

## **Viewpoints, Outlook**

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### **HISD need not fear equal time for religious speech**

Brand new state law gives religious views equal footing

**By KELLY COGLAN**

For the Houston Chronicle

In 1970 a federal court stopped the Houston Independent School District from requiring students to recite prayers and Bible verses. The school district is now using that 37-year-old injunction as an excuse to delay implementing the new Texas law protecting schoolchildren's religious viewpoints.

In a 1990 Nebraska case, the U.S. Supreme Court held: "There is a crucial difference between government speech endorsing religion and private speech endorsing religion." Students are not the government but are private citizens. The effective provisions of the injunction and the new Texas law are not in conflict.

If HISD adopts and follows the new Texas law, Texas Attorney General Greg Abbott would defend HISD from any challenges for following state law. Meanwhile, tens of thousands of Houston children wait.

The heart of the new Texas law, which I drafted, is in its first sentence: "A school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject." The remainder of the law shows schools how to implement this required neutrality.

The law was necessary because children were being forbidden from using words like "Merry Christmas" in December, "Jesus" at Easter, "St. Valentines Day" in February, or handing out candy canes due to their religious message. Valedictorians were being told to eliminate any references to God at graduations.

One superintendent told students "if they prayed they would be disciplined the same as if they had cursed" and then banned "prayers, blessings, invocations, and any reference to a deity." Students' rights were being violated and lawsuits were costing schools hundreds of thousands in legal fees. Schools needed direction and students of faith needed protection.

The Texas legislation codifies existing U.S. Supreme Court precedent into a single accessible law. For instance, in its 2001 ruling in *Good News Club v. Milford Central High School* the court held that "speech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the grounds that the subject is discussed from a religious viewpoint. [Excluding a] religious perspective constitutes unconstitutional viewpoint discrimination." In its 1990 ruling in the Nebraska case mentioned above, the court had said, "the proposition that public schools do not endorse everything they fail to censor is not complicated."

The new law is based on solid constitutional footing. Before being introduced as a bill in the Texas Legislature, it underwent a seven-year gantlet of scrutiny by constitutional attorneys across the country and field-testing in public schools from Texas to Illinois. Superintendents testifying in Austin did not point to a single instance of student abuse of a speaking opportunity, a complaint by a parent or student, a lawsuit or a demand letter.

After the American Civil Liberties Union attended the first hearing in Austin, read the proposed law and heard the evidence, it did not speak against the bill at any subsequent hearings or anytime thereafter. The bill was passed into law with overwhelming bipartisan support: 108-28 in the Texas House and 27-3 in the Texas Senate.

Most objections to the bill come from anti-faith groups fearing that if students were permitted to utter "Jesus" the next step would be baptisms in the school's swimming pool. This is irrational Jehovah-phobia.

First, we don't know if a student will ever say anything of a religious nature. The new Texas law does not require or suggest that students express a prayerful or any other type of religious viewpoint; it merely protects them if they do. Second, if a student *does* express a religious view, it is simply one student's opinion. It has no endorsement from the school. The required disclaimers make that clear.

Since it is not government speech, there is no "captive audience" argument to be made. It is simply one student's opinion expressed to others with no imprimatur of the government. Just as in class, students are free to ignore each other's opinions and often do.

The new Texas law is anti-discrimination legislation protecting religious viewpoints to the same degree — no more and no less — as secular viewpoints on the same subjects. The law does not give religious students special protection, just equal protection; not extra rights, just equal rights; not preferential treatment, just equal treatment; not an advantage, just a level playing field. That's fair.

*Coghlan, a Houston constitutional trial attorney, represented 159 students and parents as amici curiae before the U.S. Supreme Court on faith-based issues. He can be e-mailed at [kellycoghlan@netzero.net](mailto:kellycoghlan@netzero.net).*