



AMERICAN CIVIL LIBERTIES UNION

Oregon

March 2nd, 2021

House Committee on Education
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: Testimony in Support of HB 2697¹: Hate Symbols on School Property

Chair Alonso Leon, Vice Chairs Neron and Weber and members of the committee,

My name is Andrea Valderrama, and I am here representing the American Civil Liberties Union of Oregon (ACLU of Oregon). We are a nonpartisan, nonprofit organization dedicated to the preservation and enhancement of civil liberties and civil rights, with more than 28,415 members and supporters statewide. We are here in support of HB 2697.

Per the U.S. Supreme Court, there are two standards that public school officials can apply to regulate student expression: the Tinker standard² and the Fraser standard³.

HB 2697 addresses both “bias incidents” and “symbol of hate,” both of which involve a students’ constitutionally protected speech. A couple of areas we’d like to see strengthened in the bill are:

- 1. Better defining of “bias incident”.** The standard used in HB 2697 to define “bias incident” is the phrase “a person’s hostile expression of animus toward another person, related to” protected statuses set out in the bill.” However, this does not appear sufficient to set out a standard for when a student’s speech may be regulated under the First Amendment. We recommend that the *Tinker* standard be applied to “bias incidents” - similar to how the *Tinker* standard is currently applied in HB 2697 to “symbol of hate” - so that the regulation of “bias incidents” under HB 2697 is consistent with constitutional free speech protections for students.
- 2. Add additional protected statuses.** The protected statuses set out in HB 2697 are: “race, color, religion, gender identity, sexual orientation, disability or national origin.” Consistent with how federal and state anti-discrimination and harassment laws have been applied we recommend adding the following protected classes: ethnicity, sex, gender expression, and citizenship.

We strongly urge you to support HB 2697. Thank you for your time and consideration.

Thank you,

¹ <https://olis.leg.state.or.us/liz/2021R1/Downloads/MeasureDocument/HB2697/Introduced>

² *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), the Supreme Court ruled that public school officials cannot censor student expression unless they can reasonably forecast that the speech will substantially disrupt or materially interfere with school activities or invade the rights of others.

³ The Supreme Court in *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986) ruled that school officials can regulate student speech that was vulgar, lewd, or plainly offensive.



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ACLU of Oregon