

Senate Bill 361

By: Senators Williams of the 27th, McKoon of the 29th, Ligon, Jr. of the 3rd, Payne of the 54th, Harbin of the 16th and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and secondary education, so as to provide for freedom of religious speech for students and faculty members in public schools; to provide for student protections in student expression, class assignments, organization of religious groups and activities, and limited public forums; to provide for model policies by each local school system on student expression; to provide for freedom of religious expression by faculty and employees of public schools while fulfilling the duties of their jobs; to provide for statutory construction; to provide for related matters; to provide for a short title; to provide for legislative findings; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Coach Small Religious Protection Act."

SECTION 2.

The General Assembly finds:

(1) As the U.S. Supreme Court has recognized for almost 50 years, "[n]either students [n]or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969);

(2) Academic freedom derives from the right to free speech under the First Amendment to the United States Constitution, which also guarantees the right to free exercise of religion;

(3) The First Amendment guarantees that "private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995);

(4) The exercise of First Amendment rights on public school campuses in this state is a critical component of the education experience for students and requires that each public school in this state ensure free, robust, and uninhibited debate and deliberations by students;

(5) While performing their assigned job duties, school employees are required to maintain a position of neutrality toward religion; however, when interacting with other school employees or when the context makes clear that the employee is not speaking on behalf of the school, school employees are entitled to robust protections for their religious expression;

(6) Public schools are being threatened by out-of-state special interest groups who demand that schools adopt inaccurate interpretations of the First Amendment that unlawfully restrict the freedom of students, teachers, and other public school employees to engage in religious expression or otherwise exercise their freedom of religion, leading to a stifling of constitutional rights; and

(7) Clear protection in state law is needed for students, teachers, and other school employees in public schools in order to ensure First Amendment freedoms are protected, to prevent against interference from out-of-state special interest groups, and to safeguard academic freedom.

SECTION 3.

Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and secondary education, is amended by revising Article 20, which is reserved, as follows:

"ARTICLE 20

20-2-1030.

As used in this article, the term:

(1) 'Contract time' means those times when a faculty member or employee is required to be on campus or at another designated location for the purpose of fulfilling the duties of their employment, or when a faculty member or employee is otherwise acting as a designated representative of the public elementary or secondary school.

(2) 'Model policy' means a policy adopted by a local school system that is substantially similar to the policy provided in subsection (g) of Code Section 20-2-1031. ~~Reserved.~~

20-2-1031.

(a) A local school system shall not discriminate against students or parents on the basis of a religious viewpoint or religious expression. A local school system shall treat a student's

voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the local school system 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.

(b) Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Homework and classroom assignments shall be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the local school system. Students may not be penalized or rewarded on account of the religious content of their work. If an assignment requires a student's viewpoint to be expressed in coursework or artwork or by other written or oral means, a public school shall not penalize or reward a student on the basis of religious content or a religious viewpoint. In such an assignment, a student's academic work that expresses a religious viewpoint shall be evaluated based on ordinary academic standards of substance and relevance to the course curriculum or requirements of the coursework or assignment.

(c) Students in public schools may pray or engage in religious activities or religious expression before, during, and after the school day in the same manner and to the same extent that students may engage in nonreligious activities or expression. Students may organize prayer groups, religious clubs, 'see you at the pole' gatherings, or other religious gatherings before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. A religious group shall be given the same access to school facilities for assembling as is given to other noncurricular groups without discrimination based on the religious content of the group's expression. If student groups that meet for nonreligious activities are permitted to advertise or announce meetings of the groups, the local school system may not discriminate against groups that meet for prayer or other religious expression. A local school system may disclaim school sponsorship of noncurricular groups and events in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious expression. Students in public schools may wear clothing, accessories, and jewelry that display religious messages or religious symbols in the same manner and to the same extent that other types of clothing, accessories, and jewelry that display messages or symbols are permitted.

