

2017 HOUSE JUDICIARY

HB 1275

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1275
1/25/2017
27384

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the recitation of prayer at parochial or private school-sanctioned activities.

Minutes:

1,2,3,4,5,6

Vice Chairman Karls: Opened the hearing on HB 1275.

Rep. K. Koppelman: Introduced the bill. Just a bill to clarify the law on religious freedom. Discussed the situation that happened in the state at two Christian schools in the state. One was a Roman Catholic School in Fargo and the other one was a non-denomination Christian School in Bismarck. The high school athletic Association told them they were not able to recite a prayer in those games. The concern of that organization is when we rent a facility we are in charge of it and therefore; even if it is a private organization as I understand their makeup; apparently some courts and the AG has called them a state actor. They did not want to be acquiesced of violating the establishment clause of the Constitution by allowing a prayer. If students organize lead and conduct a prayer themselves no one should disrupt this. That is protected now whether it a private or public school. We need some clarifying law. I have some information that was prepared by a group called Liberty Counsel. I felt this was better to have a statute that simply protected the organization that organizes these activities by saying you can't prohibit this. If this bill passes they can cite state law. (#1)

Representative Klemin: This applies on the premises of the parochial or private school. In Bismarck when a parochial school plays football and uses the Bismarck Community Bowl; that is not their premises but they are the home team sometimes. This would not apply to that type of situation because it is not on their premises.

Chairman K. Koppelman: That is a good point. Maybe we need to amend the bill to include this. The later portion of the bill could be read to be a continuation of the premises previously described.

Representative Klemin: The other entity? When we are talking school I don't know if we are limiting that to schools and colleges and NCWA rules apply here too.

Chairman K. Koppelman: I don't know why it would not.

Representative Hanson: Maybe this is an answer on the bottom of page 2 on outlines this.

Chairman K. Koppelman: The intent is only for private or parochial schools.

Representative Klemin: Private school generally doesn't have any right to offer a prayer over the loud speaker because it doesn't control the facility.

Chairman K. Koppelman: The reason ND Athletic Association prohibited prayer and they were renting the facility for the private school and therefore they control it and they did not want to allow a prayer. You could say if a private school rented a facility for the purpose of the game then it would control the facility.

Representative Nelson: Did the High School Activities Association actually prohibit them from praying or using the PA system?

Chairman K. Koppelman: They told the schools they could not do prayer over the PA system.

Representative Nelson: I was thinking more about a coach lead prayer in the locker room.

Chairman K. Koppelman: No not to my knowledge.

Linda Thorson, State Director for Concerned Women for America of ND (CWA): Read testimony. (#2) (13:04-18:00)

Representative Maragos: You state you are the largest public policy woman's organization in ND. We have about 360 members.

Representative Maragos: Do you poll all your members when you do this?

Linda Thorson: No we do not. We have seven core issues and religious liberty would be one of those core issues. I work with the legal counsel in my national office to work on my testimony. When I see a bill that comes up and is addressing religious liberty that is how I was interested in writing a testimony in favor of this bill.

Representative Maragos: So the presumption is that since those are the core values of your organization you are speaking for all your members.

Representative Nelson: You state in your second paragraph that you somehow we are changing that law. Do you really think the wording in number 2 concerning a student broadens or in some way covers the situation that wouldn't be covered now for the student?

Linda Thorson: I am not sure. Prayer is not encouraged so my testimony is that it should be. I believe it should be in public schools.

Fintan Dooley, Alliance Defending Freedom: (#3) emailed testimony later. (20:45-22:06) We should have prayer, but the core is what is left to us is how bona fide is student lead prayer.

If it is bona fide it is appropriate, even under the constraints that have increasingly intruded on our right to have a moral instruction to our students. (22:24-23:47) Discussed other cases.

Opposition: None

Neutral:

Matt Fetsch, ND High School Association: (24:42-29:10) Read testimony (#4) Handout. (#5)

Representative Nelson: At a playoff game when you rent the facilities. Does the High School Activities Association control the PA system or do you allow the home school to say whatever they want or even announce etc. and just not pray over the PA system?

Matt Fetsch: We have a generic blanket PA script for them to follow that is modified. As far as renting the facility; along with rent we pay for all the workers at that contest; officials and gate receipts go to offset those costs.

Representative Nelson: So it is probably the regular PA guy but under your control.

Matt Fetsch: Yes. Regular season is school sponsored.

Representative Paur: If you buy tickets at the gate and they pass out prayers on a card and announced it over the PA at the beginning of the game; and then would just leave the PA silent would that meet your requirements. The group could say it out loud if they wanted.

Rachel Vertcoff, Attorney for the ND High School Association: There would be potential concerns. If they are handing out the prayer cards that could be a hint that we are establishing this.

Chairman K. Koppelman: When you are renting the facility if the High School Activities Association involved with sports other than play off games? What does sanctioned events mean?

Matt Fetsch: We sponsor 22 different sports and activities like basketball, baseball, gymnastics would be region and state tournaments. Our organization sponsors and runs them.

Chairman K. Koppelman: So two local schools play one another; be they public or private. You are sanctioning that event?

Matt Fetsch: During the regular season that is what we refer to as a school sponsored event.

Chairman K. Koppelman: It sounds like we are splitting hairs over whether it is a school sanctioned. Do you see any oddity in telling a private school that is founded for a religious reason who happens to participate in activities with other schools if it is on the premises of that private school do you see something strange in terms of free exercise clause with an outside organization coming in and saying sorry you can't pray?

Matt Fetsch: Football is what gets looked at all the time. Football because it all does fall in line with that.

Jennifer Cook, Policy Director for the American Civil Liberties Union of ND:(#6)
Collected testimony for part of the record.

Hearing closed.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1275
2/6/2017
27958

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the recitation of prayer at parochial or private school-sanctioned activities.

Minutes:

Chairman K. Koppelman: Opened meeting on HB 1275. This one says the high school activities association cannot prohibit prayer at private schools. Especially religious schools who have a practice of doing that before games.

Motion Made to move the amendment by Representative Maragos: Seconded by Representative Vetter:

Discussion: None

Voice vote carried.

Do Pass as Amended Motion Made by Representative Maragos: Seconded by Rep. Simons.

Discussion:

Rep. Magrum: On line 2 of the 2nd page is school day one word or two?

Chairman K. Koppelman: That is current law.

Representative Hanson: Questioned whether school sanctioned event meant and do we need to clarify that? (mike not on)

Chairman K. Koppelman: Question was whether that means an event at the school sanctioned or allows as opposed to if the school were used for another purpose?

Representative Paur: What if we take out school sanctioned?

Chairman K. Koppelman: To do that we would have to withdraw the motions.

Rep. Maragos withdrew his motion and Rep. Simons withdrew his second.

Chairman K. Koppelman: Do we have the bill back before us in it's original form.

Motion made to amend change the a to an an remove the words school sanctioned on line 13 and 16 and on line 2 remove sanction by Rep. Paur; Seconded by Rep. Simons

Discussion: None

Voice vote carried.

Do Pass as Amended Motion made by Rep. Maragos; Seconded by Rep. Simons

Discussion:

Representative Jones: Are we opening this up to where they can have a prayer in school sanctioned activities.

Representative Nelson: I am going to resist the motion. When they come with the high school activities association they rent the facilities. They never prohibited anyone from doing a prayer. They prohibited them from using the PA that they had rented for their school prayer.

Chairman K. Koppel man: They testified neutral and they could probably adjust that concern by the way they write their rental contracts.

Roll Call Vote: 13 Yes 2 No 0 Absent Carrier: Representative Jones

Closed.

February 6, 2017

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1275

Page 1, line 2, replace "school-sanctioned" with "school athletic"

Page 1, line 13, replace "a school-sanctioned" with "an"

Page 1, line 16, replace "a school-sanctioned activity athletic" with "an athletic activity"

Renumber accordingly

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1275**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Maragos Seconded By Rep. Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote carried.

Motion Removed.

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1275**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Maragos Seconded By Rep. Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion withdrawn.

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1275**

House **Judiciary** Committee

Subcommittee

Amendment LC# or Description: **change the a to an an remove the words school sanctioned on line 13 and 16 and on line 2 remove sanction**

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Paur Seconded By Rep. Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment : _____

If the vote is on an amendment, briefly indicate intent:

Voice vote carried.

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1275**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0761.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Maragos Seconded By Rep. Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	X		Rep. Hanson		X
Vice Chairman Karls	X		Rep. Nelson		X
Rep. Blum	X				
Rep. Johnston	X				
Rep. Jones	X				
Rep. Klemin	X				
Rep. Magrum	X				
Rep. Maragos	X				
Rep. Paur	X				
Rep. Roers-Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 13 No 2

Absent 0

Floor Assignment : Rep. Jones

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1275: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1275 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "school-sanctioned" with "school athletic"

Page 1, line 13, replace "a school-sanctioned" with "an"

Page 1, line 16, replace "a school-sanctioned activity athletic" with "an athletic activity"

Renumber accordingly

2017 SENATE EDUCATION

HB 1275

2017 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

HB 1275
3/22/2017
Job Number 29570

- Subcommittee
 Conference Committee

Committee Clerk Signature

Sandy Braungartner

Explanation or reason for introduction of bill/resolution:

Relating to the recitation of prayer at parochial or private school athletic activities.

Minutes:

#1, #2, #3

Chairman Schaible: Lets open the hearing for HB 1275.

Repr. Kim Koppelman: District 13 West Fargo; Before I introduce the bill, Professor Jeynes from Long Beach, California is here to testify, but he needs to catch a plane. So with your indulgence let him go first.

William Jeynes: Professor at Long Beach, California: Showed a slide show. (We did not get a copy. He said he would send one when he got home to Chairman Schaible). I want to thank the committee for inviting me and letting me speak. It is an honor to be here today to speak to you about HB 1275. It is only common sense. The controversy was between two religious schools. These schools were accustomed to pre-game prayer or over the public address system during the regular season. This game was on private property. The ND Activities Association is a public association that was running the public address system for that particular playoff game. Probably they wanted to ere on the side of caution because they were running the public address system, prayers were not allowed that particular day. They were probably afraid of a lawsuit. HB 1275 would give them legal cover. That is where I am coming from. Quoted Clinton about 1985 quote. Students have the same right to be in a religious discussion in a school day as they do to be involved in any activity. Students may be involved in groups of religious content before or after school such as pole-gatherings on school grounds. What message is sent to the young when they are permitted to have prayer during the day, but not at the games? I put numbers behind this. I have an analysis that shows that all the studies that have been done students involved in religious schools do better. Students get strength from their faith. This included 252 studies which would involve 1.2 million students in the study. They score higher in test scores than public schools in math, science or reading. We need to have compassion for these kids. Continued on his analysis. Children of faith are less likely to use alcohol, drugs, or tobacco. We should be the ND organization some legal cover. It is only fair if you have Christian schools and they are used to pre-game prayer. They ought to be able to do it in a playoff game. Thank you for your time.

Chairman Schaible: Your reference was private schools. One thing about this playoff game sanctioned by the ND High School Activities Association, that was contracted in advance. We are not sure who is going to playing off at that time. My question is, what if it is not Christian to

Christian school? Our biggest minority is native Americans. Are you suggesting we do one for everybody who wants to?

William Jeynes: That I think is a little bit less clear having Christian to public or native American. I think we need to iron out when there are two groups of the same faith. To different faiths coming face to face, I would leave that to Repr. Koppelman. I represent if there are 2 similar groups and they are comfortable with prayer through the season that should be allowed. If they are different, I would leave that to Repr. Koppelman.

Chairman Schaible: I believe we have that right if it is student led, and not part of the venue and not over the microphone. This would change that.

Senator Rust: Comment on the Equal Access Law.

William Jeynes: That clearly means that religious people ought to be treated the same as non-religious people. That's more of a different issue because it is much broader.

