



## **FAMILY ISSUE FACT SHEET**

No. 2008-12 (February 2008)

### **HB 2713 - Students' Religious Liberties Act**

#### **EXECUTIVE SUMMARY**

House Bill 2713 acknowledges and protects the constitutional right of students in public schools and charter schools to express their religious beliefs to other students, in homework and classroom assignments, and through clothing and accessories that express religious messages. This bill recognizes that Arizona's students at public schools have constitutional rights and that singling out religious expression for negative treatment is unconstitutional discrimination on the basis of religion. Only official neutrality toward student expression is consistent with constitutional guarantees.

#### **BACKGROUND**

In response to confusion about religious expression in Arizona schools, this bill outlines the extensive liberties that students are guaranteed by the Constitution. There is far too much hostility toward religious expression and lack of understanding of students' constitutional rights in Arizona public schools and charter schools. A few examples of unconstitutional censorship in Arizona public educational institutions include:

- A high school student in the Deer Valley School District was punished for announcing the "See You at the Pole" event among the school's morning announcements.<sup>1</sup>
- A Gilbert high school student's mention of "God" in his yearbook was censored by school officials.<sup>2</sup>
- Parents' messages, "God Bless Quinn, We Love You Mom & Dad" and "God Bless Haley, We Love You Mom & Dad," were excluded from a fundraiser called "Tiles for Smiles," in which parents were invited to purchase tiles for the school hallway that would express messages of love, praise, and encouragement to their children.<sup>3</sup>

The U.S. Supreme Court recently confirmed again that students maintain First Amendment freedoms in public schools.<sup>4</sup> The U.S. Department of Education has issued guidelines interpreting U.S. Supreme Court cases on the type of religious speech permitted in public schools.<sup>5</sup> This bill is based on those guidelines and enumerates some of the already-existing constitutional rights of students in public educational institutions. In order to comply with the First Amendment, public schools should remain neutral toward a student's choice to engage in or refrain from religious expression or activity, as long as the students' activities or expression do not "materially and substantially interfere with the orderly conduct of educational activities within the school."<sup>6</sup> This bill clarifies that government officials should not prohibit or discourage students from non-disruptive, voluntary, religious expression. Last

year, a similar bill was passed into law in the state of Texas. This year, the Oklahoma and Virginia legislatures will consider passing similar laws. Missouri also has a constitutional referendum to protect students' religious liberties.

## TALKING POINTS

- **This bill protects constitutional rights and avoids needless litigation. Arizona's public educational institutions should abide by constitutional standards.** This bill will reduce the need for lawsuits that cost hundreds of thousands of taxpayer dollars. Students should not have to file lawsuits to enjoy the expressive freedom guaranteed by the Constitution.
- **The First Amendment protects the rights of students to engage in religious expression.** As Justice Sandra Day O'Connor explained: "There is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."<sup>7</sup>
- **This bill is an anti-discrimination bill to protect students' voluntary expression of faith-based viewpoints.** The Constitution prohibits government officials from discriminating against religious expression on otherwise permissible subjects, and this bill simply makes clear some of the ways students are already free to express their religious beliefs. The bill does not create special protection or preferential treatment for any group.
- **Discriminating against the religious viewpoints of students chills free thought and expression.** The Supreme Court has held that there is at least as great of a danger that children would perceive hostility toward religious viewpoints if they were excluded when other viewpoints were allowed as that they would misperceive state endorsement of religion when religious viewpoints are allowed.<sup>8</sup>
- **Eliminating confusion about whether religious expression is allowed in public educational institutions helps students and teachers to have confidence in the classroom.** Teachers will have freedom to allow voluntary student religious expression on the subject matter being taught, and students will not fear punishment for expressing religious viewpoints on school subjects or for engaging in religious activities during non-instructional time.

## CONCLUSION

Government officials are not at liberty to pick and choose what speech will be accepted based on its religious or non-religious viewpoint. House Bill 2713 would protect students, enhance educational opportunities, ensure diversity, and uphold constitutional rights.

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<sup>1</sup> Reagan Roberson, Editorial, *Religion does not deserve harmful title of 'obscenity'*, Ridge Rev., Oct. 19, 2007, at 7, available at <http://www.azpolicy.org/assets/pdf/religion.pdf>.

<sup>2</sup> Doug Carroll, *Student wants to know why 'God' edited from yearbook*, Arizona Republic, May 16, 2007.

<sup>3</sup> *Seidman v. Paradise Valley Unified Sch. Dist.*, 327 F. Supp. 2d 1098 (D. Ariz. 2004) (holding that the school district violated the Constitution by discriminating on the basis of the parents' religious viewpoint).

<sup>4</sup> *Morse v. Frederick*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 2618, 2622 (2007) (citing *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)) ("Our cases make clear that students do not 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'").

<sup>5</sup> U.S. Dep't of Educ., *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools* (2003), [http://www.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html#17](http://www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html#17).

<sup>6</sup> *Bd. of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 241 (quoting 20 U.S.C. § 4071(c)(4)); see also *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947) ("State power is no more to be used so as to handicap religions, than it is to favor them.").

<sup>7</sup> *Mergens*, 496 U.S. at 250 (emphasis in original).

<sup>8</sup> *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 118 (2001).