



# Freedom of Religious Expression in Public Schools

## Brief Overview/History

Freedom of religion and religious expression, especially with the public school system, has been a highly contested issue for decades. The First Amendment to the United States Constitution contains two clauses that affect this issue: the Establishment Clause and the Free Exercise Clause. The Establishment Clause prohibits the federal government or any state from passing laws that establish an official religion or any action that appears as preferring one religion over another. The Free Exercise Clause prohibits the federal government or any state from interfering with a person's religious practice, though this freedom may be limited by civil or criminal law. Over the past 50 years, a number of cases and court challenges have surfaced pertaining to religious liberties within the public school system. During the Clinton Administration, Secretary of Education, Richard Riley issued a “statement of principles” that outlined permissible religious expression in public schools. Since then, a number of states, using the successful model of the Texas State Legislature, have enacted antidiscrimination laws that protect a student’s right to religious expression.

## Legal/Regulatory Precedence and Rule of Law

- [Engle v. Vitale 370 U.S. 421 \(1962\)](#) – Supreme Court decision that struck down the traditional practice of invoking God’s blessing during school.
  - [See Also.](#)
- [Tinker v. Des Moines Independent School District](#) - In an oft cited case, the Supreme Court ruled in 1969 that students do not “shed their free speech rights at the school house gate.”
- [S. Department of Education \(1995\)](#) – Under the direction of President Bill Clinton and then Secretary of Education, Richard Riley, a “statement of principles” was issued outlining permissible religious expression in public schools.

## Supportive Talking Points

- Government, laws and public policies, like many things within society, do reflect a clear value system.
- Historically, Christian principles within the school system were deemed to be appropriate and acceptable.
- The core of the U.S. Constitution supports the notion that individual rights come from God and not the state.
- The concept of religious freedom is broader than “freedom to worship,” a term that is increasingly being deployed to further weaken First Amendment rights and limit the expression of religious beliefs and values to homes and churches.
- Freedom of expression in public schools is legally defensible and worthy of the effort to fight discrimination.
  1. [Zamecnik v. Indian Prairie School District](#) #204, 636 F.3d 874 (7th Cir. 2011)
  2. Two students who were originally prohibited from wearing t-shirts that said, “Be Happy, Not Gay” in order to show their religious beliefs, were ruled to be within their rights and the school could not prohibit the act over the potential for hurt feelings.
  3. [Peck v. Baldwinville Cent. Sch. Dist.](#) 426 F.3d 617 (2d Cir. 2005)

4. The U.S. Second Circuit Court of Appeals vacated an earlier ruling that barred a student from including a picture of Jesus in an artwork assignment.
5. <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=99-2036>
6. The Supreme Court ruled in favor of students whose free speech rights were being discriminated against by the school.
7. **Current legally protected rights of religious expression**
8. **Discrimination**—School authorities may not discriminate against religious activity or speech.
9. **Bible Reading and Prayer**—Students may read their Bibles or other Scriptures, say a prayer before meals and pray before tests.
10. **Discussions**—Students may attempt to persuade their peers concerning religious topics, just as they may political topics. Harassment, however, (which is not defined) is not permissible.
11. **School Work**—Students may use religious themes in their homework, artwork, or other assignments, and such work should be judged (graded) by ordinary academic standards.
12. **Literature**—Students have the right to distribute religious literature (tracts, etc.) to their schoolmates on the same terms as they are permitted to distribute other literature.
13. **Religious Objections**—Students may be excused from lessons that are objectionable on religious or other conscientious grounds.
14. **Clothing**—Students may wear clothing depicting religious themes, and these messages may not be singled out for suppression. They are subject to the same rules as apply to comparable messages.
15. **Christian Groups**—Students religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups.
16. **Student Meetings**—Student meetings may include a prayer service, Bible reading, or other worship exercise.
17. **Access**—Students may use the public address system, the school newspaper, and the school bulletin board to announce their meetings, on the same terms as other student groups. (This only applies to schools receiving federal funds.)
18. **Teaching**—Schools may teach about religion, including the Bible or other scripture, the history of religion, the Bible-as-literature, and the role of religion in the United States and other countries. Schools are to be neutral with respect to religion. However, they may play an active role with respect to teaching civic values and virtue, and the moral code that holds us together as a community. Schools may not allow religious instruction by outsiders on school premises during the school day. However, school officials may dismiss students to off-premises religious instruction.

## Opposition Talking Points

- Students using “religious” language and expressions can be perceived as a particular religion being endorsed by the school.
  1. [M. v. Taconic Hills Cent. Sch. Dist.](#), 510 Fed. Appx. 3 (2d Cir. 2013)
  2. An 8th grade student was not allowed to include a sentence in the Bible in her graduation speech.
  3. [Busch v. Marple Newtown School District](#), 567 F.3d 89 (3d Cir. 2009)
  4. A student’s parent was not allowed to read from the Bible in a class presentation as it would be seen as “promoting religion.”
  5. [Corder v. Lewis Palmer School Dist.](#) No 38, 566 F.3d 1219 (10th Cir. 2009)
  6. A class valedictorian had to publically apologize for referencing her personal faith.
  7. [Fleming v. Jefferson County School District](#) R-1, 298 F.3d 918 (10th Cir. 2002)
  8. Following the Columbine school shooting, students were not allowed to express themselves with religious symbols in a memorial project.
  9. [H. v. Oliva](#), 226 F. 3d 198 (3rd. Cir. 2000)
  10. A Bible story was not allowed to be read in class.

