

HOUSE BILL No. 2288

By Representatives Erickson, Arnberger, Bergquist, Blex, Burris, Capps, Carlson, B. Carpenter, Collins, Delperdang, Dove, Garber, Helmer, Hoheisel, Houser, Howard, Humphries, Jacobs, Mason, Owens, Seiwert, E. Smith, Tarwater, Thimesch, Thomas, Vickrey, Waggoner and Wasinger

2-13

1 AN ACT concerning school districts; relating to religious speech; creating
2 the Kansas student and educator freedom of religious speech act.
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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. The provisions of sections 1 through 7, and amendments
6 thereto, shall be known and may be cited as the Kansas student and
7 educator freedom of religious speech act.

8 Sec. 2. The legislature hereby finds and declares the following:

9 (a) The United States supreme court has recognized for almost 50
10 years that neither students nor teachers "shed their constitutional rights to
11 freedom of speech or expression at the schoolhouse gate." *Tinker v. Des*
12 *Moines independent community school district*, 393 U.S. 503, 506 (1969).

13 (b) Academic freedom derives from the right to free speech under the
14 1st amendment to the constitution of the United States, which also
15 guarantees the right to free exercise of religion.

16 (c) The 1st amendment to the constitution of the United States
17 guarantees that "private religious speech, far from being a first amendment
18 orphan, is as fully protected under the free speech clause as secular private
19 expression." *Capitol square review & advisory bd. v. Pinette*, 515 U.S.
20 753, 760 (1995).

21 (d) The exercise of 1st amendment rights on public school campuses
22 in this state is a critical component of the education experience for
23 students and requires that each public school in this state ensure free,
24 robust and uninhibited debate and deliberations by students.

25 (e) While performing their assigned job duties, school employees are
26 required to maintain a position of neutrality towards religion. However,
27 when interacting with other school employees or when the context makes
28 clear that the employee is not speaking on behalf of the school, school
29 employees are entitled to robust protections for their religious expression.

30 (f) Public schools are being threatened by out-of-state special interest
31 groups who demand that schools adopt inaccurate interpretations of the 1st
32 amendment that unlawfully restrict the freedom of students, teachers and
33 other public school district employees to engage in religious expression or
34 otherwise exercise their freedom of religion, leading to a stifling of

1 constitutional rights.

2 (g) Clear protection in state law is needed for students, teachers and
3 other public school district employees in public schools, in order to ensure
4 1st amendment freedoms are protected, to prevent against interference from
5 out-of-state special interest groups and to safeguard academic freedom.

6 Sec. 3. As used in sections 1 through 7, and amendments thereto:

7 (a) "Contract time" means that time when a school district employee
8 is required to be on campus or at another designated location for the
9 purpose of fulfilling the duties of such employee's employment, or when a
10 school district employee is otherwise acting as a designated representative
11 of a public elementary or secondary school.

12 (b) "Model policy" means a local policy adopted by a school district
13 that is substantially similar to the provisions of section 5, and amendments
14 thereto.

15 Sec. 4. (a) A school district shall not discriminate against any student
16 or any parent or legal guardian of a student on the basis of a religious
17 viewpoint or religious expression. A school district shall treat a student's
18 voluntary expression of a religious viewpoint, if any, on an otherwise
19 permissible subject in the same manner the district treats a student's
20 voluntary expression of a secular or other viewpoint on an otherwise
21 permissible subject, and shall not discriminate against the student based on
22 a religious viewpoint expressed by the student on an otherwise permissible
23 subject.

24 (b) A student may express such student's beliefs about religion in any
25 coursework, artwork or other written or oral assignment free from
26 discrimination based on the religious content of such submission. All
27 assignments, including any assignment that requires a student to express a
28 viewpoint, shall be judged by ordinary academic standards of substance
29 and relevance to the course curriculum or requirements of the coursework,
30 artwork or other assignment, and against other legitimate pedagogical
31 concerns identified by the school district. A student shall not be penalized
32 or rewarded on the basis of religious content or a religious viewpoint.

