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Dear Members of the Committee on Local Government:

All Californians deserve to be treated equally by the law—Christians or Jews, Hundus or Muslims, agnostics or atheists. Unfortunately, AB 600 would discriminate among Californians and California organizations based on their religiosity. Religious schools and day care centers, for instance, would get special privileges. Religious meetings would get special privileges. Other private schools, day care centers, and meetings would be denied these privileges.

A Russian-American day care center would be treated worse than a Muslim day care center. A school devoted to a nonreligious philosophy (say, environmentalism and pacifism, libertarianism, or what have you) would be treated worse than a Catholic school. A weekly meeting on civil rights would be treated worse than a weekly Bible study meeting.

The law would thus discriminate against property owners who run secular schools, day care centers, and meetings. It would also discriminate against people who want to send their children to secular schools and day care centers, or people who want to go to the secular meetings. Parents who want to send their children to religious schools would have more options than people who want to send their children to nonreligious schools—precisely because the law will be giving religious schools special breaks that aren't given to other schools. It's true that all religious denominations would be treated equally by the bill. But nonreligious Californians, and Californians who are religious but who focus more on secular matters than religious ones, would be discriminated against.

The law would also treat religious *speech* better than nonreligious speech, thus violating the government's obligation to treat all speakers equally, regardless of their message. People who want to spread religious messages, whether through schools, churches, day care centers, or meetings, should certainly have equal rights with those who want to spread secular messages. I have argued that the Supreme Court should mandate this equal treatment, and strongly opposed those who would relegate religious speech to second-class status. *See, e.g.*, Eugene Volokh, *Equal Treatment Is Not Establishment*, 13 Notre Dame J. Law, Ethics & Pub. Pol. 341 (1999), *http://www1.law.ucla.edu/~volokh/equal.htm*. But AB 600 wouldn't mandate equal treatment for religious speakers: It would give them preferential treatment. In the marketplace of ideas, religious ideas will thus have more legal rights than secular ideas. That, I think, is wrong.

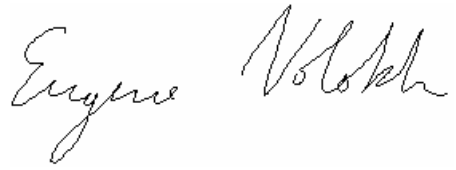
I think such a law might therefore be unconstitutional, either under the First Amendment or the California Constitution's own Free Speech Clause and Establishment Clause. Just as the Free Exercise Clause bars discrimination against religion, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), so the Establishment Clause has often been interpreted as barring favoritism for religion. *See, e.g., Everson v. Board of Educ.*, 330 U.S. 1, 18 (1947); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968).

The U.S. Supreme Court has, for instance, held that a tax exemption for sales of religious books violated the First Amendment, because it discriminated in favor of religious books and against secular philosophical books. *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989). In a decision that was, I think, strongly influenced by Establishment Clause considerations, the Supreme Court held that the religious objector provision of the draft laws had to apply equally to secular conscientious objectors. *Welsh v. United States*, 398 U.S. 333 (1970); *see also id.* at 344 (Harlan, J., concurring in the judgment, and providing the needed fifth vote) (relying explicitly on the Establishment Clause). And even when the U.S. Supreme Court interpreted the Free Exercise Clause as mandating accommodations for religious objectors, it made clear that religious *speakers* aren't entitled to any better treatment than secular speakers. *Heffron v. ISKCON*, 452 U.S. 640 (1981).

I realize that the constitutional question is unclear; some U.S. Supreme Court decisions have also said that some preferences for religion may be constitutionally permissible. *See Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Corporation of the Presiding Bishop v. Amos*, 483 U.S 327 (1987). But whether or not courts ultimately rule that such a proposal is unconstitutional, it is definitely discriminatory and unfair. The California Legislature should provide secular Californians as well as religious Californians more than just the bare constitutional minimum to which they're entitled. It should provide them with equal rights and equal treatment regardless of whether or not they are religious.

So if the Legislature wants to accommodate people's religious beliefs as well as their secular philosophical and conscientious beliefs, that's great. If the Legislature wants to protect people's ability to use their property to run schools, day care centers, and meetings that teach a wide variety of different philosophies, that's great. But it shouldn't give special preference for the religious, and discriminate against the secular.

Sincerely Yours,



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