(d)(1) To ensure that a local school system does not discriminate against a student's publicly stated voluntary expression of a religious viewpoint, if any, and to eliminate any actual or perceived affirmative school sponsorship or attribution to the local school system of a student's expression of a religious viewpoint, if any, a local school system shall adopt a policy which shall include the establishment of a limited public forum for

student speakers at all school events at which a student is to publicly speak. The policy regarding the limited public forum shall also require the local school system to:

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

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

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

(D) State in writing or orally, or both, that a student's speech does not reflect the endorsement, sponsorship, position, or expression of the local school system.

(2) The local school system disclaimer required by subparagraph (D) of paragraph (1) of this subsection shall be provided at all graduation ceremonies. The local school system shall also continue to provide the disclaimer at any other event at which a student speaks publicly for as long as a need exists to dispel confusion over the local school system's nonsponsorship of a student's speech.

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

(f) All local school systems shall adopt and implement a policy regarding a limited public forum and voluntary student expression of religious viewpoints. If a local school system voluntarily adopts and follows the model policy governing voluntary religious expression in public schools as provided by subsection (g) of this Code section, then the local school system is in compliance with the provisions of this article regarding the model policy.

(g) Each local school system shall adopt a policy that is substantially similar to the following:

'ARTICLE I

STUDENT EXPRESSION OF RELIGIOUS VIEWPOINTS

The local school system shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the local school system 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.

ARTICLE II

STUDENT SPEAKERS AT NONGRADUATION EVENTS

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

(a) Football games;

(b) Any other athletic events designated by the local school system;

(c) Opening announcements and greetings for the school day; and

(d) Any additional events designated by the local school system, which may include, without limitation, assemblies and pep rallies.

The forum shall be limited in the manner provided by this article.

Only those students in the highest two grade levels of the school and who hold one of the following positions of honor based on neutral criteria are eligible to use the limited public forum: student council officers, class officers of the two highest grade levels in the school, captains of the football team, and other students holding positions of honor as the local school system may designate.

An eligible student shall be notified of the student's eligibility, and a student who wishes to participate as an introducing speaker shall submit his or her name to the student council or other designated body during an announced period of not less than three days. The announced period may be at the beginning of the school year, at the end of the preceding school year so student speakers are in place for the new year, or, if the selection process will be repeated each semester, at the beginning of each semester or at the end of the preceding semester so speakers are in place for the next semester. The names of the volunteering student speakers shall be randomly drawn until all names have been selected, and the names shall be listed in the order drawn.

Each selected student will be matched chronologically to the event for which the student will be giving the introduction. Each student may speak for one week at a time for all introductions of events that week, or rotate after each speaking event, or otherwise as determined by the local school system. The list of student speakers shall be chronologically repeated as needed, in the same order. The local school system may repeat the selection process each semester rather than annually.

The subject of a student introduction shall be related to the purpose of the event and to the purpose of marking the opening of the event; honoring the occasion, the participants, and those in attendance; bringing the audience to order; and focusing the audience on the purpose of the event. The subject shall be designated and a student shall stay on the subject and may not engage in obscene, vulgar, offensively lewd, or

indecent speech. The local school system shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the local school system 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.

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

Certain students who have attained special positions of honor in the school have traditionally addressed school audiences from time to time as a tangential component of their achieved positions of honor, such as the captains of various sports teams, student council officers, class officers, homecoming kings and queens, prom kings and queens, and the like, and have attained their positions based on neutral criteria. Nothing in this policy eliminates the continuation of the practice of having these students, irrespective of grade level, address school audiences in the normal course of their respective positions. The local school system shall create a limited public forum for the speakers and shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the local school system 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.

ARTICLE III

STUDENT SPEAKERS AT GRADUATION CEREMONIES

The local school system hereby creates a limited public forum consisting of an opportunity for a student to speak to begin graduation ceremonies and another student to speak to end graduation ceremonies. For each speaker, the local school system shall set a maximum time limit reasonable and appropriate to the occasion.

The forum shall be limited in the manner provided by this article.

