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Dear Sen. Grassley:

I much appreciate the opportunity to answer the follow-up question that you sent June 27. My sense is that, at public universities, student prayer rights are not in jeopardy. Universities realize that students are entitled to pray on campus, and cases such as *Rosenberger v. Rector* (1995) and *Widmar v. Vincent* (1981) make clear that student religious speech is as protected as other speech.

At K-12 schools, the matter is different. The Court has repeatedly stressed that religious speech by private individuals and groups is protected at public schools (see, e.g., *Lamb's Chapel v. Center Moriches Union Free School District* (1993) and *Good News Club v. Milford Central School* (2001)). Congress has said the same as to student groups in the Equal Access Act. Yet some schools continue to unconstitutionally discriminate against religious speech. Thus, for instance, the 2011 Fifth Circuit decision in *Morgan v. Swanson* struck down Texas elementary schools' attempt to suppress religious advocacy by students—the right result, I think. But the case went all the way up to the en banc court, and that court ultimately concluded (by a sharply divided vote) that the precedents had been unclear, and that the school principals were entitled to qualified immunity.

I can't speak to whether this practice has become more frequent, since I don't have any quantitative data on the subject. But ultimately, when schools do suppress student religious speech, it often takes litigation—or at least the threat of litigation—to protect the speech. Fortunately, there are several prominent religious liberty advocacy groups that are willing to litigate such cases without charging the parents legal fees.

If Congress is interested in helping stop such abuses, it might consider amending the Equal Access Act to cover not just student groups (as the Act currently does) but also individual students.

Sincerely Yours,

A handwritten signature in cursive script that reads "Eugene Volokh".

Eugene Volokh