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## **EMPLOYMENT - OREGON**

### **[Webber v. First Student, Inc.](#)**

**United States District Court, D. Oregon., Medford Division - February 26, 2013 - F.Supp.2d - 2013 WL 773732**

*Bus driver fails to establish sufficient nexus between his private contractor employer and school district to sustain civil rights action; Confederate flags frowned upon.*

Employee was terminated by his employer, First Student, Inc., for insubordination after he refused to remove a 3-by-5 foot Confederate flag from his pickup truck while the truck was parked on school district property. First Student is a private contractor that provides transportation services to the school district. Employee claimed the termination violated his First Amendment rights and that First Student and the district acted together to deprive him of his right to freedom of speech and expression.

To state a claim for violation of his First Amendment rights under § 1983, employee must first show that First Student acted under color of state law. The court begins with the presumption that conduct by private actors is not taken under color of state law. Thus, the plaintiff bears the burden of establishing that a nominally private entity was a state actor. The basic question under the color of state law inquiry is whether the necessary “close nexus” between the state, the private entity, and the challenged conduct exists.

The Supreme Court has articulated four tests for determining whether a private entity’s actions amount to state action: 1) public function; 2) compulsion; 3) joint action; and 4) governmental nexus. The district court’s analysis revealed that the employee failed to meet any of these tests.