

SCHOOLCHILDREN'S NATIONAL DAY OF PRAYER
(Dallas Morning News)
By Kelly Coghlan

Today, on the National Day of Prayer, will children in Texas public schools hear a prayer? Maybe. Will it be legal? Yes, if the school follows the Constitution and the Texas Schoolchildren's Religious Liberties Act. Most believe the Supreme Court outlawed all school prayer. It didn't. It outlawed government prayer. Students are not government.

The heart of the new Texas law is 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." A prayer is the expression of a religious viewpoint on whatever is the subject of the prayer. For instance, if the subject for opening the football game is "safety," and one student says, "Let us have a safe game tonight," that is a secular viewpoint on the subject of safety. If another student says, "God, let us have a safe game tonight, Amen," that is a religious viewpoint on the subject of safety. Both are equally protected speech.

Schools are not religion-free zones. Teachers are not prayer police. Schools set the subjects, but may not then selectively discriminate against a child's religious viewpoint on the subject. This isn't preferential treatment; this is equal treatment.

The law is anti-discrimination legislation codifying Supreme Court precedent. For instance, in the *Good News Club* decision in 2001, the court held that in a public school, "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 the *Mergens* decision in 1990, the court said about public schools: "There is a crucial difference between government speech endorsing religion...and private speech endorsing religion.... The proposition that public schools do not endorse everything they fail to censor is not complicated." "Private speech" is speech from a private citizen. Students are private citizens, as held in the *Tinker* case in 1969. And in *Santa Fe v. Doe* (2000), although the school lost because the Court found that students were being coerced to pray, the students won when the Court sweepingly held "nothing in the Constitution...prohibits any public school student from *voluntarily* praying at any time before, during, or after the schoolday" and then referenced the typically elected "student body president, or even a newly elected prom king or queen" as examples of neutrally selected students who might constitutionally use public speaking opportunities to do so.

The Jehovah-phobic crowd need not fret for the law does not require or suggest that any student express a prayerful or any other type of religious viewpoint, it just protects them if they do. And if they do, it is merely one student's opinion having no government endorsement. The neutral selection process and required disclaimers make that clear. Since it isn't government speech, there is no "captive audience" issue. While school personnel must remain neutral, parents, pastors, students and other non-school-officials are free to encourage students to communicate God-honoring viewpoints whenever they publicly speak.

Recently, during the football State Playoffs, a student opened the game with a prayerful expression that included thanks that she lived “in a country where a student can publicly reverence God without fear of punishment.”

Yes, we can still pray in the USA, and Texas has the strongest religious liberties law of any state. Let’s hope that students across Texas will exercise their legal right to pray today.

[Kelly Coghlan, a Houston attorney, is the legal author of the Schoolchildren’s Religious Liberties Act and obtained the first federal injunction preventing censorship of a student’s voluntary public prayer in *Ward v. Santa Fe ISD* culminating in a judgment for the child. Website www.KellyCoghlan.com Email KellyCoghlan@netzero.net]