

TO: Senate Education Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: December 5, 2018
RE: House Bill 428 – Opponent Testimony

To Chairwoman Lehner, Vice Chair Huffman, Ranking Member Sykes, and members of the Senate Education Committee, thank you for this opportunity to present opponent testimony on House Bill 428.

House Bill 428 is a true mixed bag. On the positive side, it removes a small amount of specific language that restricts Ohio students' rights to religious liberty in a public school. On the negative side, other parts of HB 428 contain problematic and imprecise language sure to confuse schools and administrators. Otherwise, HB 428 restates core religious liberties and constitutional principles that are unnecessary in state legislation as the First Amendment to the U.S. Constitution and the Ohio Constitution already and adequately protect these same rights.

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 the sections that ignore that neutrality mandate and 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.



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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 could 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.