If the employee utilizes the statutory right, the employer is allowed to specify which three (3) hours the employee is allowed to be absent, in order to minimize the impact on the workplace.

Second, school district employees do have certain rights to express political speech - the form of speech given the highest level of First Amendment protection. As we learned in the

Supreme Court's *Tinker* decision, public school teachers do not forgo their constitutional rights just by taking a position teaching students. However, the school district can limit a public school employee from sharing his personal political viewpoints during instructional time. This is because students are impressionable – when a teacher stands in front of a classroom, students presume that they are teaching. They should be able to presume that what comes out of the mouth of their teacher is not merely an opinion, but rather, is something that they should know and believe as fact. Thus, under the Supreme Court's 2006 decision in *Garcetti v. Ceballos*, if a teacher expresses his personal political belief during instructional time, he will not be afforded protection against regulation by his employing district. Similarly, the district can prohibit employees from engaging in political activities in the workplace (i.e. making speeches, distributing pamphlets) if such activities violate board policy or cause intimidation or harassment to other employees.

While a district can regulate its employee's political speech during instructional time, it cannot do so on the employee's personal time. Once off the clock, the school employee no longer is presumed to be an agent of the employing district and therefore enjoys the same freedom of speech as any other citizen. The district may, however, adopt policies that prohibit employees from engaging in such activity in a way that suggests that the district endorses a particular candidate or belief.

Check your Board policies to ensure that they conform to these standards. We suggest adopting a policy that provides that, "No partisan political views may be espoused by any teacher or staff member; however, teachers may teach about political parties and politics as related to the governmental systems of the nation or world." If you have questions about employee

participation in the political and election process this election season, consult with your school attorney.