Senator Rust: They should have equal access to the kind of prayer also? You might have spectators that could be other. Do they an equal access to a prayer of their desire being stated?

William Jeynes: I am more concerned with the school policy that existed throughout the year where prayer is allowed over the PA. I am concerned about the consistency and fairness issue.

Chairman Schaible: These are tournament issues picked way before the actual game. The Activities Association is looking where to host these events and they see this as a Christian, non-Christian; two teams playing and this is one incident. There could be 8 teams playing. They see this as a hindrance to a school that has a fantastic facility, but because of this they might not want to use their facility.

William Jeynes: I would use that as an argument that we should pass the bill. If the bill is passed with the legal cover they wouldn't have to worry about that.

Chairman Schaible: You don't know when you schedule what religions will be there.

William Jeynes: We are talking about Christian versus Christian not Christian versus public. I would think there would be some terms of flexibility. I think people would be more bothered where it is Christian versus Christian and there is not prayer.

Senator Oban: Every example you have given is Christian versus Christian and that is not what this bill is written as. You keep drilling this one situation but that is not what this is about.

William Jeynes: All of the data is about different types of religious schools

Senator Oban: I don't think the data has much to do with the bill itself. I think we should be debating what is on the paper and what is on the paper is not the example you are giving us. I don't think I am misreading the bill.

Chairman Schaible: Other questions? Have a good flight.

Kim Koppelman: Repr. from Dist 13 in West Fargo: Professor Jeynes actually contacted me when he saw this bill and asked if he could come to ND and testify. That is how that happened. HB 1275 is to clear up confusion. What occurred was Shanley in Fargo and Shylo Christian in Bismarck, were involved with games at their facilities and both of them had a good season, both were in the playoff games at their own facilities. They both had a practice of having a pre-game prayer. The ND High School Athletics Association because of various court cases has been held to be a state actor. As a result of that, they are very careful about what they do and what they might be accused of doing. The Attorney General office had several visits with them. The gist was because they are a state actor and the playoff game is held, they rent the facility. As a result, they said, "thou shall not pray". The AG office thought the best thing to do was sponsor a bill. The High School Athletics Association is afraid of being sued. As a state actor, at a rented facility, they felt they had to dictate no prayer. The Attorney General's office felt if we had a statue on the books if would give them sufficient cover. It is not their role to have or prohibit prayer. This issue has more to do with the free exercise clause being inhibited, which I believe it was, then it has to do with the establishment clause. We will give them the cover they need if we pass this bill. I have been contacted by groups that will represent

anyone in a law suit from their perspective. The NDHSAA's concern that when they rent the facility, they control the PA. They control anything that goes on. What the bill does is it simply says they cannot prohibit a school from prayer which is their practice. It goes on to what the Supreme Court has said that prayer cannot be prohibited if it is student led and students participate. I encourage you to recommend it for passage.

Chairman Schaible: Student led prayer in the locker room, end zone, middle or where ever, is it prohibited now?

Kim Koppelman: To my knowledge, no. I don't know if it is anywhere in law either.

Chairman Schaible: If it is supported by the Supreme Court practiced now, I don't see the reason to put it in state law.

Kim Koppelman: This is a moving target over the years and we are opted to make it a law in ND.

Chairman Schaible: In discussions with the AG's office, they are worried about not being on solid ground and would have just as many issues as without it.

Kim Koppelman: They actually encouraged this and discussions with the NDHSAAA would welcome that kind of cover. We can go talk to the AG office together.

Senator Rust: The Freedom from Religion Foundation have had court cases where they are more about freedom from religion, instead of freedom for religion. Someone doesn't want their child subjected to any kind of prayer from anywhere and I suspect you could have one of those Freedom from Religion lawsuits. Schools don't want to get involved because they cost tens of thousands of dollars. Did the AG office suggest that if we pass that law will the state be the defendant of a law suit that would come their way?

Kim Koppelman: It would be the Attorney General's job to defend any lawsuit that comes to the state of North Dakota. There are other attorneys staying in line to defend in a lawsuit.

Senator Rust: We might have someone to defend the law. What about punitive damages?

Kim Koppelman: I don't ever remember where there were punitive damages.

Senator Oban: In this law there is nothing that says Shylo can have prayer if the NDHSAA rents their place for a game.

Kim Koppelman: That is exactly the case. Shylo was hosting and was not playing a Christian school. But in the regular season they can say a prayer. There were two incidents with two different Christian schools that were forbidden to offer prayer.

Senator Oban: I don't get the impression that the NDHSAA says you can't ever pray. I do think there are some things about saying it over the PA versus the freedom to pray by yourself or a group. The NSHSAA is paying for the PA system, and I am not sure why we wouldn't follow the contract that they have.

Kim Koppelman: Our constitutional convention had prayer themselves. We follow that same custom in both of our chambers every day. I am sure there are people in our assemblies that are not Christians, if they are offended, there is no word in the constitution against being offended. But there is freedom of religion.

Senator Vedaa: I agree with prayer. We have some native American reservations that are able to host tournaments. Are they able to have a ceremonial dance before the game? At the 1998 state tournament they had one that lasted about 30 minutes.

Kim Koppelman: They should be allowed to do that. We used to have the State of the Tribes Address and the State of the Judiciary Address on different days. When we did the State of the Tribes, there would be the drums and I understand that is a religious belief. If I am a visitor, I see no reason to be offended for their belief in their territory.

Senator Rust: Is there a difference of the age levels between here in assembly and at a game? Is that something that is a problem with young people and subjecting them to prayer?

Kim Koppelman: I think all high school students know prayer or witnessed one somewhere. At least I hope so. I don't think anyone should be shocked to hear prayer on a Christian campus. I don't have to share the belief or faith.

Chairman Schaible: Other questions? Other testimony in favor? In opposition?

Jennifer Cook: Policy Director of the American Civil Liberties Union of North Dakota: Testimony #1. We urge for a Do Not Pass for HB 1275.

Chairman Schaible: Do you see a benefit to codify language in any way?

Jennifer Cook: I don't feel it is necessary.

Senator Vedaa: Did you say the sound system at a public event is government and should remain neutral?

Jennifer Cook: Yes, the reason why is, the activity association has the control of the messages that go out of the PA system.

Senator Vedaa: To remain neutral does that person who is doing the play by play, do they have to be neutral?

Jennifer Cook: Yes, if it is the policy of the activities association.

Chairman Schaible: Any other testimony? Agency or neutral testimony?

Matt Fetsch: Executive Director of the North Dakota High School Activities Association: Testimony #2. The bill has no reference to public address. Handout #3

Senator Davison: You identified a solution amongst the people involved in those games. It seems satisfactory and avoids a lawsuit that could be costly and timely.

Matt Fetsch: That is what occurred last year with the attorney. The conversation between our state office and the host schools, if they were non-public, would be we would receive a call and they would say we are not allowed to pray over the loud speaker because it is a playoff game, correct? Yes, that was the conversation without incident. The relationship with the Association and non-public schools has not been an issue.

Senator Vedaa: Is the announcer supposed to be neutral?

Matt Fetsch: When we do the scripts for the media for our hosts, there is language with the rule books that reference during regular season, which we don't sponsor, the announcer should remain neutral. Does it happen all the time? I would be lying if I said it did.

Senator Kannianen: Have you ever been contracted about threatening about prayer?

Matt Fetsch: The conversations have been with the Thomas Moore Society regarding this. They did not necessary threaten suit. They simply requested that the prayer for the game The ACLU contacted us wondering what our decision was.

Senator Oban: Is there anything that a non-public school can start their own athletics association? When they join the Association, I assume they know the rules. Is that correct?

Matt Fetsch: Yes, we are a voluntary membership. We have 171 member schools. 8 of them are non-public and they follow the by-laws created by the member schools. All of the states have a public school association and then there is a non-public school association just because of the large number of non-public schools.

Senator Rust: If this bill were to pass, what kind of recommendation would you give your board with regard to whether you should host any of those events at a non-public school?

Matt Fetsch: I would probably recommend they ask for an attorney general opinion.

Senator Davison: Do you see not holding an event at a private school as something that would come into play if you were trying to avoid a lawsuit? Could that way on where to hold the event?

Matt Fetsch: It is possible. Right now recommendations for who hosts the tournament come from the schools in the region. Because of the facilities, sometimes the non-public schools are the only ones large enough to house a tournament of the size. I don't have an answer right now, but would be asked at the board level.

Chairman Schaible: We have heard that there are lawyers willing to look at this both ways. We could get sued both ways. Which do you feel is the better way to go?

Matt Fetsch: With conversations with our attorney, we feel we have a much better defense with the current practice in line with the Santa Fe decision.

Chairman Schaible: Other testimony? We will close the hearing. We will adjourn until Monday.

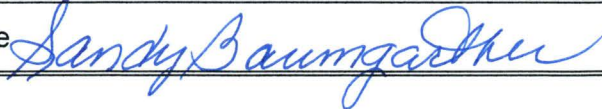
2017 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

HB 1275
3/27/2017
Job Number 29728

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the recitation of prayer at parochial or private school athletic activities

Minutes:

none

Chairman Schaible: Let's look at HB 1275.

Senator Rust: I think I have a conflict with how my heart wants to vote and how my mind wants to vote. I have changed my mind I think more times than I can count. It isn't something that can be kicked around. When you look at some of the decisions handed down by the Supreme Court is that they feel that, and the ND High School Athletics Association also said that this is violations of the opinion of the Supreme Court. As far as a case for yes, is you have the prime sponsor says it is constitutional. If this bill is passed and the NDHSAA would place a tournament in a Private venue, there are several things that could happen. One is that a prayer may never be offered over the loudspeaker. Another one is if prayer is offered the possibility exists of a challenge. If a prayer is offered and challenged the attorneys will defend it pro bono. Since the parochial schools did not testify against this bill, I assume they must be okay with the legislation and the possible ramifications. The NDHSAA might not put a tourney in a public school. I will probably vote yes.

Chairman Schaible: I have a couple issues. I am not against prayer. First of all, prayers are being allowed now and not just for a certain type of prayer. This is an association with a public school effort and with the private and parochial schools to be involved with that with the Activities Association. It is the Association that sets these rules up. It always been deemed that at these tournaments sanctioned by the Association is part of the public school system and under that control. I agree that anytime we have a suggestion that we can't prohibit a parochial or private school to make that prayer, I would assume a Christian prayer, I have concerns about how another group would like to pray. Another thing is if we are forced to participate in a prayer or service without the opportunity to not be a part of that. So we allow this exemption for parochial or private school to make these choices, but we know we can't allow the public school to make these same determinations. I think they have to treat them the same. What do we do as a membership as a whole as a part of this association? Now we determine it is good for one, but not for the other. What are we trying to solve? The problem is the schools that do that under normal practice wants to change that into a venue that chose by an association. Now we are making a change for a certain class of school.

Senator Kannianen: Most things are considered constitutional until challenges in court. (Talked about experiences he had about prayer or flag song at games). I am going to support the bill. Conversation about songs, prayer, flag songs at various tournaments.

Chairman Schaible: It is acceptable to have student led and we should encourage that. The difference is that this is saying it is venue driven. It is part of the program. I believe it is the fundamental difference of what we are talking about.

Senator Kannianen: The experiences I have had they announce it over the PA that such and such group is going to perform this song and so forth. It could be a 4-5-minute thing. So it is venue.

Senator Rust: There is nothing in here about over a PA system. It is not there. I do find it interesting that they use the word before. It is almost limiting the during and after. Basically this is down to those ½ dozen schools. This bill does not apply to any public school. It only applies to a private or parochial school.

