



(508) 892-1722
info@au-ma.org
www.au-ma.org

Massachusetts Chapter
340 Main Street, Room 860
Worcester, MA 01608

Oppose HB 2715 as Drafted: Bill Does Not Protect Against Religious Coercion

September 28, 2011

The Honorable Sonia Chang-Diaz
Senate Chair
Joint Committee on Education
The General Court of the Commonwealth of Massachusetts
Room 413C
State House
Boston, MA 02133

The Honorable Alice Hanlon Peisch
House Chair
Joint Committee on Education
The General Court of the Commonwealth of Massachusetts
Room 473G
State House
Boston, MA 02133

Dear Chairwomen Chang-Diaz & Hanlon Peisch:

On behalf of its members, the Massachusetts Chapter of Americans United for Separation of Church and State urges you to **oppose HB 2715 as drafted**. The First Amendment to the U.S. Constitution clearly protects students' rights to voluntarily pray and express religious viewpoints. This bill, however, goes even further by giving students the right to engage in religious expression at all times in the classroom and at school events where children of different religious beliefs are a captive audience. The bill should be clarified to allow teachers and administrators to prevent religious coercion; without better guidelines, schools could face costly litigation.

Students' Free-Speech Rights

Although public-school students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,"¹ this right is not without limit. Schools must allow students' private, voluntary, personal expression. But schools may maintain control of student expression in curricular activities,² and indeed, are constitutionally required to prohibit certain types of student religious expression.³

¹ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

² *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271–73 (1988).

³ *Walz v. Egg Harbor Twp. Bd. of Educ.*, 342 F.3d 271, 279–81 (3d Cir. 2003); see also *Busch v. Marple Newtown Sch. Dist.*, 567 F.3d 89, 99 (3d Cir. 2009); *Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 983–85 (9th Cir. 2003); *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1101–04 (9th Cir. 2000).

Compulsory Attendance Laws Create Captive Audiences in Public Schools

“It is beyond dispute that, at a minimum, the Constitution guarantees that the government may not coerce anyone to support or participate in religion or its exercise.”⁴ Yet, when prayers, evangelism, or anti-religious speech takes place within classrooms or at other school activities like graduation, students are a captive audience and thus are coerced to participate in religious exercise, which violates the Establishment Clause.

HB 2715, as drafted, does not provide guidance to teachers and administrators about the requirements to curtail certain constitutionally prohibited student religious expression. Section 1C states that religious expression would have to be treated the same as nonreligious expression in all instances. But prayers given over the loudspeaker before football games,⁵ reciting Bible verses during morning announcements,⁶ and imploring fellow students to accept Christ during graduations speeches⁷ are constitutionally forbidden. Moreover, the bill also states that students would have to be permitted to express religious viewpoints in class assignments.⁸ Even if a student’s work satisfies the confines of the assignment, however, there is a constitutionally significant difference between one student making a persuasive speech about his views on global warming and the need to conserve energy and another student making a persuasive speech stating that all students must accept Jesus Christ in order to achieve salvation.

These provisions could expand student expression rights without acknowledging the equally valid requirement that schools cannot coerce students to listen to uninvited religious expression. “If students are subjected to prayer [other religious exercise, or proselytization] in a ‘captive audience’ situation, the state, although not officially delivering the prayer, may be effectively coercing students who do not wish to hear or participate in a prayer to do so.”⁹ The bill should be amended to ensure that no one would be required to participate in religious activities. It should also be amended to clarify what teachers and administrators must do to fulfill their obligation to maintain order in the educational process, including their constitutional obligations under the Establishment Clause.

HB 2715 Should Not Treat Elementary Students the Same as Secondary Students

“In elementary schools, the concerns animating the coercion principle are at their strongest because of the impressionability of young elementary-age children.”¹⁰ Elementary-school students have particular difficulty distinguishing “the line between school-endorsed speech and merely allowable speech” because they are so “young” and “impressionable.”¹¹ If a first-grader, whose

⁴ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (quoting *Lee v. Weisman*, 505 U.S. 577, 587 (1992)).

⁵ *Santa Fe*.

⁶ See *Abington Sch. Dist. v. Schempp*, 374 U.S. 203 (1963).

⁷ *Lassonde; Cole*.

⁸ The bill should be amended to limit the right to student religious expression to those assignments where students are required to express their viewpoint. A similar law in Arizona, passed in 2009, did this. Ariz. Rev. Stat. § 15-110. Without this limitation, students could discuss their religious viewpoints on creationism during Biology class. Teaching creationism is unconstitutional.

⁹ *Ingebretsen v. Jackson Pub. Sch. Dist.*, 864 F. Supp. 1473, 1488 (S.D. Miss. 1994), *aff’d*, 88 F.3d 274 (5th Cir. 1996).

¹⁰ *Peck v. Upshur County Bd. of Educ.*, 155 F.3d 274, 287 n.* (4th Cir. 1998); see also *Busch*, 567 F.3d at 95–96, 99; *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1170 (7th Cir. 1993).

¹¹ *Walz*, 342 F.3d at 277.

family is atheist, responds to an assignment to share stories about why her family is special and unique by explaining that her family thinks that the Bible is fiction and that Jesus, like Santa Claus, is make-believe, this could be particularly devastating to her classmates. This classroom experience would not be as potentially harmful to high-school students who have an understanding about our nation's diverse religious views and cultural myths.

Private, Voluntary Religious Exercise Should Be Protected

We fully support the right of students to voluntarily express their religious beliefs. It is beyond question that students have the right to engage in voluntary, student-initiated prayer that is not coercive and does not disrupt the school's educational mission and activities. This bill, however, does not clearly differentiate between student expression that relates to personal observance of religion and student expression that constitutes "outward promotion" of religion or "proselytizes a particular view."¹²

Because "[f]amilies entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family," courts are "particularly vigilant in monitoring" whether religious beliefs are taught in public schools.¹³ Without clarification, this bill could lead to myriad lawsuits against school districts for violating the Constitution by exposing students, who would be a captive audience, to messages that promote or exercise religion.

Once again, we urge you to protect Massachusetts's public schools by **opposing HB 2715, as drafted**. By amending the bill to prohibit student expression from harming others' rights or the educational process, the legislature would take a big step to respect all students' religious freedom and to protect public schools from Establishment Clause violations. If you have any questions regarding Americans United's position on this bill, please contact Ronal Madnick at (508) 982-1722 or rmadnick@msn.com.

Sincerely,

Ronal Madnick
President, Massachusetts Chapter
Americans United for Separation of Church and State

cc: Members of the Joint Committee

¹² *Id.* at 278.

¹³ *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).