



February 3, 2026

Hon. Renee Erickson , Chair  
Senate Education Committee  
State Capitol  
Topeka, KS

SUBJECT: SB 421

Dear Chairman Erickson & Members of the Committee:

My name is Lance Kinzer, and I am the Policy Director for 1<sup>st</sup> Amendment Partnership where we are privileged to work with some of the nation's largest faith communities with respect to their common commitment to First Amendment freedoms.

While supportive of SB 421 in general, I will focus my comments on Sec. 1(d)(4) and 1)(e) of the bill under which **student clubs would be protected from unfair viewpoint discrimination. Moreover, the bill would safeguard the ability of religious, political, and ideologically based student clubs to select leaders who share the club's mission and beliefs.**

While such protections may seem like common sense, the challenges facing religious student clubs at public schools is a matter of long standing concern. **Indeed, unfair treatment of faith based clubs lead President Reagan to sign the *Equal Access Act, 20 U.S.C. 4071* in 1984 (<https://www.law.cornell.edu/uscode/text/20/407>).** This longstanding provision of federal law protects the right of public high school students to develop clubs based on shared values and core convictions. The U.S. Supreme Court upheld the Equal Access Act in a 9-0 decision in *Westside Community Schools v. Mergens*, (1990). In that opinion, the Court was clear that in granting equal access for student clubs, the state does not establish religion (nor endorse any viewpoint an organization may hold) – it merely upholds freedom. **While this federal law is valuable, it can be difficult to enforce, making specific state protections important in order to meaningfully safeguard these core rights.**

**In another analogous context, federal and state<sup>1</sup> nondiscrimination law both typically recognize the right of religious organizations to choose leaders on the basis of their religious beliefs.** At the federal level, by way of example, Title VII explicitly provides that religious associations may use religious criteria in hiring decisions. In three separate provisions, it exempts religious associations from its general provisions on religious discrimination:

- 1) 42. U.S.C. 2000e-1(a) (Act does not apply to a religious association with respect to employment of an individual to perform work connected with carrying on the associations' activities);
- 2) 42 U.S.C. 2000e-2(e)2) (Act does not apply to a religious educational institution with respect the employment of employees that share that institutions religious convictions, where the institution is directed toward the propagation of a particular religion);
- 3) 42 U.S.C. 2000e-2(e)(1) (Any employer may hire on the basis of religion where religion is a bona fide occupational qualification).

These accommodations were upheld by the U.S. Supreme Court in *Corporation of Presiding Bishop v. Amos* (1987). Moreover, in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* (2012), the Court unanimously rejected the argument that federal nondiscrimination laws could be used to trump religious association leadership decisions. As Justice Alito and Justice Kagan stressed, while nondiscrimination laws are “undoubtedly important”, **“religious groups are the archetype of associations formed for expressive purposes, and their fundamental rights surely include the freedom to choose who is qualified to serve as a voice for their faith.”** This same basic point was more recently affirmed by the Court in *Our Lady of Guadalupe School v. Morrissey-Berru* (2020).

**In 2023 the same premise was reiterate by the U.S. Court of Appeals for the Ninth Circuit in *Fellowship of Christian Athletes v. San Jose Unified School District*.<sup>2</sup>** As explained by its attorneys, in that case:

FCA has had a presence in the San Jose Unified School District for over a decade. But in 2019, **district officials derecognized FCA and forced the student group off campus after a Pioneer teacher attacked the group's Christian beliefs in his classroom. The teacher targeted the club during class time, and then sent emails to the school principal describing FCA's**

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<sup>1</sup> In Kansas, sectarian corporations are not covered by the definition of employer under the Kansas Act Against Discrimination, and thus receive an even broader accommodation than under federal law. K.S.A. 44-1002(b).

<sup>2</sup> <https://becketfund.org/case/sinclair-v-san-jose-school-district/>

**beliefs in vulgar language and advocating for FCA’s removal from campus. He even suggested that FCA’s beliefs and mere presence on campus should be treated as equivalent to sexual harassment. Why? All because FCA wanted to choose leaders who shared their Christian beliefs,** which the teacher and the district said was illegal discrimination. Within two weeks, Pioneer FCA was kicked off campus by the district, and eventually all three FCA student clubs in the district were shut out. **When students tried to get the FCA club reestablished on campus the next semester, their request was denied—while at the same time, the school recognized a Satanic Temple Club that formed for the purpose of protesting FCA.**

Fortunately, the Court sided with FCA noting that, “Anti-discrimination laws and policies serve undeniably admirable goals, but when those goals collide with the protections of the Constitution, they must yield—no matter how well-intentioned. *303 Creative LLC v. Elenis* (2023) (“When a state public accommodations law and the Constitution collide, there can be no question which must prevail.” (citing U.S. CONST., Art. VI, cl. 2)). Even if the views held by FCA may be considered to be out-of-date by many, the First Amendment “counsel[s] mutual respect and tolerance . . . for religious and non-religious views alike.” *Kennedy, 142 S. Ct. at 2416.*”

**However, even when student groups win in court, much of the harm to the educational experience of the impacted students is already done.** No judicial remedy can adequately address the harms that public schools inflict when they target student organizations, and thus their members, based upon their religious beliefs. SB 421 is designed to prevent such litigation by providing a clear legal standard that simply preserves the right of belief-based student groups to be protected from view point discrimination, and to choose leaders who agree with their purpose and mission.

**By creating a clear standard, SB 421 promotes the important goal of pluralism, avoids needless litigation, and makes it certain that public school administrators cannot decide who is entitled to recognition as a student organization based upon which beliefs those administrators favor or disfavor.**

Thank you so much for your attention to this matter. Please don’t hesitate to contact me with any questions you may have.

Respectfully,

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