Senator Oban: Comparing a song to a flag song, a better comparison is comparing a flag song to the Star Spangled Banner. If you consider the Star Spangled Banner spiritual is entirely up to you. I have had discussions to attorneys about this, not because I don't enjoy participating in prayer. It is because I am tired of the legislature passing bills that the attorney general has to defend that cost tax payer's money. We have done it way too many times. When we trying to figure out how to pay the bills that we have to pay, I don't really want to t-up another potential one. I appreciate hearing what situation led to having this bill being introduced. But if you listen to what was done, those schools made arrangements to compromise. They asked for a moment in silence and everybody did what they chose to do. The public and the schools figured out on their own. Those schools don't have to join the Association if they don't want to follow their rules. I don't want schools not to be able to host these events. If we passed this and then the Association might decide not to have the tournaments at those sites.

Chairman Schaible: My understanding that this would be over the PA or would it be what we are doing now? If this says it is okay to do what we are doing now I am not in favor of writing meaning for this language.

Senator Kannianen: The intent is to allow prayer over the PA system, but for whatever reason it's not specifically in here.

Chairman Schaible: It needs to be clear with what it means. I don't have a problem with what is happening now. We can't have rights for one school and restricted in another.

Senator Oban: When they include in there that the NDHSAA and any other entity, what is that?

Chairman Schaible: I think like the Civic Center activities.

Senator Rust: District schools could act as a group. Regional and State tournaments are North Dakota Activities events.

Chairman Schaible: I read it as the school offering prayer. I read it as "the venue is providing the prayer" or are they going to have a prayer for every team. Then if they don't I would say, "Why not"? Let's wait until tomorrow morning to decide.

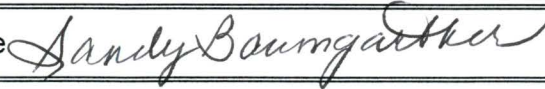
2017 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

HB 1275
3/28/2017
Job Number 29742

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the recitation of prayer at parochial or private school athletic activities

Minutes:

none

Chairman Schaible: Welcome and let's have roll. Roll taken and all present except Senator Davison. Let's look at 1275. I did some calling and some checking and did stop in at the AG's office this morning. I wanted to confirm that section 1, subsection 2, in my interpretation is a venue driven over the PA part of the program type prayer. I asked if they thought the same and they confirmed that. Lines 10-14 states that it is a venue driven over the PA type prayer. They told me the way it looked would raise some concerns with the constitution and the other people's rights. I also called Matt from the NDHSAA and if this bill passed as written what would their course of action be. He would have to take council of his legal advice, but if that was the interpretation it would be a real concern. They might look at not having events at the private schools. If we pass this bill as is we are saying that only a prayer from that venue would be allowed on the PA system and I don't believe the others would be. I would have to oppose this. One solution would be if to take lines 10-14 out. The rest is what we are doing now. If that needed to be codified in the state, that would be okay.

Senator Oban: Did you ask Matt about his thoughts on removing 10-14?

Chairman Schaible: I did, and they are okay with that because it is exactly what we are doing now. Do we need to confirm in law everything in law? If that helps this situation, I am fine with it.

Senator Kannianen: Just to clarify, the intent was interpreted that it would be something over the PA system?

Chairman Schaible: Just looking at it. That is what the AG told me.

Senator Kannianen: The sentence 14-16, that would be interpreted as something not on the PA system, whether on the field or where have you, but not over the PA?

Chairman Schaible: That is exactly the points I asked him. That was my interpretation and wanted to see if that was his. He confirmed that it was. Could you (intern) draw me an amendment to that affect? (answer: I can if you have a motion on it.)

Senator Vedaa: Do you need a motion of the amendment?

Chairman Schaible: Yes, if that is what we want to do. We can wait till tomorrow and have one draft.

Senator Vedaa: Should we add on line 15, also and after?

Chairman Schaible: We certainly could.

Senator Kannianen: I forget the gentleman's name who suggested just to change the "before" to "at".

Chairman Schaible: I did look at that and it would still have the same language. It is still assumed.

Senator Kannianen: I agree with that. I am just thinking if we were to draft an amendment just eliminate the first sentence and then the second sentence would still do the same thing to just put "at" instead of "before". Starting on line 14.

Chairman Schaible: I am looking at Matt's amendment and I think it is the same. Why don't we suggest that council draft one and take it up tomorrow? Any other discussion?

Senator Rust: I am wondering what the feeling of the private schools are with regard to that?

Chairman Schaible: Would you like them to answer that?

Senator Rust: I would.

Rod Backman: State Association of Non-Public Schools: We did not take a position on 1275 for several reasons. When we consulted with our schools they weren't all on the same page. We did have a consensus by supporting or opposed the bill. We weren't consulted about it ahead of time or drafting the bill. Some of our schools said the current compromise with the NDHSAA is just fine now.

Chairman Schaible: We are talking about the second part of the bill is exactly says that we don't restrict. You are okay with that?

Rod Backman: That language is fine.

Senator Rust: Are you okay with taking out the first sentence?

Rod Backman: I would say 11-14. Being as we didn't take a position, I can't really say do it or don't do it. We don't have a position on the bill.

Chairman Schaible: We will have an amendment pending for that and hopefully it will be done tomorrow. The only other bill we have is a study. As the bill is written I am not for the study as is. I kept it there in case we want to add a study. We might leave that till next week. I talked to leadership and it is not a problem. I am getting a lot of interest in doing a study on the way we do education or the way we fund education. I don't know if we will pursue it. But that's the only two bills we have. If we fix this one tomorrow, we will be in good shape. As of now we only have one conference committee. Could be several others. It won't be a big load. With that, is there anything else from the committee? If not, we will see you tomorrow at 9AM.

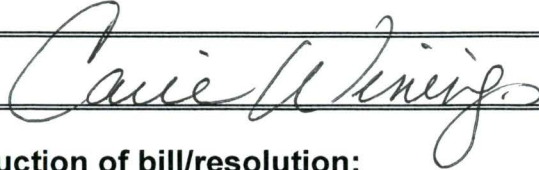
2017 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

HB 1275
3/29/2017
Job Number 29783

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the recitation of prayer at parochial or private school athletic activities.

Minutes:

Attachments: 1

Chairman Schaible: Opened HB 1275 for committee discussion.

Senator Vedaa: See Attachment #1 for amendment proposed to the committee. Explained the amendment.

(1:18) Chairman Schaible: Is there any discussion?

Senator Oban: Was there any thought of whether we should check into making sure that this covers what our intentions are. Just because it didn't say venue driven over the PA type of prayer previously, I know that was the AG's sort of interpretation of it.

Chairman Schaible: When I visited with him yesterday morning, I did ask that about the second sentence in Section 2 and he said that it was fine. I am sure the correction should be fine because we did not change the substantive meaning of it. Unless you want a further review, I think it is ok.

Senator Oban: No, that is ok.

Senator Vedaa: Last night I was at a banquet and it was in the commons area at the school. There was a prayer given over the loud speaker for this event. A student did it and so is that what this is covering? Did that go above and beyond what should happen?

Senator Davison: I think it covers that.

Chairman Schaible: I think that is kind of a different thing because it is not an association, venue driven. I am not sure how FFA works, but they are an extension of the school. I would imagine the superintendent probably had checked into that.

Vice Chairman Rust: This bill only addresses athletic activity.

Senator Davison: When you say that it only addresses athletic activity, it addresses anything that is covered under the North Dakota Activities Association, or not?

Senator Oban: We took high school activities association out.

Vice Chairman Rust: This bill has “a student of a public or a non-public school may not be prohibited from voluntarily participating in any student initiated prayer at an athletic activity held on the premises of a public or non-public school”. That is the bill.

Chairman Schaible: If you took out the word “athletic”, then it would cover every activity.

Senator Davison: That was my question. I do not know that is the right thing to do.

Vice Chairman Rust: I don't think you need to do that. It is currently ok to do that with the supreme court rulings. They have ruled on that – that student initiated prayer is ok.

Chairman Schaible: I agree with you. This is just a clarification of what our intent was. We are not offering anything new that is not being allowed now. If we need to expand it, I think we can do it in conference committee or two years from now.

Senator Vedaa: Moved Amendment 17.0761.03001.

Senator Kannianen: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Vedaa: Moved a Do Pass As Amended.

Senator Kannianen: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Vedaa will carry the bill.

March 28, 2017

CLL
3/22/17

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1275

Page 1, line 2, remove "parochial or private school"

Page 1, line 2, after "activities" insert "for public and nonpublic schools"

Page 1, line 10, remove "Notwithstanding any other provision of law, neither the North Dakota high school"

Page 1, remove lines 11 through 14

Page 1, line 15, replace "parochial school" with "A student of a public or nonpublic school may not be prohibited"

Page 1, line 15, replace "before" with "at"

Page 1, line 16, replace "the public, parochial, or private" with "a public or nonpublic"

Renumber accordingly

Date: 3/29
 Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. _____

1275

Senate Education _____ Committee

Subcommittee

Amendment LC# or Description: 17.0761.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Vedaa Seconded By Kannianen

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	✓		Senator Oban	✓	
Vice-Chairman Rust	✓				
Senator Davison	✓				
Senator Kannianen	✓				
Senator Vedaa	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 3/29
 Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1275

Senate Education Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Vedaa Seconded By Kannianen

Senators	Yes	No	Senators	Yes	No
Chairman Schaible	✓		Senator Oban	✓	
Vice-Chairman Rust	✓				
Senator Davison	✓				
Senator Kannianen	✓				
Senator Vedaa	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Vedaa

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1275, as engrossed: Education Committee (Sen. Schaible, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1275 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "parochial or private school"

Page 1, line 2, after "activities" insert "for public and nonpublic schools"

Page 1, line 10, remove "Notwithstanding any other provision of law, neither the North Dakota high school"

Page 1, remove lines 11 through 14

Page 1, line 15, replace "parochial school" with "A student of a public or nonpublic school may not be prohibited"

Page 1, line 15, replace "before" with "at"

Page 1, line 16, replace "the public, parochial, or private" with "a public or nonpublic"

Renumber accordingly

2017 CONFERENCE COMMITTEE

HB 1275

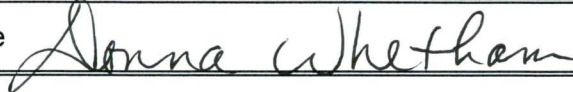
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1275
4/12/2017
30094

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the recitation of prayer at parochial or private school-sanctioned activities.

Minutes:

Chairman K. Karls: Opened the conference committee on HB 1275.

Attendance: Chairman K. Karls, Rep. K. Koppelman, Rep. Simons; Senator Davison, Senator Schaible, Senator Kannianen.

Senator Davison: On the Senate side there was testimony of possible litigation regarding the bill as far as allowing public school prayer. The ND High School Activities Association sponsored event already allows pray but not over the intercom system at ND Activities Association sponsored events.

Sen. Schaible: We had concerns that any prayer venue driven or over a PA system requires participation by someone who doesn't want to. That's the red flag we saw. The NDHAA said it places those tournament venues in jeopardy. They said this might be controversial, put them membership in jeopardy of a law suit and not in their best interest. Private schools did not intend for this to become controversial. Also with the statements in here, everyone feels prayers is important but should not infringe on anybody's rights. We thought what we had was adequate by changing to what the word it said in here created some real problems of an adverse action that might happen to some of our private school's venues as far as hosting tournaments. A rule change affects every event we have which could be speech or whatever, all subject to the same rules.

Rep. Koppelman: Nothing in the bill talks about forced participation. I heard a lot of things announced on a PA system that I may or may not care about, think about or want to participate in. The fact is this occurs regularly in private schools at every game except, when they hosted a playoff game they were told they couldn't because the NDHSAA had fear of controversy. The bill was introduced after legal experts and the ND AG's office, who were in contact with NDHSAA. They need state law telling them they can't prohibit prayer a prayer

over a PA system when it's the custom of the venue at those activities. That strengthens their legal position because they can point to the statute if this becomes law. If someone were to sue them, they'd have greater legal standing saying we're obeying the law. We're saying a state entity cannot prohibit a private entity that has a practice of praying, from doing so. Unless that entity prohibits a private Christian school from saying a prayer, it's somehow establishing a religion in our state, I can't think of a more farfetched legal premise. My discussions with the NDHSAA attorney, they came here in neutral and raised those concerns. I was encouraged to contact a group called Liberty Council. They feel the NDHSAA discriminated, and if the bill in its original form becomes law in ND, should they be sued, they will defend them free of charge because they are so confident of their firm legal and constitutional foundation.