33 (c) A student may pray or engage in religious activities or religious
34 expression before, during and after the school day in the same manner and
35 to the same extent that other students may engage in nonreligious activities
36 or expression. Students may organize prayer groups, religious clubs or
37 other religious gatherings before, during and after school to the same
38 extent that students are permitted to organize other noncurricular student
39 activities and groups. Religious groups shall be provided the same access
40 to school facilities for assembling as is provided to other noncurricular
41 groups without discrimination based on the religious content of the
42 students' expression. A school district shall not discriminate against groups
43 that meet for prayer or other religious speech with respect to advertising of

1 such groups and announcements of meetings of such groups. A school
 2 district may disclaim school sponsorship of noncurricular groups and
 3 events in a manner that neither favors nor disfavors groups that meet to
 4 engage in prayer or religious speech. A student may wear clothing,
 5 accessories and jewelry that display religious messages or religious
 6 symbols in the same manner and to the same extent that other types of
 7 clothing, accessories and jewelry that display messages or symbols are
 8 permitted.

9 (d) (1) To ensure that a school district does not discriminate against a
 10 student's publicly stated voluntary expression of a religious viewpoint, if
 11 any, and to eliminate any actual or perceived affirmative school
 12 sponsorship or attribution to the school district of a student's expression of
 13 a religious viewpoint, if any, the board of education of each school district
 14 shall establish a limited public forum for student speakers at all school
 15 events at which a student is to publicly speak. Each school district shall be
 16 required to:

17 (A) Provide the limited forum in a manner that does not discriminate
 18 against a student's voluntary expression of a religious viewpoint, if any, on
 19 an otherwise permissible subject;

20 (B) provide a method, based on neutral criteria, for the selection of
 21 student speakers at school events and graduation ceremonies;

22 (C) ensure that a student speaker does not engage in obscene, vulgar,
 23 offensively lewd or indecent speech; and

24 (D) state, in writing, orally, or both, that the student's speech does not
 25 reflect the endorsement, sponsorship, position or expression of the school
 26 district.

27 (2) The disclaimer required by paragraph (1)(D) shall be provided at
 28 all graduation ceremonies, and at any other event in which a student
 29 speaks publicly for as long as a need exists to dispel confusion over the
 30 district's nonsponsorship of the student's speech.

31 (e) Student expression on an otherwise permissible subject shall not
 32 be excluded from the limited public forum because the subject is expressed
 33 from a religious viewpoint.

34 (f) The board of education of each school district shall adopt and
 35 implement policies regarding the establishment of a limited public forum
 36 and voluntary student expression of religious viewpoints. If a board of
 37 education adopts the model policy set forth in section 5, and amendments
 38 thereto, the school district shall be considered to be in compliance with the
 39 provisions of sections 1 through 7, and amendments thereto.

40 Sec. 5. The following is a model policy governing limited public
 41 forums and voluntary religious expression in public schools:

42 ARTICLE I

43 STUDENT EXPRESSION OF RELIGIOUS VIEWPOINTS

1 The school district shall treat a student's voluntary expression of a
2 religious viewpoint, if any, on an otherwise permissible subject in the same
3 manner the district treats a student's voluntary expression of a secular or
4 other viewpoint on an otherwise permissible subject and may not
5 discriminate against the student based on a religious viewpoint expressed
6 by the student on an otherwise permissible subject.

7 ARTICLE II

8 STUDENT SPEAKERS AT NONGRADUATION EVENTS

9 The school district hereby creates a limited public forum for
10 student speakers at all school events at which a student is to publicly
11 speak. For each speaker, the district shall set a maximum time limit
12 reasonable and appropriate to the occasion. Student speakers shall
13 introduce:

- 14 (a) Football games;
- 15 (b) any other athletic events designated by the district;
- 16 (c) opening announcements and greetings for the school day;
- 17 and
- 18 (d) any additional events designated by the district, which may
19 include, without limitation, assemblies and pep rallies.

20 The forum shall be limited in the manner provided by this article.
21 Only those students in the highest two grade levels of the school and who
22 hold one of the following positions of honor based on neutral criteria are
23 eligible to use the limited public forum: Student council officers, class
24 officers of the highest grade level in the school, captains of various sports
25 teams and other students holding positions of honor as the school district
26 may designate.

27 An eligible student shall be notified of the student's eligibility,
28 and a student who wishes to participate as an introducing speaker shall
29 submit the student's name to the student council or other designated body
30 during an announced period of not less than three days. The announced
31 period may be at the beginning of the school year, at the end of the
32 preceding school year so student speakers are in place for the new year, or,
33 if the selection process will be repeated each semester, at the beginning of
34 each semester or at the end of the preceding semester so speakers are in
35 place for the next semester. The names of the volunteering student
36 speakers shall be randomly drawn until all names have been selected, and
37 the names shall be listed in the order drawn. Each selected student will be
38 matched chronologically to the event for which the student will be giving
39 the introduction. Each student may speak during the course of a week at a
40 time for all introductions of events that week, or rotate after each speaking
41 event, or otherwise as determined by the district. The list of student
42 speakers shall be chronologically repeated as needed, in the same order.

