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## Shock and awe of a resurgence in school prayer

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The prayer wars have ended and students are the winners. In early February, the U.S. Departments of Education and Justice issued Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools (at [www.ed.gov/inits/religionandschools/prayer\\_guidance.html](http://www.ed.gov/inits/religionandschools/prayer_guidance.html)), a seven-page set of rules that elementary, junior high and high schools must follow to receive federal funds.

The guidelines clarify that public schools are not religion-free zones, school officials are not prayer police and students of faith are not enemies of the state. Now students will be able to open their school activities with prayer. Out loud. And without fear of punishment by their schools.

That is hard to believe when just this time last year a New York school was in the news for stopping three kindergartners from joining hands and saying grace over their cupcakes, a Texas school was defending its policy of "prayers, blessings, invocations and references to a deity are prohibited," and numerous schools were advising class valedictorians to refrain from religious references. But the rules have changed. On this National Day of Prayer, we should give thanks.

The guidelines provide that with basic safeguards in place, student prayer over school microphones, on school property, at school-sponsored events is protected constitutional speech: "Where student speakers are selected on the basis of genuinely neutral, evenhanded criteria and retain primary control over the content of their expression, that expression is not attributable to the school and therefore may not be restricted because of its religious content. To avoid any mistaken perception that a school endorses student speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech is the speaker's and not the school's." The same rule applies to graduation speakers.

There are even provisions permitting students to actually pray meaningful prayers: "Public schools may not restrict or censor [students'] prayers on the ground that they might be deemed 'too religious' to others. The Establishment Clause prohibits state officials from making judgments about what constitutes an appropriate prayer, and from favoring or disfavoring certain types of prayers—be they 'nonsectarian' and 'nonproselytizing' or the opposite—over others."

In March, Texas schools joined the thousands of other public schools across the nation in signing promises to follow the guidelines. It is up to students and the public to assure compliance. Anyone may complain to the Texas Education Agency of a school's violation of the

guidelines and an investigation and report of findings will be made to the U.S. Department of Education.

The guidelines were issued pursuant to the No Child Left Behind Act of 2001. And lest anyone believe this a right-wing conspiracy, the bill was approved by Senator Edward Kennedy's Education Committee and passed by a Democratically controlled Senate.

But the Guidelines should surprise no one. They are merely a summary of the current state of the law based on U.S. Supreme Court decisions. For 40 years the Supreme Court has adhered to the rule it crystallized in *Santa Fe v. Doe*: "[T]he Constitution is abridged when the state affirmatively sponsors the particular religious practice of prayer," but "nothing in the Constitution prohibits any public school student from voluntarily praying at any time before, during or after the school day." Affirmative sponsorship occurs when a school expressly or subtly coerces students to pray. Voluntary student prayer occurs when the coercion is absent. Government's duty is to protect both religious and secular speech equally and to remain neutral between the two. That is what the guidelines accomplish.

Adherence to the guidelines will require most schools to adopt new policies for selecting student speakers "on the basis of genuinely neutral, evenhanded criteria" and eliminate policies that provide selection of speakers "on a basis that either favors or disfavors religious speech." To accomplish this end, school districts need to adopt student speaker policies like those recommended by the State Board of Education (see [www.saferschools.org](http://www.saferschools.org)).

Once students realize they may use speaking opportunities to honor God without the fear of government reprisals, a resurgence of prayer may break out in America's schools. Now that would be shock and awe.

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