11. [Furley v. Aledo](#) S.D., 218 F.3d 743 (5th Cir. 2000)
  12. A valedictorian was not allowed to include a prayer in her speech.
- Students using “religious” language and expressions can be perceived by the school as proselytizing and in effect, creating student oriented “public pulpits.”
    1. [Morgan v. Swanson](#), 659 F.3d 359 (5th Cir. 2011) (en banc)
    2. Goodie bags used during a “Winter Party” were disallowed because the contents included religious items.
    3. [Walz v. Egg Harbor Township](#), 342 F.3d 271 (3d Cir. 2003)
    4. A pre-kindergarten student was not allowed to give class gifts with a religious theme/message because it was deemed to be proselytizing speech.
  - Students using religious language and expression can increase the risk for bullying LGBT students.

## States with Successfully Enacted Legislative Initiatives/Authors, Sponsors

- Texas
  1. **Texas HB No. 3678**
    - [See Also](#)
    - [See Also](#)
    - Known as either the Religious Viewpoints Antidiscrimination Act (RVAA) or the Schoolchildren’s Religious Liberties Act
    - **Primary Author:** Charlie Howard (R)
    - **Brief Summary:** Local Education Agencies (LEAs), including public schools, are to treat a student’s voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject, in the same manner the LEA 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. This includes the expression of religious beliefs in classroom and homework assignments, as well as organizing and participating in religious student gatherings to the same extent as secular non-curricular groups. The model policy language is the exact language approved by the Supreme Court decision in *Good News Club v. Milford Central School*, 533 U.S. 98 (2001).
- Tennessee
  1. **Tennessee HB No. 1547/SB No. 1793**
    - [See Also](#)
    - [See Also](#)
    - Mirrors Texas HB No. 3678 and is known as the Religious Viewpoints Antidiscrimination Act (RVAA)
    - **Primary Authors:** Courtney Rogers (R) and Sen. Ferrell Haile (R)
    - **Brief Summary:** See A.1.e
- South Carolina
  1. **South Carolina SB No. 0134/HB No. 3858**
    - [See also.](#)
    - [See also.](#)
    - [See also.](#)
    - Mirrors Texas HB No. 3678 and is known as the Religious Viewpoints Antidiscrimination Act (RVAA)

- **Primary Authors:** Vincent Sheheen (D), Sen. Daniel Verdin (R), Sen. Michael Fair (R), Sen. George Campsen (R) and Sen. Shane Martin (R)
    - **Brief Summary:** See A.1.e.
- Mississippi
  1. **Mississippi SB No. 2633/HB No. 1112**
    - [See also.](#)
    - [See also.](#)
    - [See also.](#)
    - Mirrors Texas HB No. 3678 and is known as the Religious Viewpoints Antidiscrimination Act (RVAA)
    - **Primary Author:** Chris McDaniel (R)
    - **Brief Summary:** See A.1.e.
- Kentucky
  1. **Kentucky HB No. 279**
    - [See also.](#)
    - [See also.](#)
    - Mirrors Texas HB No. 3678 and is known as the Religious Viewpoints Antidiscrimination Act (RVAA)
    - **Primary Author:** Bob Damron (R)
    - **Brief Summary:** See A.1.e.
- North Carolina
  1. North Carolina SB No. 370
    - [See also.](#)
    - [See also.](#)
    - Mirrors Texas HB No. 3678 and is known as the Religious Viewpoints Antidiscrimination Act (RVAA)
    - Primary Author: Ralph Hise (R)

## States with Drafted/Pending Legislative Initiatives/Authors, Sponsors

- Oklahoma
  1. Oklahoma HB No. 2422
    - [See also.](#)
    - [See also.](#)
    - Mirrors Texas HB No. 3678 and is known as the Religious Viewpoints Antidiscrimination Act (RVAA)
    - **Primary Authors:** John Bennett (R) and Nathan Dahm (R)
    - **Brief Summary:** See A.1.e.
    -
- Other states currently considering Religious Viewpoints Antidiscrimination Act (RVAA) legislation: West Virginia, Missouri, Alabama and Georgia.

## Federal Legislation/Resources

- [Congressional Legislation Tracker](#)
- [S. Department of State Office of International Religious Freedom](#)

## Law and Policy Contacts / Additional Resources

- Alliance Defending Freedom (ADF): [alliancedefendingfreedom.org](http://alliancedefendingfreedom.org)
  1. Primary Contact – Alan Sears, Esq., President, CEO
- Liberty Counsel: [libertycounsel.org](http://libertycounsel.org)
  1. Primary Contact – Mathew Staver, Esq., President, CEO
- Pacific Justice Institute: [pacificjustice.org](http://pacificjustice.org)
  1. Primary Contact – Brad Dacus, Esq., President
- Wallbuilders: [wallbuilders.com](http://wallbuilders.com)
  1. Primary Contact – David Barton
  2. See Attachment titled, A Constitutional Amendment Protecting School Prayer and Other Religious Speech (2001) by David Barton/Wallbuilders
- Americans for Religious Liberty: [arinc.org](http://arinc.org)
  1. Primary Contact – Edd Doerr, President
- See: [religioustolerance.org/ps\\_pray.htm](http://religioustolerance.org/ps_pray.htm) regarding case law on religion and prayer in public schools.
- See: [religioustolerance.org/ps\\_prae.htm](http://religioustolerance.org/ps_prae.htm) regarding case law on graduation prayers.