43 The subject of the student introductions must be related to the

1 purpose of the event and to the purpose of marking the opening of the
2 event, honoring the occasion, the participants and those in attendance,
3 bringing the audience to order and focusing the audience on the purpose of
4 the event. The subject must be designated, a student must stay on the
5 subject and the student may not engage in obscene, vulgar, offensively
6 lewd or indecent speech. The school district shall treat a student's
7 voluntary expression of a religious viewpoint, if any, on an otherwise
8 permissible subject in the same manner the district treats a student's
9 voluntary expression of a secular or other viewpoint on an otherwise
10 permissible subject and may not discriminate against the student based on
11 a religious viewpoint expressed by the student on an otherwise permissible
12 subject.

13 For as long as there is a need to dispel confusion over the
14 nonsponsorship of the student's speech at each event in which a student
15 will deliver an introduction, a disclaimer shall be stated in written or oral
16 form, or both, such as, "The student giving the introduction for this event
17 is a volunteering student selected on neutral criteria to introduce the event.
18 The content of the introduction is the private expression of the student and
19 does not reflect the endorsement, sponsorship, position or expression of
20 the school district."

21 Certain students who have attained positions of honor in the
22 school have traditionally addressed school audiences from time to time as
23 a tangential component of their achieved positions of honor, such as the
24 captains of various sports teams, student council officers, class officers,
25 homecoming kings and queens, prom kings and queens and the like, and
26 have attained their positions based on neutral criteria. Nothing in this
27 policy eliminates the continuation of the practice of having these students,
28 irrespective of grade level, address school audiences in the normal course
29 of their respective positions. The school district shall create a limited
30 public forum for the speakers and shall treat a student's voluntary
31 expression of a religious viewpoint, if any, on an otherwise permissible
32 subject in the same manner the district treats a student's voluntary
33 expression of a secular or other viewpoint on an otherwise permissible
34 subject and may not discriminate against the student based on a religious
35 viewpoint expressed by the student on an otherwise permissible subject.

36 ARTICLE III

37 STUDENT SPEAKERS AT GRADUATION CEREMONIES

38 The school district hereby creates a limited public forum
39 consisting of an opportunity for a student to speak to begin graduation
40 ceremonies and another student to speak to end graduation ceremonies.
41 For each speaker, the district shall set a maximum time limit reasonable
42 and appropriate to the occasion. The forum shall be limited in the manner
43 provided by this article.

1 Only students who are graduating and who hold one of the
2 following neutral criteria positions of honor shall be eligible to use the
3 limited public forum: Student council officers, class officers of the
4 graduating class, the top three academically ranked graduates or a shorter
5 or longer list of student leaders as the school district may designate. A
6 student who will otherwise have a speaking role in the graduation
7 ceremonies is ineligible to give the opening and closing remarks. The
8 names of the eligible volunteering students will be randomly drawn. The
9 first name drawn will give the opening and the second name drawn will
10 give the closing.

11 The topic of the opening and closing remarks must be related to
12 the purpose of the graduation ceremony and to the purpose of marking the
13 opening and closing of the event, honoring the occasion, the participants
14 and those in attendance, bringing the audience to order and focusing the
15 audience on the purpose of the event.

16 In addition to the students giving the opening and closing
17 remarks, certain other students who have attained positions of honor based
18 on neutral criteria, including, without limitation, the valedictorian, will
19 have speaking roles at graduation ceremonies. For each speaker, the school
20 district shall set a maximum time limit reasonable and appropriate to the
21 occasion and to the position held by the speaker. For this purpose, the
22 district creates a limited public forum for these students to deliver the
23 addresses. The subject of the addresses must be related to the purpose of
24 the graduation ceremony, marking and honoring the occasion, honoring the
25 participants and those in attendance and the student's perspective on
26 purpose, achievement, life, school, graduation and looking forward to the
27 future.

28 The subject must be designated for each student speaker, the
29 student must stay on the subject and the student may not engage in
30 obscene, vulgar, offensively lewd or indecent speech. The school district
31 shall treat a student's voluntary expression of a religious viewpoint, if any,
32 on an otherwise permissible subject in the same manner the district treats a
33 student's voluntary expression of a secular or other viewpoint on an
34 otherwise permissible subject and may not discriminate against the student
35 based on a religious viewpoint expressed by the student on an otherwise
36 permissible subject.