Sen. Schaible: It says here, "...may prohibit a parochial or private school from offering prayer." That seems to be venue driven. You say this is happening in regular games and that's fine because they are not venues rented or leased but not hosted by NDHSAA. That's when you make have contracts for a venue of a tournament or function. That language seems to interpret that private school, and they might not even be the team playing, that they have that right. These are venues that are leased to the NDHSAA to hold events. No different than the Civic Center or other venues that aren't school related but leased venues, and then they have to follow the rules. What they do on a normal Friday night game and a tournament are very separate ideas where different rules apply. We asked the question if this is a concern and becomes a questionable area then why would you even consider putting that in a venue? They aren't the ones pushing this bill so we asked is it worth having this in there if it jeopardizes having your venue and they said no, they don't want that. If I was a board member of that group, I would say yes I would have a hard time putting that in there.

16:40

Rep. Koppelman: I understand what you're saying when you're talking venue driven and that the contract for the venue was a concern of the NDHSAA. When the AG's office asked them well before the session began if they had a bill protecting them, would you have a problem. It was my understanding at that point they said no and now apparently their raising concerns. You made a good point about the contract. Public schools are present on those premises and every bit state actors as the NDHSAA, in fact I would argue even more so because they are local entities created by state law. If I were on a team at a public school, and came to a Christian parochial school to play a game, and they said a prayer, I wouldn't be shocked by that or the cross on the wall, I know where I'm going. I respect the points you made about their renting the venue, etc. but that can be easily solved by just changing the contract a little bit. I do think you make a very good issue of who's playing.

21:38

Chairman K. Karls: On football playoffs, I understand where the playoff games are held is determined by the standing of the schools. It's different in basketball which is getting so big they hold them in at the Civic Center.

Sen. Davison: In my recollection of discussion the NDHSAA they are comfortable right now with what goes on. It seems to be that we're trying to solve right now is someone praying over the loudspeaker. They're comfortable with how that's happening and how they're working with their schools in regards to that. We're not eliminating prayer from any of the games. We're simply eliminating prayer from over the loudspeaker. The NDHSAA is not interested in creating different contracts and monitor those things. They're not interested in having a potential lawsuit.

24:02

Senator Kannianen: Initially I supported this bill in its original form and what Rep. Kopplemen's saying. When you talk about legal standing what he's saying is correct. The main reason I went along with the amendments was because the key actors involved supported them. I figure if the people the bill affects are in line with it, I don't see why I should be trying to force something they don't want.

Sen. Schaible: I don't think we need to make laws for one specific instance but if we're talking about making a law for every tournament, school and activity then that's a different story. You open it up for everybody or keep it the way we have. That's the issue we have now is. Some people can't infringe on someone's religious rights and I understand that but when you start doing this over the PA and as venue driven, now you're forcing people to participate. That's the basis for some of the lawsuits we've seen. As far as the AG's opinion, if this law would go into place, are they going to defend then? I asked that of the AG and he said no.

Rep. Koppelman: I think the important thing to remember is that the schools did not ask for this bill to be introduced. I thought it was the right thing to do like many of you introduce legislation because you believe it's the right thing to do. I started to hear from people, the public including parents that had students in school and some that didn't have anything to do with those schools. Sen Schaible pointed out they may be afraid because they don't lose the right to host these games. I think the reason schools treat this lightly is they appreciate being involved in high school activities. I'd like to talk with the AG's office more based on what you said Sen. Schaible because they are interesting points. I appreciate the opportunity to look at this further and maybe we can find an amendment. I think obviously the Senate language removes the effect of the bill and see if we can find something together that makes it work.

Rep. K. Karls: adjourned the meeting.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1275
4/18/2017
30199

Subcommittee
 Conference Committee

Committee Clerk Signature

Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Relating to the recitation of prayer at parochial or private school-sanctioned activities.

Minutes:

Attachment 1-2

Rep. K. Karls: Opened the conference committee on HB 1275.

Attendance: Chairman K. Karls, Rep. K. Koppelman, Rep. Simons; Senator Schaible, Senator Kannianen. Senator Oban

Rep. Karls: Since we left on the 12th, Rep. Koppelman has been working on an amendment.

Rep. K. Koppelman: (#1) (#2) presented the amendment and markup. I have been working with the Attorney General's office and have come up with different language than the original bill and the Senate version. The motion, if we do this would be for the House to accede to the Senate amendment, which deletes the first part of the original bill, and to further amend.

Senator Schaible: This is still a school, venue driven, over the PA.

Rep. K. Koppelman: The difference is it inserts language that says may offer a prayer before a public entity contractually takes control of the facility, of the parochial or private school. It was to try and balance all the concerns, rather than forcing it by saying we don't have a right to restrict religious freedom.

Senator Schaible: I have an email from the High School Activities Association and I'd like to read the response. "The NDHSAA cannot support any of those additions to the bill. The NDHSAA has liability coverage for the entire event. There is no set time that NDHSAA takes over necessarily, and it has never been an issue. But the language regarding taking control of the facility or when the facility is under contract could be interpreted by people differently. We have similar concerns to the second language option you included. It could be taken way out of context and could also hold different meanings to different individuals. We certainly would not want to have to litigate over ambiguous language. I don't have any suggested language that could be added that would alleviate our concerns."

If they're worried about litigation or ambiguous language, they're reluctant to host an event I don't see this as fixing the problem. Legally if HSAA is contracting for a venue a year or years in advance, you don't know yet who the teams, I don't see this as a problem

Rep. K. Koppelman: I am disappointed that they are not willing to work on a solution and accept this language. Why not write the event contract to accommodate these rules? If this doesn't work, I hope they would offer another recommendation. We are trying to take concerns of affected parties in account and find what might work. We rent a venue for an event, the concern is we don't want to be sued because someone might say we are establishing a religion by not forbidding a prayer. To me a logical solution is write the contract specifically the time the rental begins.

Senator Schaible: This response came from them and their attorney. We have some venues that go on multiply days and play every day. You're talking about the facility that hosts the event, is allowed for a prayer. What about multiple teams involved? I think the solution we are looking for is causing more problems. We write these laws to cover all situations; not just one event. I think we are looking for a solution for a problem that doesn't exist.

Rep. K. Koppelman: We are having this discussion because there are private schools that have a custom to have prayer in their schools before an event. You can't restrict religious freedom and tell them they can't pray. How can we solve this problem?

Senator Schaible: This is an organization that's not a part of government but it's membership schools and they come up with their own rules. Now we are dictating how to change their membership driven policies for them and I don't think we should change this. By doing that we might jeopardize what public and private schools do in their management. Frankly now we are micromanaging how they do things to do our intent, even though they're not asking for it.

Rep. K. Koppelman: Any law we make you could call dictating. I think if that freedom is violated we have a duty to try and fix this.

Senator Schaible: This is public policy for all entities involved so here we are carving out a certain unique situation for a school that believes this way. Now we telling them because you are a certain religious facility, we're going to carve out language for you but can't tell all these other religions that might not be the same that they cannot do that because of the facility. This language is allowing a school to have a prayer where some of these people might not appreciate that prayer. By doing this we are giving exclusive rights to one small group. I don't know why we want to go there and create more problems than we are solving.

Rep. K. Koppelman: I've never seen a right in the constitution against being offended. The constitution talks about rights we have. The last thing I want to do is create a situation that would injure any of these schools. What I've seen and heard from constituents is what is wrong with this picture? We have public schools playing private schools. If a public school hosts an event, they don't pray. If the private school hosts a game, they choose to pray before the game. Then playoffs come along and now you're forbidden from doing that. That's what I'm trying to solve. I think there should be a way to resolve that.

Senator Oban: At no point did I hear that somebody was told they couldn't pray. We can go back and forth on what is offensive and what isn't. Ultimately isn't this being brought forward because you felt some people were offended they couldn't pray over a loudspeaker when they were told they could pray as a team? In fact, they came up with their own solution and held a moment of silence and whoever chose to, did pray.

Rep. K. Koppelman: Maybe I didn't hear the story right. Until the play-off happened then they were told they could not say a prayer at the game. I later learned it's because a particular organization rents that facility that feels they are in control, and is worried they might get sued.

Senator Oban: I would still ask were they not allowed to prayer?

Rep. K. Koppelman: I know that they were not allowed to do what they were customarily did.

Rep. Simons: At committee they were told if they brought their own PA they could use it. I think these people would not bring this to us because they're running scared. We're talking about a private school, not a state run school. They're playing on common ground and they pray. I think we probably agree on this. When do we take a stand? I am deeply concerned on this subject. To tell a Christian school they could not use the PA when they're part of that organization is a bit of insanity.

Senator Schaible: We need to get off the reference of running scared. They believe totally in what they do. I think they are trying to do what is right. We need to decide what is best for everybody. The school boards decide what is best. I think we need to focus on what the issue is here. The idea that this doesn't change when it becomes a state sanction event; lots of things change then. There are a lot of issues here. I think we will be creating some issues. Our interpretation is that the solution was found and the problems they had were taken care of and in talking to the schools involved, they agree.

Rep. K. Koppelman: I hope we can find a way to find a solution that is constructive. My intent is not to criticize any school, group or the association. In using the words running scared that was used to described where we are, which is attorneys err on the side of caution. They look at this and say if we dare do this we might get sued. We've talked in committees, if we dare do the opposite we could get sued too.

Senator Schaible: Any member school can propose an idea to the floor. I don't know but there is a process to bring complaints and ideas to the membership. I don't know if any member has done this. Every member has an opportunity to bring it to their boards to serve that issue and they will decide their issues. Is there a possible solution? I think the venue driven PA system is the issue.

Rep. K. Koppelman: I would like to see us visit and see if we can reach a solution.

Chairman Karls: We have run out of time and are at a stalemate. We can return to what the Senate did, follow this amendment or compromise. Closed the hearing.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1275
4/19/2017
30230

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the recitation of prayer at parochial or private school-sanctioned activities.

Minutes:

Rep. K. Karls: Opened the conference committee on HB 1275.

Attendance: Chairman K. Karls, Rep. K. Koppelman, Rep. Simons; Senator Schaible, Senator Kannianen. Senator Oban

Rep. Karls: Is there anyone wishing to make a statement?

Rep. Simons: I am disappointed that we can't come together and stand up for what I think is religious freedom. I feel like we are buckling to the fear of a law suit. I am sorry we can't come together and make this bill better.

Chairman K. Koppelman: It does not appear we can come to a good solution. I think it is a fear of a law suit. Do we do something. I am prepared to make a motion. I wondered why the word athletic is on line 11 but I do not think it should not be there. We are just trying to make good general law because we could be dealing with any kind of activity. On line 11, line 2 as well of the 04000 we need to put athletic in there.

Motion Made for the Senate to recede from the Senate Amendments and further amend by removing the word athletic on line 2 and 11 in version .4000 by Rep. Koppelman; Seconded by Senator Schaible.

Discussion:

Senator Schaible: I agree. It should be uniform to all participants.

Chairman K. Koppelman: No one is discouraging anyone here. The schools, the Senate, the associations involved have great respect for all. I know it is a difficult issue. People are

concerned about ramifications and that is why we are where we are. We have to come together with something we can all live with. Passing this is better than passing nothing.

Senator Schaible: We did discuss some options we can go through. These private schools could petition the association and they could look at the rule changes; the schools could do the same so I think we have some opportunities to try some other things first. I think those are better things to try and I appreciate the discussion and maybe the discussion will lead to some improvements.

