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Louisiana House of Representatives
State Capitol
P.O. Box 44486
Baton Rouge, LA 70804-4486
Baton Rouge, LA 70804

Re: Oppose HB 724 – Providing Access for Student Prayer Groups on Public School Campuses

Dear Representative:

On behalf of its Louisiana members, Americans United for Separation of Church and State urges you to oppose HB 724. This bill would grant religious student groups broad access to campus facilities to engage in prayer. Americans United strongly supports the right of students to engage in free speech activities, including student-initiated, voluntary prayer, but this bill's emphasis on providing access solely for religious speech is at best unnecessary, and at worst unconstitutional.

This Bill Is Unnecessary

HB 724 purports to do nothing more than preserve the status quo. Its proponents claim that it extends no other rights or privileges to religious student groups than those that already exist. In fact, the bill's author even stated that HB 724's only purpose is to clarify what types of behaviors are allowed under the U.S. Constitution and under federal and state law. But the rights of students to engage in voluntary prayer and gather as a religious student group are already established in both federal and Louisiana laws. It is not necessary to introduce a new piece of legislation merely to clarify already-existing rights.

Students already have the right to engage in voluntary, student-initiated prayer that is not coercive and does not disrupt the school's educational mission and activities.¹ Louisiana statutory law currently states: "No law, rule, or policy shall prevent a student attending any public elementary or secondary school from participating in voluntary, student-initiated, student-led prayer on school property before or after school or during free time."²

Moreover, religious student groups are also guaranteed the same access to campus as any other group. The U.S. Supreme Court has held that religious groups have the right to meet on school campuses during noninstructional time.³ Additionally, both federal and state law prohibits

¹ See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000); *Wallace v. Jaffree*, 472 U.S. 38, 59 (1985).

² LA. REV. STAT. ANN. § 17:2115.5 (1995).

³ *Good News Club v. Milford Central School*, 533 U.S. 98 (2001); *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993).

discrimination of student groups based on religious beliefs. Under the federal Equal Access Act,⁴ student groups must be given the same access to school facilities as all other non-curriculum related student groups.⁵ Also, under Louisiana law, no public school may deny “recognition or any privilege or benefit” to a student organization “solely because it is religious in nature, has a religious affiliation, or has no religious affiliation.”⁶

Because federal and state law already sets out the rights of students to engage in student-led, voluntary prayer and to gather with as a religious student group, this bill is unnecessary.

This Bill Endangers Religious Freedom

Perhaps even more important, this bill should be rejected because its description of students’ rights to gather to pray in public schools does not accurately reflect constitutional jurisprudence. Instead, it gives religious speech special privileges and permits teachers and staff—government officials—to participate in the prayers, which violates the Constitution. If Louisiana is going to adopt yet another law governing these matters, it should not pass a bill that is inaccurate and will likely invite constitutional abuses and costly litigation.

Although public-school students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” this right is not without limit.⁷ The Constitution, at a minimum, also guarantees students the right to attend public schools free from coercion to support or participate in religion or its exercise.⁸ Although this bill alleges to do no more than provide students a space to gather and engage in voluntary prayer – a right that students already possess – this bill’s effects could be more wide-reaching.

The Bill Allows Employees to Participate in the Prayers with Students

HB 724 states that school employees may not only attend, but may also “participate in the [prayer] gathering if it occurs before the employee’s work day begins or after the employee’s work day ends.” An employee’s active participation, even if it is technically outside the hours of the “work day,” can indicate school-sponsored activity, which violates the Constitution.

If the student group is meeting for any religious purpose, the role of the faculty present must be a non-participatory role only.⁹ The cardinal rule of the Establishment Clause is that governmental entities cannot take any action that “has the purpose or effect of ‘endorsing’ religion.”¹⁰ Instead these entities must maintain neutrality.¹¹ Accordingly, school officials may not “lend the aura of school sponsorship to [a] private religious enterprise.”¹² Allowing school employees to engage

⁴ 20 U.S.C. §4071 (1984).

⁵ The Equal Access Act states:

It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of religious, political, philosophical, or other content of speech at such meetings.

