



TO: House Education & Career Readiness Committee

FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio

DATE: February 27, 2018

RE: House Bill 428

To Chairman Brenner, Vice Chair Slaby, Ranking Member Fedor, and members of the House Education & Career Readiness Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio (“ACLU of Ohio”) and I appear to present opponent testimony on House Bill 428.

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Perhaps the most important point for consideration is HB 428 is unnecessary. The Establishment Clause of the First Amendment, the Ohio Constitution, and federal law already protect public school students’ voluntary ability to pray and express religious viewpoints.

Indeed, students have the fundamental right to pray and discuss their religious beliefs with fellow students as long as they are not disruptive. They can already express their religious beliefs in homework, reports, essays, and artwork, so long as those beliefs are germane to the assignment and coursework. They may distribute religious literature to fellow students, subject to typical time, place, and manner restrictions imposed on all such speech. They can participate in religious events such as “See You at the Pole” before and after the school day, on school property. They form student-led religious clubs that have the same access to resources and facilities as secular clubs. They can and do wear clothing reflecting their religious beliefs and with religious messages.

All of this is consistent with the constitutional mandate that government remain neutral in matters of religion and religious practices, neither infringing upon or endorsing those beliefs.

The problem with HB 428 is it ignores that neutrality mandate and ultimately gives religious speech more protection than secular speech. This can and ultimately will result in the proselytization and unwanted coercion of students of different religious beliefs and those with none.

To more fully illustrate the problems with HB 428, consider these questions:

If a student is assigned homework in a biology class and completes her assignment claiming the Earth and universe around her is less than 10,000 years, as Young Earth Creationists believe, can the teacher give her a lesser grade? Under HB 428, the answer is “no” as this legislation clearly states the instructor “shall not penalize or reward a student based on the religious content of a student’s work”.

It is not unusual for students to use school resources and events to communicate information to each other, including the public address system, school assemblies, student run newspapers, and other methods and events. Under HB 428 must these same opportunities be equally available to those who wish to broadcast prayers and proselytize to their classmates, a captive audience in school? That answer is “yes” as HB 428 requires religious speech and expression be treated “in the same manner and to the same extent” as non-religious speech and expression.

Examples like these will cause a variety of problems for public schools as, under HB 428, they are apparently required to accommodate these efforts, even if it means a commandeering of school property and resources to promote prayers and other religious speech. Previous attempts of this type have been ruled unconstitutional by federal courts numerous times. But the repetition of this problem in HB 428 will inevitably lead to costly litigation for schools across Ohio, unfortunate distractions for students, teachers, and school administrators, and alienation of religious minorities in our classrooms.

Indeed, protecting religious liberties in our schools is a laudable goal. However, there is no evidence of any widespread or notable problems of this type in Ohio. In the ACLU of Ohio’s experience, when problems do arise in schools they are anomalies and we treat them as such. That is, we typically handle any controversies of this type through communication with school boards, administrators, and their legal counsel and not by rushing to the courthouse to file a lawsuit. We do this with the understanding that, many times, a situation of this type may arise because a single teacher or administrator experienced confusion as to the school’s legal authority and others are left unaware of their actions.

To that end, increased education regarding the religious liberties of public school students is never a bad thing for all involved. The ACLU of Ohio believes that would be a more productive effort as opposed to HB 428, which invites confusion, tasks public schools with engaging in practices found unconstitutional, and may divide communities. We urge your rejection of House Bill 428.