Chairman K. Koppelman: I think my hope is we won't leave here and some will take this to heart and maybe we should allow some accommodation here to allow the schools that have this practice to have the practice. I hope what Senator Schaible has suggested is constructive and I hope that is the outcome.

Roll Call Vote: 6 Yes 0 No 0 Absent Carried

I was informed Senator Kannianen will be the bill carrier on the Senate side.

Closed.

9/19/17 DP

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1275

That the Senate recede from its amendments as printed on pages 1275 of the House Journal and pages 1035 and 1036 of the Senate Journal and that Engrossed House Bill No. 1275 be amended as follows:

Page 1, line 2, remove "parochial or private school athletic"

Page 1, line 2, after "activities" insert "for public and nonpublic schools"

Page 1, line 10, remove "Notwithstanding any other provision of law, neither the North Dakota high school"

Page 1, remove lines 11 through 14

Page 1, line 15, replace "parochial school" with "A student of a public or nonpublic school may not be prohibited"

Page 1, line 15, replace "before" with "at"

Page 1, line 16, remove "athletic"

Page 1, line 16, replace "the public, parochial, or private" with "a public or nonpublic"

Renumber accordingly

Date: 4/12/2017

Roll Call Vote #:

2017 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL HB1275 as (re) engrossed

House Judiciary Committee

- Action Taken
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: _____ Seconded by: _____

Representatives	4/12	4/18	Yes	No	Senators	4/12	4/18	Yes	No
Chairman K.Karls	✓	✓			Senator Davison	✓			
Rep. K. Koppelman	✓	✓			Senator Schaible	✓	✓		
Rep. Simons	✓	✓			Senator Kannianen	✓	✓		
					Senator OBAN		✓		
Total Rep. Vote					Total Senate Vote				

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**2017 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES**

HB 1275 as (re) engrossed

House Judiciary Committee

- Action Taken** **HOUSE accede to Senate Amendments**
 HOUSE accede to Senate Amendments and further amend
 SENATE recede from Senate amendments
 SENATE recede from Senate amendments and amend as follows
- Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Koppelman Seconded by: Senator Schaible

Representatives	4/19		Yes	No		Senators	4/19		Yes	No
Chairman K.Karls	X		X			Senator Schaible	X		X	
Rep. K. Koppelman	X		X			Senator Oban	X		X	
Rep. Simons	X		X			Senator Kannianen	X		X	
Total Rep. Vote			3			Total Senate Vote			3	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. Karls Senate Carrier Senator Kannianen

LC Number 17.0761. . 03002 of amendment

LC Number . 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Removed the word athletic on line 2 & 11 in version .4000

Insert LC: 17.0761.03002
House Carrier: Karls
Senate Carrier: Kannianen

REPORT OF CONFERENCE COMMITTEE

HB 1275, as engrossed: Your conference committee (Sens. Schaible, Kannianen, Oban and Reps. Karls, K. Koppelman, Simons) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1035-1036, adopt amendments as follows, and place HB 1275 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1275 of the House Journal and pages 1035 and 1036 of the Senate Journal and that Engrossed House Bill No. 1275 be amended as follows:

Page 1, line 2, remove "parochial or private school athletic"

Page 1, line 2, after "activities" insert "for public and nonpublic schools"

Page 1, line 10, remove "Notwithstanding any other provision of law, neither the North Dakota high school"

Page 1, remove lines 11 through 14

Page 1, line 15, replace "parochial school" with "A student of a public or nonpublic school may not be prohibited"

Page 1, line 15, replace "before" with "at"

Page 1, line 16, remove "athletic"

Page 1, line 16, replace "the public, parochial, or private" with "a public or nonpublic"

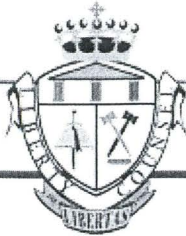
Renumber accordingly

Engrossed HB 1275 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

HB 1275

LIBERTY COUNSEL



#1
1275
1-25-17

Post Office Box 540774
Orlando, FL 32854-0774
Telephone: 407•875•1776
Facsimile: 407•875•0770
www.LC.org

122 C Street N.W., Suite 360
Washington, DC 20001
Telephone: 202•289•1776
Facsimile: 202•737•1776

Post Office Box 11108
Lynchburg, VA 24506-1108
Telephone: 407•875•1776
Facsimile: 407•875•0770
liberty@LC.org

Reply to: Virginia

January 25, 2017

VIA EMAIL ONLY – kkoppelman@nd.gov

Rep. Kim Koppelman,
North Dakota House of Representatives
513 First Avenue NW
West Fargo, ND 58078

RE: Liberty Counsel supports HB 1275 and offers *pro bono* defense

Dear Representative Koppelman:

By way of brief introduction, Liberty Counsel is an international nonprofit media, legal, and policy organization focused on constitutional liberties, with a particular expertise in First Amendment religious freedoms. With offices in Florida, Virginia, and the District of Columbia, we routinely represent public and private schools in matters touching the free exercise of religion.

Liberty Counsel supports HB 1275. The bill is necessary to protect First Amendment rights, and to provide clarity as to whether and under what circumstances prayer is permissible at athletic events involving private and public schools. It is particularly necessary to prevent religious discrimination at games played under the auspices of the North Dakota High School Activities Association (“NDHSAA”), which is made up of member public and private schools.

The need for HB 1275 dates to Fall 2015, when the NDHSAA determined that it would not permit a Catholic high school to offer a pre-game prayer over its own PA system, at its own football stadium, while hosting the playoff game in which it had earned home field advantage. I understand that NDHSAA’s determination was taken, at least in part, as a result of *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass’n*, 531 U.S. 288 (2001), in which the Supreme Court determined that, for some purposes, a state athletic association was not merely a private association, but could also be considered a “state actor.”

Notwithstanding *Brentwood*, the short answer is that private Christian schools retain their right to sponsor pre-game prayers over the PA system, where the game is between the private school and a public school, but played on private school property; and where the game is on public property, but between two private schools. This is true regardless of

NDHSAA involvement, or whether the game is a regular season game, or a post-season playoff. A brief discussion of school prayer in the athletic context is in order.

Despite school prayer cases such as *Lee v. Weisman*, 505 U.S. 577 (1992), in the public school context, students may still engage in voluntary, private religious expression, whether at graduation in a speech (*Adler v. Duval County Schools*, 250 F.3d 1330 (11th Cir. 2001) *cert denied*, 534 U.S. 1065 (2001)), or at an athletic event, in the form of “taking a knee” on the football field before or after a game. The Supreme Court held in 2001 only that a *public school* may not create a venue as part of a government-initiated program to encourage public school students to pray at football games. See *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000). The crux of the *Santa Fe* decision is that it violates the Establishment Clause for a public school district to take affirmative steps to create a vehicle for a prayer to be delivered at a school assembly. The decision is limited in its scope as it is based on a unique set of facts that existed in the Santa Fe school district, and has no bearing on private religious speech that is truly voluntary in nature. Schools may and must permit students to engage in voluntary religious expression not at the behest of the government.

Private schools, however, because of their private nature, are not restricted by what the courts have interpreted the Establishment Clause to require of government entities. See *Amendment I, U.S. Constitution*. Thus, private Christian schools, on private property, retain full religious free exercise rights and may sponsor and facilitate prayer, and may allow their students to likewise engage in voluntary religious expression.

When two private schools play one another, even if they are NDHSAA members, there are no constitutional issues raised by one or both schools officially permitting pre-game prayer. A private entity may not be required to forego constitutionally-protected liberties as a precondition for receiving a government benefit. See, e.g., *Rust v. Sullivan*, 500 U.S. 173, 197 (U.S. 1991) (Supreme Court “‘unconstitutional conditions’ cases involve situations in which the Government has placed a condition on the recipient of the subsidy...thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally funded program”).

When a private Christian school team plays against a public school team, whether public prayer is permissible depends upon where the game is played, and who offers the prayer.

If the game is played on public school property where the private Christian school is a guest, then the rules applicable to public school prayer should apply. In this instance, the private Christian school team may engage in voluntary pre-game prayer, along with their coaches. The public school team students may also engage in prayer (as they could if the game were played on public school grounds), but the public school coaches may not participate. The private school generally has no legal right to offer a prayer over the loudspeaker, because it does not control the facility, and the public school may not do so under applicable Supreme Court precedent. See *Santa Fe*, 530 U.S. 290 (2000).

If the game is played on public property, and is played between two private Christian school teams, then public prayer using the public address system must be allowed, upon request, because it is private speech. This should really not be controversial, because both schools are private schools, and retain their First Amendment free exercise of religion rights, in a forum otherwise available to all.

A public facility, even if predominately paid with tax dollars, does not become “off limits” to private religious expression under federal guidelines and cases. “[P]rivate religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.” *Capitol Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 760 (1995). The religious expression of private organizations or individuals may not be censored or punished, where, as here, there is no doubt that it is not the message of the government. Speech containing religious themes, prayer, or other expressions by private organizations or individuals, is private speech, not attributable to the public facility, and moreover, may not be subjected to discrimination based upon any religious viewpoint it conveys. See *Good News Club v. Milford Central School District*, 533 U.S. 98 (2001), as well as *Child Evangelism Fellowship of Maryland, Inc. v. Montgomery County Public Schools*, 17 F.3d 703 (4th Cir. 1994); *Hills v. Scottsdale Unified School District*, 329 F. 3d 1044 (9th Cir 2003).

If the game is played on private property owned by a private Christian school or another private entity, a prayer may be publicly offered by the private Christian school or private venue owner, because the Establishment Clause does not generally apply to private expression on private property. *Salazar v. Buono*, 559 U.S. 700, 720 (U.S. 2010). If a public school team is in attendance at a game on private property, the public school students and attendees may voluntarily participate in the prayer, but may not be compelled to do so. Public school coaches and school employees may participate (if they wish) if they are not present in their official capacities, but public school attendees may not prohibit the private Christian school from offering a prayer. A reasonable observer would not believe that the *government* is “endorsing” any religious expression, but would understand that the NDHSAA is made up of both public and private school members, and that the Establishment Clause does not apply to private individuals or entities acting in their private capacity. See, e.g., *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 780 (U.S. 1995) (O’Connor, J., concurring).

Thus, even if NDHSAA is a “state actor” under *Brentwood* for federal constitutional law purposes, despite it being a private association incorporated under North Dakota law, the prayer of private Christian schools described above is not “state action” – it is private speech. Conversely, assuming NDHSAA is a “state actor,” then its *denial* of a private school’s request for religious accommodation is viewpoint discrimination, which state actors are prohibited from doing. Government discrimination among viewpoints is a “more blatant” and “egregious form of content discrimination.” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

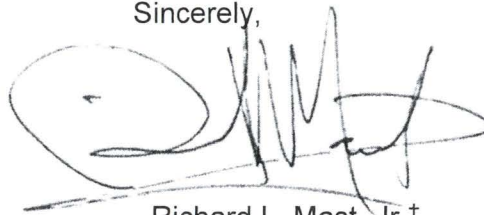
In the past, some might have objected to public schools participating in interscholastic athletics against Christian schools, simply because of their religious beliefs. Those days are long gone. If private Christian schools can be members of NDHSAA (which

they can) without "endorsement" of private religious beliefs and teachings by a "state actor," then private Christian schools can engage in private religious expression before a game as described herein.

In light of how the NDHSAA discriminated against the private religious expression of private Christian schools in 2015, it is necessary for the North Dakota Legislature to act, to prevent the NDHSAA from banning private actors from engaging in constitutionally-protected activity.

Liberty Counsel supports HB 1275. Should the Legislature of North Dakota enact this necessary law, Liberty Counsel is prepared to provide *pro bono* representation at no charge to the taxpayers, in the event of legal challenge. If you have further questions about any of the points contained in this letter, please don't hesitate to contact me at 407-875-1776.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard L. Mast, Jr.', written over a horizontal line.

