



TESTIMONY OF
DR. MICAH W. KUBIC
EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION OF KANSAS

IN **OPPOSITION TO SB 324**
KANSAS SENATE COMMITTEE ON EDUCATION

JANUARY 28, 2016

- **WRITTEN TESTIMONY ONLY** -

Thank you, Chairman Abrams, and members of the Senate Committee on Education for affording us the opportunity to provide testimony on SB 324.

The American Civil Liberties Union (ACLU) of Kansas, a membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas, **opposes SB 324**. The bill pertains to the curriculum taught in Kansas school districts, codifying that school districts may choose to include instruction “on the history of traditional winter celebrations.” The bill authorizes schools to “display scenes or symbols associated with winter celebrations on school property” and the “offer[ing] of traditional greetings associated with winter celebrations.” The bill mandates that any school which displays “religious scenes or symbols” must also display scenes or symbols of more than one religion and a secular scene, and should not encourage adherence to a particular religious belief.

- **SB 324 is wholly unnecessary.** Kansas school districts already have the power to establish curricula and parameters for those curricula, consistent with the principle of local control. Kansas school districts currently have the power to provide instruction about “traditional winter celebrations”—and any other celebrations—in a neutral and academic way. The power to choose to provide such instruction extends to celebrations and holidays that are religious in nature. So long as the instruction is neutral, academic in nature, and does not encourage adherence to a particular belief, school districts *already* possess the power that SB 324 seeks to grant to them. Indeed, if anything, SB 324 could *restrict* the ability of school districts to provide instruction on traditional winter celebrations. The bill explicitly states that school districts may include this instruction as part of the “history curriculum,” while districts currently possess the power to include such instruction in *any* part of the curriculum where it is educationally appropriate.
- **Public school students *already* have the freedom to celebrate holidays in public schools, and that freedom will be strongly defended by the ACLU.** If the purpose of SB 324 is to ensure that students have the freedom to celebrate traditional winter celebrations in public schools, the bill is unnecessary. Students already possess that freedom; their right to celebrate and articulate their views is protected by the United States Constitution. On those occasions when a student’s right to celebrate a holiday is violated, the ACLU of Kansas will be the first to come to their defense. Indeed, in the

last few years, the ACLU has intervened to support the rights of a fifth grader to distribute invitations to a church Christmas party to classmates, a group of students who wanted to include Christian Christmas messages in holiday gift bags at school, and a group of students who were wrongly suspended for distributing candy canes with a religious Christmas message in school. Passage of SB 324 will do nothing to enhance or protect the right of students to freely exercise their religion, or to engage in expression protected by the First Amendment.

- **SB 324 could put school districts at legal risk.** There is a significant distinction to be made between permissible instruction *about* traditional winter celebrations and the promotion of the religious traditions out of which some of those celebrations arise. The latter is clearly and blatantly unconstitutional. Even though SB 324 states that school districts should not “encourage adherence to a particular religious belief” through displays on school property, the bill could result in schools unintentionally crossing the line between neutral, academic instruction and unconstitutional promotion of particular religious beliefs. The bill does not provide school districts with nearly enough guidance to avoid that risk. Some school districts may initiate activities that will subject them to legal risk, under the mistaken assumption that the new statute reduces the level of constitutional and legal scrutiny they will face. In fact, any religious displays by schools automatically carry with them high levels of legal scrutiny. If school districts cross the line, intentionally or not, they face risk from constitutional challenges. SB 324 affords neither solid guidance on avoiding that situation, nor any protection for school districts if they do face such a risk.

We urge you to **oppose SB 324** on these grounds.