⁶ LA REV. STAT. ANN. § 17:2115.6 (1995).

⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

⁸ *Santa Fe*, 530 U.S. at 302 (quoting *Lee v. Weisman*, 505 U.S. 577, 587 (1992)).

⁹ *Westside Community Schools v. Mergens*, 496 U.S. 226, 259 (1990)(citing 20 U.S.C. §4071(c)(3)).

¹⁰ *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 592 (1989).

¹¹ *McCreary Cnty. v. ACLU of Kentucky*, 545 U.S. 844, 860 (2005).

¹² *Chandler v. James*, 985 F. Supp. 1068, 1087 (M.D. Ala. 1997).

in or lead students in prayer on school campuses would certainly create an aura of school sponsorship. Because this bill promotes active participation, rather than neutral supervision by school faculty, it runs afoul of the Establishment Clause's prohibition on government-sponsored religion.

The Bill Invites Non-students onto the School's Campus for Participation

The bill's encouragement for active participation by community members and attendance by parents also causes constitutional problems. Indeed, the bill places no limits on the size or frequency of these events. As the bill is written, students could fill the public school auditorium to full capacity with their families and outsiders every morning for a large, community-wide prayer service. Such attendance could establish student prayer gatherings as widely-accepted and well attended events on campus, and may have a coercive effect on students. Students who either do not subscribe to the same faith or who are nonbelievers would feel pressured to join these prayer groups. This holds true even when the prayer takes place during extracurricular activities or at noninstructional school time, but still exerts social pressure on other students to engage in prayer.¹³

The Bill Applies to Elementary School Students Who are Particularly Impressionable

This pressure to be included would be detrimental to all nonbelievers and students of non-majority faiths, but would be even more strongly felt by elementary school students. Elementary school students in particular have difficulty distinguishing "the line between school-endorsed speech and merely allowable speech" because they are so "young" and "impressionable."¹⁴ Yet the bill fails to distinguish elementary school policy from secondary school policy. Whereas high school students have a greater understanding of the diversity of religious beliefs, this bill as applied to elementary school children, would be an even more potent message of school-sponsored religion

This Bill Grants Special Privileges to Religious Speech.

As explained above, students already have the right to voluntarily pray and to gather in religious clubs. But this bill violates the Constitution by providing students the right to use school facilities for prayer that are not granted to students for other types of speech and secular activities. For example, the bill places no limitation on which spaces students can use for prayer gatherings. And, students can be granted space before school or during noninstructional school time even if other clubs are not permitted to meet at that time.

In *Westside Community Schools v. Mergens*,¹⁵ the U.S. Supreme Court upheld the Equal Access Act as constitutional because it covered "religious, political, philosophical, or other content of speech," as well as religious speech.¹⁶ Unlike the Equal Access Act, HB 724 only protects students who wish to gather and pray. The Court in *Mergens* held that the purpose of the Equal Access Act was to prevent discrimination of religious and political groups as compared to other noncurricular student groups;¹⁷ thus, it is logical that the reverse is also true: non-religious

¹³ *Id.*

¹⁴ *Walz v. Egg Harbor Twp. Bd. of Educ.*, 342 F.3d 271, 277 (3d Cir. 2003).

¹⁵ 496 U.S. 226 (1990).

¹⁶ *Id.* at 228.

¹⁷ *Id.* at 238.

student groups should not be given less access, opportunities, or privileges as religious student groups. HB 724's special treatment for prayer groups would contravene that principle.

Conclusion

This bill endangers religious liberties by demonstrating the government's special interest in school prayer. As the Supreme Court noted, "[w]hat to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear . . . to be an attempt to employ the machinery of the State to enforce a religious orthodoxy."¹⁸

The legislature should work hard to continue to preserve the already-existing rights for students to engage in voluntary prayer, rather than working to construct an unnecessary and unconstitutional shield for religion in schools. For the reasons enumerated above, we strongly urge to you oppose HB 724.

Sincerely,

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¹⁸ *Santa Fe*, 530 U.S. 290, 312 (2000) (quoting *Lee*, 505 U.S. 577, 592).