Richard L. Mast, Jr.†

† Licensed in Virginia
RLM/vab

4



#2
1275
1-25-17

**To the House Judiciary Committee
In Support of HB 1275
January 25, 2017**

Mr. Chairman and members of the committee, I am Linda Thorson, the State Director for Concerned Women for America (CWA) of North Dakota. CWA is the largest public policy women's organization in the nation and our state. We are here today on behalf of our North Dakota members in support of HB 1275.

This amendment which states, "A student may voluntarily pray aloud or participate in religious speech at any time before, during, or after the school day to the same extent a student may voluntarily speak or participate in secular speech," is a statute supported by the U.S. Department of Education. The "Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools," February 2003, "Section 9524 of the Elementary and Secondary Education Act ("ESEA") of 1965," as amended by the No Child Left Behind Act of 2001, requires the Secretary to issue guidance on constitutionally protected prayer in public elementary and secondary schools. In addition, Section 9524 requires that, as a condition of receiving ESEA funds, a local educational agency ("LEA") must certify in writing to its State educational agency ("SEA") that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance."¹

The U.S. Department of Education guidelines further state, "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 (whether religious or nonreligious) is the speaker's and not the school's."

Religious liberty was at the forefront of our Forefathers' minds when the Founders of our nation declared sovereignty and separation. Religious freedom is a fundamental right of every person and the bedrock of any free society. In our democratic nation, the government exists to protect the essential, inalienable right to personal conscience. For schools to deny any student something so basic is incompatible with the values upon which "The Free World" was established. Our Founding Fathers envisioned a nation where all people were given the right to exercise their beliefs — free from government intrusion. Unless there is an undeniable interest for involvement, the same should be true today.

¹ Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, February 7, 2003, https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html

Our inherent liberties are threatened by opponents of religious freedom because some have taken statements, such as “the impregnable wall” and “separation of church and state” and made them pseudo-rule of law, even though these *phrases are not found in any line of our nation's founding documents but in Thomas Jefferson's Letter to the Danbury Baptists Association*. Skewed interpretations of those phrases have redefined the First Amendment to be the direct opposite of the Founders’ original intent.

The statement that one should “leave religious beliefs at home” or be thought intolerant, under the First Amendment, is ironically something the Founders sought to prevent. The First Amendment was created to liberate and protect the convictions of even the minority, not to stifle religion. For those of deeply held beliefs, religion is not a “pastime”; it is a core value.

In our current society, schools have become so concerned with offending those that do not share similar religious views that the fundamental right to participation in prayer as set forth in the constitution and supported by The Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, is unprotected.

“Hostility toward religion is neither required by our Constitution nor desirable in a free and just society. Only those who are insecure of their position seek to impose it by force by silencing their opposition. The Christian citizen must be alert to those who seek to silence religious views and reject their freedom-stifling ideas. As long as we are able and committed to fight the abuse of the First Amendment with the virtues of the First Amendment, we shall preserve liberty and freedom. If we fail, oppression is sure to follow,”² said Mario Diaz, CWA Legal Counsel.

When lawmakers and school authorities choose to forego a students’ right of conscience in the name of political correctness, liberty and freedom are at genuine risk. James Madison once said that, “Conscience is the most sacred of all property” — for all people, not just Christians. It is the personal duty and right of conscience of our citizens to preserve liberty and freedom for all, including those attending school.³

We urge your “Do Pass” vote on HB 1275. Your consideration of this request is appreciated.

² Diaz, Mario, *Be Spent, Winning the Fight for Freedom's Survival*, 2015

³ Wegman, Hannah, #PrayforParis But Condemn #CoachKennedy? America's Prayer Paradox <http://www.christianpost.com/news/prayforparis-but-condemn-coachkennedy-americas-prayer-paradox-150826/#QFZMAbFTS8VOHGqD.99>

#3
1275
1-25-17

NDLA, H JUD - Shimek, Delores

From: NDLA, Intern 10 - Johnson, Kelly
Sent: Thursday, January 26, 2017 8:07 AM
To: NDLA, H JUD - Shimek, Delores
Subject: FW: House Bill ND Bill 1275. Constitution

Hi Delores –

I received this email from a Mr. Dooley, who testified yesterday. Rep. Koppelman was also on this email but wanted to send this your way so that you are aware of it. Please let me know if you think I should print copies for the committee or wait to see if Rep. Koppelman instructs me on what to do.

Thank you,

Kelly

From: Fintan Dooley [mailto:findooley@gmail.com]
Sent: Wednesday, January 25, 2017 3:44 PM
To: Koppelman, Kim A. <kkoppelman@nd.gov>; NDLA, Intern 10 - Johnson, Kelly <intern10@nd.gov>
Cc: Fintan L. Dooley ND Bar 03270 <findooley@gmail.com>
Subject: FW: House Bill ND Bill 1275. Constitution

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Dear Representative Koppelman,

I cautiously support the bill.

Fintan L. Dooley, ND Bar #03270
218 North 4th Street
Bismarck, ND 58501
Office: 701-212-1000
Cell: 414-731-0520
Fax: 701-557-1681
Email: findooley@gmail.com or
findooley@wi.rr.com

From: Fintan Dooley [mailto:findooley@gmail.com]
Sent: Wednesday, January 25, 2017 12:22 PM
To: Fintan L. Dooley ND Bar 03270
Subject: House Bill ND Bill 1275. Constitution

ND Constitution

ARTICLE I DECLARATION OF RIGHTS

Section 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state ...

ARTICLE VIII EDUCATION

Section 1. A high degree of intelligence, patriotism, integrity and morality ... to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall ...(maintain) a system of public schools ...and free from sectarian control.

Permitting Student Lead Prayer

Excerpts of Alliance Defending Freedom's Q & A entitled, You Do Not Have To Leave Your Faith at Home!

Q -7 Can students offer a prayer before the beginning of a sporting event?

A. Private speech even at school-related functions is protected by the Constitution.

The test is whether the prayer is genuinely student initiated and student led, and not part of a school policy which encourages or endorses it.

Similar to the guidelines noted above for graduation, a school can allow a pre-game message to be given by a neutrally-selected student, and the message chosen by the student, whether religious or not, should be permissible.

This should prevent any appearance of endorsement regarding student messages, including those that are religious in nature.

Students, including those on sports teams, are also permitted to pray together before or after sporting events, provided the prayer is student initiated and student led.

First Amendment –Definitions:

Establishment Clause “Congress shall make no law respecting an establishment of religion, ...”

Free Exercise Clause “Congress shall make no law ... prohibiting the free exercise thereof, ...”

Free Speech Clause “Congress shall make no law ... abridging the freedom of speech, ...”

Leading Case Allowing Prayer in Texas Published through the Loudspeaker: Santa Fe Pitted Baptist against Mormons and Catholics

At the trial level, the Federal District Court ordered that only non-sectarian prayers were permitted. On appeal, the U.S. circuit court decided that the policy was unconstitutional. The school board appealed to the U.S. Supreme Court and won.

When this case reached the Supreme Court in March 2000, the justices agreed to decide the following issue:

"Whether [the school board] policy permitting student-led, student initiated prayer at football games violated the Establishment Clause."

The attorneys for the Santa Fe Independent School District made these main points in their brief.

1. The school board policy does not violate the establishment clause because the decisions whether to have a pregame "invocation and/or message," who will deliver it, and what the student will say is entirely in the hands of students exercising their First Amendment rights.
2. The school board policy is neutral and does not endorse any religion.
3. The student-led "invocation and/or message" could be a prayer, if the student chooses, or, it could be a non-religious statement that conforms to the stated purposes of the school board policy.
4. The school board policy has non-religious purposes such as promoting student free speech and good sportsmanship.
5. The "invocation and/or message" is delivered by a student at a sports event outside of school hours before a mix of students and adults who are attending voluntarily.

The attorneys for the anonymous Catholic and Mormon families made these main points in their brief:

1. The school board policy does violate the establishment clause because using the word "invocation" plus the long tradition of pregame Christian prayers at Santa Fe High football games clearly show a school endorsement of the community's dominant religion.
2. The two-part election procedure in the school board policy leaves little doubt that the views of the religious majority (mainly Baptists) will be imposed on those who hold different beliefs.
3. The school is not neutral and uninvolved since the student-led prayer can only be delivered during the school's pregame ceremony, over the school stadium's public address system, before a crowd assembled on school property for a school-sponsored event.
4. Football team members, band members, and cheerleaders must attend the school's football games. If any of them chose not participate in the pregame student-led prayer, they could be harassed by others both at the game and later on at school.
5. The school board policy is a sham designed to make sure that the longstanding practice of Christian prayers remains an official Santa Fe High School tradition.

Sent from my iPhone

January 25, 2017

#4
1275
1-25-17

HOUSE JUDICIARY COMMITTEE

HB 1275

CHAIRMAN KOPPELMAN AND COMMITTEE MEMBERS:

My name is Matt Fetsch. I am the Executive Director of the North Dakota High School Activities Association. Our attorney, Rachel Bruner-Kaufman, is also here today in the event you have questions for her.

We are providing neutral testimony regarding House Bill 1275, along with some background information, and are hoping for some clarification as to the Bill's intent.

Background

The United States Supreme Court issued an opinion in 2000 titled *Sante Fe Independent School District v. Doe*, 530 U.S. 290 (2000). The Court addressed the question whether a school district policy permitting student-led prayer over the public-address system at a public high school football game violates the Establishment Clause or whether the practice must be permitted under the Free Speech Clause and Free Exercise Clause. Ultimately, the Court determined it did violate the Establishment Clause.

The NDHSAA has been deemed a public entity by the North Dakota Attorney General. *See N.D.A.G. 2008-O-29*. Because it is a public entity, the NDHSAA has prohibited prayer over the loud speaker at NDHSAA-sponsored events in line with the *Sante Fe* decision.

This came up during the football playoffs in 2015. NDHSAA sponsors all playoff football games, as well as region and state tournaments. Since the NDHSAA sponsors the games and since it's a public entity, NDHSAA did not allow Shanley to say a prayer over the loud speaker at the playoff game in November 2015. The Thomas More Society¹ sent the NDHSAA a letter requesting NDHSAA "suspend the prohibition of prayer for the playoff game at Shanley." NDHSAA responded that we have never prohibited prayer at any game. Instead, in line with the *Sante Fe* decision, NDHSAA has prohibited prayer over the loud speaker at NDHSAA-sponsored events. We did not receive any further correspondence from the Thomas More Society since then.

This past year, Shanley again hosted a pair of football playoff games. Shanley's athletic director asked the NDHSAA if it could allow for a moment of silence over the PA system before the National Anthem, and NDHSAA agreed that the language the AD provided² did not violate the Establishment Clause. Shanley's team then prayed on the field, but the prayer was not over the PA system.

¹ "The Thomas More Society is a not-for-profit, national public interest law firm dedicated to restoring respect in law for life, family, and religious liberty." <https://www.thomasmoresociety.org/about/>

² "Please rise and remove all headwear as we observe a moment of silence to honor all assembled here today....(10 second pause)... WE ASK THAT YOU REMAIN STANDING AND PUT YOUR HAND OVER YOUR HEART AS WE HONOR AMERICA WITH THE PLAYING OF OUR NATIONAL ANTHEM."

The NDHSAA is a member of the National Federation of State High School Associations (NFHS). The NFHS posted an article entitled *Prayer, Religion-related Activities at School Athletics Events*, which is in line with what the NDHSAA's practice has been. I have copies if the Committee would like to see it.

Intent of House Bill 1275

The way House Bill 1275 is written, it is not clear whether the intent is for it to apply to NDHSAA-sponsored events, like playoffs, region, and state tournaments, and whether the intent is to include prayers over a loud speaker.

Notwithstanding any other provision of law, neither the North Dakota high school activities association nor any other entity may prohibit a parochial or private school, which is a member of the North Dakota high school activities association or another entity, from offering a prayer before a school – sanctioned athletic activity held on the premises of the parochial or private school.

