

# OPPOSE HB 2715—Act Protecting The Religious Freedoms of Students

## THE LIMITED PUBLIC FORUM PROVISIONS ARE FLAWED AND WILL LEAD TO ESTABLISHMENT CLAUSE VIOLATIONS

In short, under this bill, schools would have to choose between violating this state law or the US Constitution—either choice would lead to costly litigation. Furthermore, the bill would force school districts to open and manage limited public forums even if they determine it is not in students' educational interest or school officials' capacity.

### **This Bill Doesn't Clarify the Law; It Introduces More Confusion and Contradictions**

Some may argue that this bill will simply clarify the law for teachers and school officials. But, in truth, the bill's public forum provisions would mandate that schools create policies that violate the US Constitution's Free Speech and Establishment Clauses. Douglas Laycock, one of the foremost First Amendment scholars in the US, criticized a nearly identical bill that was introduced in Texas: "**This is so irresponsible . . . [i]t's going to cause legal problems for districts** across the state, and they're going to be **stuck with the lawsuits.**"<sup>1</sup> *The Dallas Morning News* said the Texas law "**created statewide confusion** over how districts should comply with the law . . . ."<sup>2</sup>

### **Calling the Speech Forums "Limited Public Forums" Doesn't Mean that the Establishment Clause Doesn't Apply to the Speech**

The bill labels student speech forums as "limited public forums." However, even if such labels were legally accurate, they do not allow schools to evade the Establishment Clause ban on school-sponsored prayers—even when students deliver the prayers at school events. Indeed, in *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 303 n.13 (2000), the US Supreme Court explained: "A conclusion that the District had created a public forum would help shed light on whether the resulting speech is public or private, but we also note that we have never held the mere creation of a public forum shields the government entity from scrutiny under the Establishment Clause." **So, even under this bill and its model policy, schools would still violate the Establishment Clause when students pray within these created forums at school events. This will result in lawsuits.**

### **Compulsory Attendance Laws Create Captive Student Audiences Who Are Forced to Listen to Prayers**

"It is beyond dispute that . . . the Constitution guarantees that the government may not coerce anyone to . . . participate in religion or its exercise." *Santa Fe* at 302. Yet, when prayers, evangelism, or anti-religious speech takes place in the classrooms or at other school activities like graduation, students are a captive audience and thus coerced to participate in religious exercise, which violates the Establishment Clause.

### **HB 2715 Improperly Creates Limited Public Forums; School Districts Will Face Free Speech Lawsuits**

Just because the state calls these forums "limited public forums," does not make them so: "[G]overnmental 'designation' [cannot] be completely determinative of the rights of a citizen to speak on public property."<sup>3</sup> Courts don't just look at a forum's title, but also at its characteristics, including who can access the forum and whether the government restricts the content of the speaker's speech. Here the state allows only a narrow set of speakers to deliver a narrow and specific message. If passed, students will be able to challenge the forum on free speech grounds—students chosen to speak could sue because the school improperly limits their message and students not chosen to speak could sue claiming access to the forum is insufficient.

### **The Bill Would Create Logistical Nightmares for Schools**

Schools would be forced to open forums for student speech even if they do not want to do so. Schools will be responsible for many new tasks, including setting up mechanisms for choosing students to speak, assigning students speaking dates, ensuring students show up to speak, and monitoring the messages to ensure they comply with the permissible messages allowed by the law. All these new responsibilities will, of course, cost money.

### **The Bill Would Allow Only Some Students the Ability to Speak Their Mind**

The purpose of a public forum is to allow all speakers, whether their message is popular or not, the ability to speak. This bill would open forums in which only students who are elected as team captain, student council president, or homecoming queen to speak. By definition, only the popular kids will have access to the microphone and less popular kids and messages will have no access.

### **If the Forum Is Truly a Public Forum, Students Could Say Things the School Will Not Like**

Because the school cannot restrict the student's viewpoint in a public forum, a student could say a prayer to Satan over the loudspeaker or could insult other students, teachers, or school officials at school events.

<sup>1</sup> Jenny Lacost-Caputo, "Law on Religion in School Spurs Fear," *San Antonio Express-News*, July 25, 2007.

<sup>2</sup> Brandon Formby, "Schools wrestling with policies under new religious liberties act," *Dallas Morning News*, Aug. 27, 2007.

<sup>3</sup> *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.* 473 U.S. 788, 822 (1985).