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January 23, 2007

House Education Standing Committee  
Utah House of Representatives  
W030 Capitol Complex  
Salt Lake City, UT 84114

**Re: House Bill 236, "Student Clubs Amendments"**

Dear Member of the House Education Standing Committee,

On behalf of the American Civil Liberties Union of Utah, I write to express our concerns regarding the constitutionality of House Bill 236, "Student Clubs Amendments," and to urge you to vote against the bill.

All laws and regulations regarding student clubs must be understood in the context of the 1984 Federal Equal Access Act (attached), which mandates that if a public high school allows any student group whose purpose is not directly related to the curriculum to meet on school grounds, then it must provide other non-curricular student groups equal access to the school's resources. In other words, schools may not pick and choose among non-curricular student clubs based on their preferences for what students discuss. If the school does so and treats some non-curricular clubs differently than others, then it risks losing its federal funding. The Equal Access Act simply upholds students' rights to free speech and association, which are protected by the First Amendment to the United States Constitution.

HB 236 conflicts with the requirements of the Equal Access Act and the First Amendment in the following ways:

- **First, HB 236 opens the door for school administrators and faculty to effectively shut down a student club, violating students' First Amendment right to association.** All non-curricular student clubs require a faculty advisor, yet under HB 236, "[a] school employee assigned to provide oversight to a club may not be required to do so if the assignment would violate the conscience of the employee." HB 236 defines conscience so broadly that a situation may arise—particularly in a small high school—in which students are unable to find an advisor for whom their club does not violate the potential advisor's conscience. Under HB 236, these students would also be prohibited from joining a similar non-curricular club at another high school. In effect, they would be prohibited from exercising their First Amendment right to expressive association.

- **Second, HB 236 burdens students' First Amendment right to association by imposing parental veto power over student involvement in school clubs.** By requiring "written parental or guardian consent for student participation in all curricular and non-curricular clubs," HB 236 is an additional administrative burden and a potential liability for schools. Such a state-wide requirement hurts students whose parents are not actively involved in their lives the most, because a student who cannot get a parent's attention to sign a permission slip is prohibited from participating in student clubs. Further, the requirement allows a third party—parents or guardians—to prohibit students from exercising their constitutional right to expressive association. Courts, however, have found that government cannot defer to a third party's objection to another's exercise of a First Amendment right, even when that right is the right of students in school, and the objectors are the parents of those students.
- **Third, HB 236 may open districts up to legal liability by giving administrators and teachers the false idea that they must ban clubs they find objectionable.** The Equal Access Act is clear in its requirement that high schools may not "deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting . . . on the basis of the religious, political, philosophical, or other content of the speech at such meetings." 20 U.S.C. §4071(a). In contrast, HB 236 is much more ambiguous in its requirement that student clubs "maintain the boundaries of socially appropriate behavior," and in its prohibition of clubs that "violate concepts of civility or propriety appropriate to a school setting." Teachers and administrators may view HB 236 as a mandate to ban student clubs that they or members of the community find to be controversial. If the bill is used to inappropriately ban clubs, teachers and administrators are in danger of violating the Equal Access Act and students' First Amendment rights.

From Bible study groups to Gay Straight Alliances, high school clubs are a vital resource for young people; for many students, joining a school club is their first independent exercise of their constitutional rights to expression and association. The ACLU of Utah believes HB 236 threatens these constitutional rights, and we urge you to vote against the bill. Thank you for your consideration.

Sincerely,

Margaret Plane  
Legal Director