With the words “school-sanctioned,” it is not clear whether that would apply to NDHSAA-sponsored activities or not. Also, it does not specifically mention prayers over the loud speaker, but we are concerned it may be interpreted to require the NDHSAA to allow prayers over a speaker at NDHSAA-sponsored events. Currently, private and parochial schools can offer a prayer before their own school-sponsored activities, if they so choose. It's only NDHSAA-sponsored events (playoffs, region, and state tournaments) where they are prohibited from praying over the loud speaker.

If the intent is to apply to NDHSAA-sponsored events and to apply to prayers over a loud speaker, the NDHSAA is concerned that it would be unconstitutional pursuant to the United States Supreme Court's *Sante Fe* decision. And if so, the NDHSAA is concerned it may be sued along with the State to enjoin enforcement of this statute for violating the Establishment Clause.

The NDHSAA is also uncertain of the last sentence of the new language in the bill. “An entity may not prohibit a student of a public, private, or parochial school from voluntarily participating in any student-initiated prayer before a school-sanctioned activity athletic held on the premises of the public, parochial, or private school.” There may be a typo where activity and athletic should be switched. Regardless, the NDHSAA already follows that sentence, unless again the intent is for it to cover prayers over a loud speaker.

If the intent of the bill is to require NDHSAA to allow prayer over the loud speaker at NDHSAA-sponsored activities, there may be concerns. However, if the intent is to codify what is already the practice of the NDHSAA, we do not necessarily oppose it, but would like clarification.

Thank you for your time. Rachel or I will do our best to answer any questions.

#5
1/24/17, 4:06 PM
1275

Prayer, Religion-related Activities at School Athletics Events

1-25-17

Lee Green, J.D. on April 13, 2016

hst



The Legal Issue

An ongoing challenge for school and athletics administrators is the question of the legal permissibility of prayer being conducted and other religion-related activities taking place at school events – both at sports contests and on other occasions. Dozens of disputes arise each year across the country regarding the issue, and the following are four examples that have occurred in just recent months.

On January 29, 2016, the Texas Supreme Court ruled 8-0 that a lawsuit should proceed by cheerleaders at Kountze High School who displayed banners bearing Bible verses at football games, overturning a state Court of Appeals ruling in 2014 dismissing the cheerleaders' claims as moot because the policy prohibiting the banners had been reversed by the district. The Texas Supreme Court held that the issues in the case

✓

were not moot because the district never explicitly agreed that its elimination of the policy was a permanent decision and therefore the possibility existed that the district might reinstate the ban in the future. In 2012, Kountze School District administrators prohibited the banners believing that school-sponsored religious messages in a public setting like a high school football game violated the Establishment Clause in the First Amendment to the U.S. Constitution. The cheerleaders argued that their banners were non-school-sponsored, student-initiated religious expression protected by both the Free Exercise Clause and the Free Speech Clause in the First Amendment. The suit will now go forward to resolve the issue whether the Bible-verse banners are legally impermissible, school-sponsored religious messages or legally permissible, purely-student-driven communications.

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The passions inflamed among the parties in all four of these cases, and in the dozens of similar situations that arise each year across the country, reflect the tension between two conflicting viewpoints regarding the constitutionality of prayer and religious activities in schools. The first perspective is that the need for educational institutions to play a role in the moral and character development of our nation’s youth necessitates that the First Amendment’s Free Speech Clause and Free Exercise Clause be interpreted to provide ample latitude for religious activity initiated by persons acting privately, including coaches and student-athletes, to facilitate the role-modeling of the values society wishes to be instilled in young people. The second viewpoint is that the Founding Fathers, most of whom hailed from countries where coercion and duress regarding religious beliefs were commonplace, wrote the First Amendment’s Establishment Clause specifically to protect those of faith by ensuring that even if an individual’s religious beliefs are in the minority in a particular community – including school community – that person will be free of any form whatsoever of government-sponsored pressure to listen to or adhere to the tenets of a faith with which he or she disagrees.

The Prevailing Legal Standard

In its 2000 decision in *Santa Fe ISD v. Doe*, the United States Supreme Court established a rule of law that

strikes a balance between the two conflicting viewpoints regarding the constitutionality of prayer and religious activities in schools. Specifically, the Court addressed the question whether a school district policy permitting student-led prayer over the public-address system at a public high school football game violates the Establishment Clause or whether the practice must be permitted under the Free Speech Clause and Free Exercise Clause.

The dispute began when Doe, allowed by the federal courts to litigate anonymously as protection against intimidation and harassment, challenged the policy of Santa Fe (Texas) High School which allowed the student who held the elective office of Student Council Chaplain to deliver or choose another student to deliver a prayer over the football stadium's PA system before each game. The Supreme Court held that because the school was a public institution, because it was involved in the selection of the speaker, because the message was broadcast over the stadium's PA system to a captive audience, and because the communication occurred at an official school function, members of the crowd would certainly interpret the prayer as a school-sponsored message. "Regardless of the listener's support for or objection to the message, an objective Santa Fe High School student will unquestionably perceive the pregame prayer as stamped with her school's seal of approval." Therefore, the Court found the practice to be in violation of the Establishment Clause.

However, it is important to note that in the Santa Fe ISD case, the Court also clarified that the Establishment Clause does not "impose a prohibition on all religious activity in our public schools. Indeed, the common purpose of the Religion Clauses is to secure religious liberty. Thus nothing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during or after the school day." The religious liberty protected by the First Amendment is violated only when the school "affirmatively sponsors the particular religious practice of prayer."

In other words, the Court concluded that the Free Speech Clause and Free Exercise Clause protect prayer or religious activity initiated by individuals acting privately. Only prayer or religious activity initiated by governmental entities (public schools) or governmental agents (those acting at the direction of schools such as school officials, teachers and coaches) is prohibited.

Recommendations

Based on the precedent set forth by the U.S. Supreme Court in the Santa Fe ISD case, student-athletes acting on their own, without any involvement of the school or its personnel, may engage in prayer or religious activity. Members of a team may, therefore, spontaneously decide to take a knee in the locker

room for a pre-game prayer or gather on the field for a post-game prayer or engage in other religious activity solely as individuals acting privately. Schools need only focus on ensuring that coaches and other school personnel – who even as much as institutions might desire to have them involved in the spiritual development of students – remain detached from student religious activities to preserve the constitutionality of those student practices, keeping in mind the intent of the founding fathers to use the Establishment Clause to protect those of faith by ensuring that they are not expressly or impliedly coerced by the government or government officials into listening to religious messages that conflict with their personal beliefs.

With regard to the handling by educational institutions of the many permutations of issues regarding religious practices in schools, the U.S. Department of Education in 2003 issued a policy directive titled Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, which sets forth a detailed summary of constitutional principles governing topics such as accommodation of prayer during instructional time; prayer during non-instructional time; organized student prayer groups and activities; prayer by teachers, administrators and other school employees; moments of silence; religious expression in class assignments; prayer at graduation and baccalaureate ceremonies; and religious expression at student assemblies. The full-text of the policy guidance is available at

www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

Lee Green, J.D.

Lee Green is an attorney and a professor at Baker University in Baldwin City, Kansas, where he teaches courses in sports law, business law and constitutional law. He is a member of the High School Today Publications Committee. He may be contacted at Lee.Green@BakerU.Edu.



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#16
1275
1-25-17

Testimony in Opposition of HB 1275 – Recitation of Prayer at Parochial or Private Schools

American Civil Liberties Union of North Dakota

House Judiciary Committee

January 25, 2017

Thank you, Chair Koppelman and members of the House Judiciary Committee for your time and attention this morning. My name is Jennifer Cook and I am the Policy Director for the American Civil Liberties Union of North Dakota. The ACLU of North Dakota is a nonprofit, nonpartisan organization with more than 6,000 members, activists, and followers. The ACLU of North Dakota is one of the state’s leading organizations dedicated to advancing and defending civil liberties and civil rights.

We urge the committee to give a Do Not Pass recommendation on HB 1275 to preserve inclusiveness of students from all religious backgrounds at extracurricular events throughout the state. One of the activities association’s great accomplishments is bringing together schools, students, parents, and alumni from many different backgrounds through common interests.

This bill would allow and encourage unconstitutional behavior.

- As NDHSAA properly acknowledged in 2015, announcements at public school athletic events cannot include religious invocations or endorsements. This includes, for example, games between one public school team and one private school team.
- Well-settled U.S. Supreme Court law prohibits any government-sponsored prayer (even if given by students) at public school events. In *Santa Fe Indep. Sch. Dist. v. Doe*, the Supreme Court held that prayer over the loudspeaker at public school football games violates the Establishment Clause and is unconstitutionally coercive.¹
 - Particularly in the school context, the government must be careful not to force religious views on any of the students, parents, coaches, or others in attendance.²
 - Prayer at athletic events could serve to exclude or alienate public school students, parents, alumni, and supporters from what should be an inclusive and fundamental part of the high school experience.³

¹ 530 U.S. 290, 317 (2000) (“The policy is invalid on its face because it...unquestionably has the purpose and creates the perception of encouraging the delivery of prayer at a series of important school events.”)

² The U.S. Supreme Court also established that in *Lee v. Weisman*, ruling graduation prayer unconstitutional: “What to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy.” 505 U.S. 577, 592 (1992).

³ For instance, “[h]igh school home football games are traditional gatherings of a school community; they bring together students and faculty as well as friends and family from years present and past to root for a common cause.”

- No student should have to feel like an outsider while representing his or her school at an athletic event, no matter the student's religion.
- Any prayer over a loudspeaker or to start the proceedings of official events involving a public school team would be seen as government-sponsored speech and thus unconstitutional.
- While private school students and teachers can do what they like at private school-only games on private school property, they cannot force these religious views on public school participants, nor can they force a government-sponsored event to include prayer.

The bill is unnecessary and would only serve to confuse students and teachers.

- Public school students already have the right under the First Amendment to participate voluntarily in prayer and express religious views, as long as the religious activity is not disruptive to the school day. The ACLU has defended this right many times across the country.⁴
 - This means, for example, that groups of students on and off the athletic field can still pray with one another or individually.
- Private school students and coaches already of course have the right to pray individually or in groups as their school rules allow. The government cannot prohibit prayer at private school events that do not involve public school students and officials.

Taken together, the bill's provisions would likely embroil the state in costly litigation.

- We recognize the sponsor's intent to resolve community complaints without a lawsuit.⁵ However, this bill would only serve to encourage violations of the constitution and likely lead to costly litigation.

We again urge rejection of this bill to preserve constitutionality, but also to preserve the unity that interstate extracurricular competitions and activities provide to student athletes, students, parents, and fans.

Santa Fe Indep. Sch. Dist., 530 U.S. at 312. Athletic events such as league playoffs can be of even more import than routine football games to unite the community.

⁴ *ACLU Defense of Religious Practice and Expression in Public Schools*, American Civil Liberties Union, <https://www.aclu.org/aclu-defense-religious-practice-and-expression-public-schools>.

⁵ Tu-Uyen Tran, *West Fargo Lawmaker Tackles Pre-Game Prayers in New Bill*, Bismarck Tribune (Jan. 11, 2017), http://bismarcktribune.com/news/state-and-regional/west-fargo-lawmaker-tackles-pre-game-prayers-in-new-bill/article_ed327c1a-c6e6-5cfc-ab83-c3c063595c94.html.

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HB 1275
#1 p.1

Testimony in Opposition of HB 1275 – Recitation of Prayer at Parochial or Private Schools

American Civil Liberties Union of North Dakota

Senate Education Committee

March 22, 2017

Good afternoon Chairman Schaible and members of the Senate Education Committee. My name is Jennifer Cook and I am the Policy Director for the American Civil Liberties Union of North Dakota. The ACLU of North Dakota is a nonprofit, nonpartisan organization with more than 6,000 members, activists, and followers. The ACLU of North Dakota is one of the state’s leading organizations dedicated to advancing and defending civil liberties and civil rights.