37 A written disclaimer shall be printed in the graduation program
38 that states, "The students who will be speaking at the graduation ceremony
39 were selected based on neutral criteria to deliver messages of the students'
40 own choices. The content of each student speaker's message is the private
41 expression of the individual student and does not reflect any position or
42 expression of the school district or the board of trustees, or the district's
43 administration, or employees of the district, or the views of any other

1 graduate. The contents of these messages were prepared by the student
 2 volunteers, and the district refrained from any interaction with student
 3 speakers regarding the student speakers' viewpoints on permissible
 4 subjects."

5 ARTICLE IV

6 RELIGIOUS EXPRESSION IN CLASS ASSIGNMENTS

7 Students may express the students' beliefs about religion in
 8 homework, artwork and other written and oral assignments free from
 9 discrimination based on the religious content of the students' submission.
 10 Homework and classroom work shall be judged by ordinary academic
 11 standards of substance and relevance and against other legitimate
 12 pedagogical concerns identified by the school. Students may not be
 13 penalized or rewarded on account of religious content. If a teacher's
 14 assignment involves writing a poem, the work of a student who submits a
 15 poem in the form of a prayer, such as a psalm, should be judged on the
 16 basis of academic standards, including literary quality, and not penalized
 17 or rewarded on account of its religious content.

18 ARTICLE V

19 FREEDOM TO ORGANIZE RELIGIOUS GROUPS AND
 20 ACTIVITIES

21 Students may organize prayer groups, religious clubs and other
 22 religious gatherings before, during and after school to the same extent that
 23 students are permitted to organize other noncurricular student activities
 24 and groups. Religious groups must be given the same access to school
 25 facilities for assembling as is given to other noncurricular groups, without
 26 discrimination based on the religious content of the group's expression. If
 27 student groups that meet for nonreligious activities are permitted to
 28 advertise or announce the groups' meetings, for example, by advertising in
 29 a student newspaper, putting up posters, making announcements on a
 30 student activities bulletin board or public address system, or handing out
 31 leaflets, school authorities may not discriminate against groups that meet
 32 for prayer or other religious speech. School authorities may disclaim
 33 sponsorship of noncurricular groups and events, provided they administer
 34 the disclaimer in a manner that does not favor or disfavor groups that meet
 35 to engage in prayer or other religious speech.

36 Sec. 6. (a) During contract time, school district employees may:

37 (1) Engage in religious expression and discussions and share religious
 38 materials with other school district employees at the same times and in the
 39 same manner that faculty and employees are permitted to engage in secular
 40 expression and discussions;

41 (2) discuss religious topics and use religious materials in the
 42 classroom when presented in a neutral manner that serves a valid, secular
 43 educational purpose;

1 (3) serve as a sponsor of student religious clubs and assist the
2 students in planning meetings, activities and events to the same extent that
3 faculty sponsors of secular clubs are so permitted;

4 (4) permit and be present for student-initiated, student-led religious
5 expression;

6 (5) participate in voluntary student-initiated, student-led prayer, such
7 as prayer before a sporting event, when invited to do so by the students,
8 provided that the participation is in the employee's personal capacity and
9 not as a representative of the school;

10 (6) wear religious clothing, symbols or jewelry, provided that such
11 items otherwise comply with any dress code implemented by the school
12 district; and

13 (7) decorate such employee's desk and other personal space in such
14 employee's office or classroom with items that reflect the religious beliefs
15 of such employee to the same extent that other employees are permitted to
16 decorate such other employees' desk and other personal space.

17 (b) During non-contract time, school district employees may engage
18 in religious expression and share religious materials to the same extent as
19 other individuals.

20 Sec. 7. (a) Nothing in sections 1 through 7, and amendments thereto,
21 shall be construed to authorize the state or any political subdivisions
22 thereof to:

23 (1) Require any person to participate in prayer or any other religious
24 activity; or

25 (2) violate the constitutional rights of any person.

26 (b) Nothing in sections 1 through 7, and amendments thereto, shall be
27 construed to limit the authority of any school district to:

28 (1) Maintain order and discipline on the campus of any school
29 operated by such district in a content and viewpoint neutral manner;

30 (2) protect the safety of students, employees and visitors of any
31 school operated by such district; or

32 (3) adopt and enforce policies and procedures regarding student
33 speech at any school operated by such district provided that the policies
34 and procedures do not violate the rights of students as guaranteed by the
35 constitution of the United States, the constitution of the state of Kansas,
36 and federal and state law.

37 Sec. 8. This act shall take effect and be in force from and after its
38 publication in the statute book.