Only students who are graduating and who hold one of the following positions of honor shall be eligible to use the limited public forum: student council officers, class

officers of the graduating class, the top three academically ranked graduates, or a shorter or longer list of student leaders as the local school system may designate. A student who will otherwise have a speaking role in the graduation ceremonies is ineligible to give the opening or closing remarks. The names of the eligible volunteering students will be randomly drawn. The first name drawn will give the opening remarks and the second name drawn will give the closing remarks. The topic of the opening and closing remarks shall be related to the purpose of the graduation ceremony and to the purpose of marking the opening and closing of the event; honoring the occasion, the participants, and those in attendance; bringing the audience to order; and focusing the audience on the purpose of the event. In addition to the students giving the opening and closing remarks, certain other students who have attained special positions of honor based on neutral criteria, including, without limitation, the valedictorian, will have speaking roles at graduation ceremonies. For each speaker, the local school system shall set a maximum time limit reasonable and appropriate to the occasion and to the position held by the speaker. For this purpose, the local school system creates a limited public forum for these students to deliver the addresses. The subject of the addresses shall be related to the purpose of the graduation ceremony, marking and honoring the occasion, honoring the participants and those in attendance, and the student's perspective on purpose, achievement, life, school, graduation, and looking forward to the future. The subject shall be designated for each student speaker and the student shall stay on the subject and may not engage in obscene, vulgar, offensively lewd, or indecent speech. The local school system shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the local school system 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 written disclaimer shall be printed in the graduation program that states: "The students who will be speaking at the graduation ceremony were selected based on neutral criteria to deliver messages of the students' own choices. The content of each student speaker's message is the private expression of the individual student and does not reflect any position or expression of the local school system or the board of trustees, or the local school system's administration, or employees of the local school system, or the views of any other graduate. The contents of these messages were prepared by the student volunteers, and the local school system refrained from any

interaction with student speakers regarding the student speakers' viewpoints on permissible subjects."

ARTICLE IV

RELIGIOUS EXPRESSION IN CLASS ASSIGNMENTS

Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Homework and classroom assignments shall be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Students may not be penalized or rewarded on account of religious content. If a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards, including literary quality, and not penalized or rewarded on account of its religious content.

ARTICLE V

FREEDOM TO ORGANIZE RELIGIOUS GROUPS AND ACTIVITIES

Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, and other religious gatherings before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups shall be given the same access to school facilities for assembling as is given to other noncurricular groups without discrimination based on the religious content of the group's expression. If student groups that meet for nonreligious activities are permitted to advertise or announce the groups' meetings, for example, by advertising in a student newspaper, putting up posters, making announcements on a student activities bulletin board or public address system, or handing out leaflets, school authorities may not discriminate against groups that meet for prayer or other religious expression. School authorities may disclaim sponsorship of noncurricular groups and events, provided they administer the disclaimer in a manner that does not favor or disfavor groups that meet to engage in prayer or other religious expression.'

20-2-1032.

(a) During contract time, faculty and employees at public elementary and secondary schools may:

(1) Engage in religious expression and discussions and share religious materials with other faculty and employees at the same times and in the same manner that faculty and employees are permitted to engage in nonreligious expression and discussions;

(2) Discuss religious topics and use religious materials in the classroom when presented in a neutral manner and when serving a valid, secular educational purpose;

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

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

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

(6) Wear religious clothing, symbols, or jewelry, provided that such items otherwise comply with any dress code implemented by the public elementary or secondary school; and

(7) Decorate their desk and other personal space in their office or classroom with items that reflect their religious beliefs to the same extent that other faculty and employees are permitted to decorate their desk and other personal space.

(b) During noncontract time, faculty and employees at public elementary and secondary schools may engage in religious expression and share religious materials to the same extent that other individuals are permitted to do so.

20-2-1033.

(a) This article shall not be construed to authorize this state or any of its political subdivisions to:

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

(2) Violate the constitutional rights of any person.

(b) This article shall not be construed to limit the authority of any public school to:

(1) Maintain order and discipline on the campus of the public school in a content-neutral and viewpoint-neutral manner;

(2) Protect the safety of students, employees, and visitors of the public school; or

(3) Adopt and enforce policies and procedures regarding student speech at school, provided that the policies and procedures do not violate the rights of students as guaranteed by the United States and Georgia Constitutions and laws."

SECTION 4.

This Act shall apply beginning with the 2018-2019 school year.

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SECTION 5.

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All laws and parts of laws in conflict with this Act are repealed.