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 - Particularly in the school context, the government must be careful not to force religious views on any of the students, parents, coaches, or others in attendance.²
 - Prayer at athletic events could serve to exclude or alienate public school students, parents, alumni, and supporters from what should be an inclusive and fundamental part of the high school experience.³

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March 22, 2017

SENATE EDUCATION COMMITTEE

HB 1275

CHAIRMAN SCHAIBLE AND COMMITTEE MEMBERS:

My name is Matt Fetsch. I am the Executive Director of the North Dakota High School Activities Association (The Association). Our attorney, Rachel Bruner-Kaufman, is also here today in the event you have questions for her.

We are providing neutral testimony regarding House Bill 1275, along with some background information.

Background

The United States Supreme Court issued an opinion in 2000 titled *Sante Fe Independent School District v. Doe*, 530 U.S. 290 (2000). The Court addressed the question whether a school district policy permitting student-led prayer over the public-address system at a public high school football game violates the Establishment Clause or whether the practice must be permitted under the Free Speech Clause and Free Exercise Clause. Ultimately, the Court determined it did violate the Establishment Clause.

The Association has been deemed a public entity by the North Dakota Attorney General. See *N.D.A.G. 2008-O-29*. Because it is a public entity, the Association has not allowed prayer over the loud speaker at Association-sponsored events in line with the *Sante Fe* decision.

There has been some misconception between NDHSAA-sponsored events and NDHSAA-sanctioned activities that we can hopefully clarify. The Association regulates numerous high school athletics and activities, but it does not sponsor regular season play. Instead, the high schools themselves sponsor regular season games, which entails finding and paying for officials, charging admission, insuring the property, etc. The Association, however, does sponsor certain playoffs, regionals, and state tournaments.

This issue came up during the football playoffs in 2015. The Association sponsors all playoff football games, as well as region and state tournaments. Since the Association sponsors the games and since it's a public entity, NDHSAA did not allow Shanley to say a prayer over the loud speaker at the playoff game in November 2015. The Thomas More Society¹ sent the Association a letter requesting they "suspend the prohibition of prayer for the playoff game at Shanley." The Association responded that we have never prohibited prayer at any game. Instead, in line with the *Sante Fe* decision, only prayer over the loud speaker at Association-sponsored events is not allowed. We did not receive any further correspondence from the Thomas More Society since then.

¹ "The Thomas More Society is a not-for-profit, national public interest law firm dedicated to restoring respect in law for life, family, and religious liberty." <https://www.thomasmoresociety.org/about/>

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This past year, Shanley again hosted a pair of football playoff games. Shanley's athletic director asked if a moment of silence over the PA system before the National Anthem would be allowed, and the Association agreed that the language the AD provided² did not violate the Establishment Clause. Shanley's team then prayed on the field, but the prayer was not over the PA system.

The Association is a member of the National Federation of State High School Associations (NFHS). The NFHS posted an article entitled *Prayer, Religion-related Activities at School Athletics Events*, which is in line with the practice of state high school associations across the country. I have copies if the Committee would like to see it.

Intent of House Bill 1275

The way House Bill 1275 is written, it is not clear whether the intent is to include prayers over a loud speaker. But through the discussion at the House Education Committee's hearing on this bill, it appears the intent is to require the Association to allow prayer over the loud speaker at Association-sponsored events. Therefore, we are concerned that the practice would be unconstitutional pursuant to the United States Supreme Court's *Sante Fe* decision. And if so, the Association is concerned it may be sued along with the State to enjoin enforcement of this statute for violating the Establishment Clause.

Thank you for your time. Rachel or I will do our best to answer any questions.

² "Please rise and remove all headwear as we observe a moment of silence to honor all assembled here today... (10 second pause)... WE ASK THAT YOU REMAIN STANDING AND PUT YOUR HAND OVER YOUR HEART AS WE HONOR AMERICA WITH THE PLAYING OF OUR NATIONAL ANTHEM."

3-22-2017

Prayer, Religion-related Activities at School Athletics Events

By Lee Green, J.D. on April 13, 2016

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The Legal Issue

An ongoing challenge for school and athletics administrators is the question of the legal permissibility of prayer being conducted and other religion-related activities taking place at school events – both at sports contests and on other occasions. Dozens of disputes arise each year across the country regarding the issue, and the following are four examples that have occurred in just recent months.

On January 29, 2016, the Texas Supreme Court ruled 8-0 that a lawsuit should proceed by cheerleaders at Kountze High School who displayed banners bearing Bible verses at football games, overturning a state Court of Appeals ruling in 2014 dismissing the cheerleaders' claims as moot because the policy prohibiting the banners had been reversed by the district. The Texas Supreme Court held that the issues in the case were not moot because the district never explicitly agreed that its elimination of the policy was a permanent decision and therefore the possibility existed that the district might reinstate the ban in the future. In 2012, Kountze School District administrators prohibited the banners believing

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that school-sponsored religious messages in a public setting like a high school football game violated the Establishment Clause in the First Amendment to the U.S. Constitution. The cheerleaders argued that their banners were non-school-sponsored, student-initiated religious expression protected by both the Free Exercise Clause and the Free Speech Clause in the First Amendment. The suit will now go forward to resolve the issue whether the Bible-verse banners are legally impermissible, school-sponsored religious messages or legally permissible, purely-student-driven communications.

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involving John Green, a cross country runner from West Forsyth High School, who finished third in the Georgia Class 6A state meet, but was disqualified for wearing a headband bearing the notation Isaiah 40:30-31 (NIV: "Even youths grow tired and weary, and young men stumble and fall; but those who hope in the Lord will renew their strength. They will soar on wings like eagles; they will run and not grow weary, they will walk and not be faint."). The Georgia High School Association (GHSAA) issued a press release stating that the runner was disqualified not for what was written on the headband, but for violating a rule that uniforms must be "unadorned except for a logo" and for wearing the headband despite being warned by GHSAA personnel before the race to take it off. The Green family, several religious freedom advocacy groups, and numerous Georgia legislators argued that despite the GHSAA's claims that its actions were "content neutral," the First Amendment's Free Exercise Clause and Free Speech Clause require that a religious exception should be incorporated into the rules regarding uniforms for non-school-sponsored messages that are intended to be communicated solely by an athlete.

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The Prevailing Legal Standard

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However, it is important to note that in the Santa Fe ISD case, the Court also clarified that the Establishment Clause does not "impose a prohibition on all religious activity in our public schools. Indeed, the common purpose of the Religion Clauses is to secure religious liberty. Thus nothing in the Constitution as interpreted by this Court prohibits any public school student from voluntarily praying at any time before, during or after the school day." The religious liberty protected by the First Amendment is violated only when the school "affirmatively sponsors the particular religious practice of prayer."

In other words, the Court concluded that the Free Speech Clause and Free Exercise Clause protect prayer or religious activity initiated by individuals acting privately. Only prayer or religious activity initiated by governmental entities (public schools) or governmental agents (those acting at the direction of schools such as school officials, teachers and coaches) is prohibited.

Recommendations

Based on the precedent set forth by the U.S. Supreme Court in the Santa Fe ISD case, student-athletes acting on their own, without any involvement of the school or its personnel, may engage in prayer or religious activity. Members of a team may, therefore, spontaneously decide to take a knee in the locker room for a pre-game prayer or gather on the field for a post-game prayer or engage in other religious activity solely as individuals acting privately. Schools need only focus on ensuring that coaches and other school personnel – who even as much as institutions might desire to have them involved in the spiritual development of students – remain detached from student religious activities to preserve the constitutionality of those student practices, keeping in mind the intent of the founding fathers to use the Establishment Clause to protect those of faith by ensuring that they are not expressly or impliedly coerced by the government or government officials into listening to religious messages that conflict

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with their personal beliefs.

With regard to the handling by educational institutions of the many permutations of issues regarding religious practices in schools, the U.S. Department of Education in 2003 issued a policy directive titled Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, which sets forth a detailed summary of constitutional principles governing topics such as accommodation of prayer during instructional time; prayer during non-instructional time; organized student prayer groups and activities; prayer by teachers, administrators and other school employees; moments of silence; religious expression in class assignments; prayer at graduation and baccalaureate ceremonies; and religious expression at student assemblies. The full-text of the policy guidance is available at www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html.

Lee Green, J.D.

Lee Green is an attorney and a professor at Baker University in Baldwin City, Kansas, where he teaches courses in sports law, business law and constitutional law. He is a member of the High School Today Publications Committee. He may be contacted at Lee.Green@BakerU.Edu.



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Prepared by the Legislative Council staff for
Senator Vedaa

March 28, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1275

Page 1, line 2, remove "parochial or private school"

Page 1, line 2, after "activities" insert "for public and nonpublic schools"

Page 1, line 10, remove "Notwithstanding any other provision of law, neither the North Dakota high school"

Page 1, remove lines 11 through 14

Page 1, line 15, replace "parochial school" with "A student of a public or nonpublic school may not be prohibited"

Page 1, line 15, replace "before" with "at"

Page 1, line 16, replace "the public, parochial, or private" with "a public or nonpublic"

Renumber accordingly

#1
1225
4-18-17

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Proposed Amendments for Judiciary Conference Committee
Prepared by Kelly Johnson, Intern
April 18, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1275

That the House accede to the Senate amendments as printed on pages 1035-1036 of the Senate Journal and pages 425-426 of the House Journal and that Engrossed House Bill No. 1275 be amended as follows:

Page 1, after line 9, insert: "2. A parochial or private school may offer a prayer before a public entity contractually takes control of the facility of the parochial or private school that is rented by a public entity for an athletic activity. A public entity must narrowly tailor any policy regarding prayer held during an athletic event on the property of a private or parochial school so as not to unreasonably burden the private or parochial school.

Renumber accordingly

#2
1275
4-18-17

17.0761.04000

**FIRST ENGROSSMENT
with Senate Amendments
ENGROSSED HOUSE BILL NO. 1275**

Sixty-fifth
Legislative Assembly
of North Dakota

Introduced by
Representatives K. Koppelman, Damschen, Kasper, Monson, D. Ruby, Vigessaa
Senator Erbele

1 A BILL for an Act to amend and reenact section 15.1-19-03.1 of the North Dakota Century
2 Code, relating to the recitation of prayer at athletic activities for public and nonpublic schools.
3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 15.1-19-03.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **15.1-19-03.1. Recitation of prayer - Period of silence - Pledge of allegiance.**

7 1. A student may voluntarily pray aloud or participate in religious speech at any time
8 before, during, or after the schoolday to the same extent a student may voluntarily
9 speak or participate in secular speech.

**2. A parochial or private school may offer a prayer before a public entity
contractually takes control of the facility of the parochial or private school that is
rented by a public entity for an athletic activity. A public entity must narrowly
tailor any policy regarding prayer held during an athletic event on the property of a
private or parochial school so as not to unreasonably burden the private or
parochial school.**

10 ~~2.~~ 3. A student of a public or nonpublic school may not be prohibited from voluntarily
11 participating in any student - initiated prayer at an athletic activity held on the premises
12 of a public or nonpublic school.

13 ~~3.~~ 4. A school board, school administrator, or teacher may not impose any restriction on the
14 time, place, manner, or location of any student-initiated religious speech or prayer
15 which exceeds the restriction imposed on students' secular speech.

16 ~~3.4.~~ 5. A school board may, by resolution, allow a classroom teacher to impose up to one
17 minute of silence for meditation, reflection, or prayer at the beginning of each
18 schoolday.

19 4.5.6. A school board may authorize the voluntary recitation of the pledge of allegiance by a
20 teacher or one or more students at the beginning of each schoolday. A student may
21 not be required to recite the pledge of allegiance, stand during the recitation of the
22 pledge of allegiance, or salute the American flag.