

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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2001 HOUSE EDUCATION

HB 1128

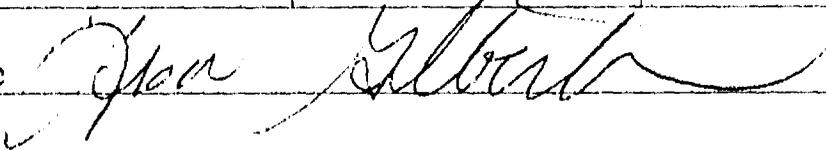
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1128

House Education Committee

Conference Committee

Hearing Date 01/23/01

Tape Number	Side A	Side B	Meter #
#1	X		44 to 3102
#1		X	1 to 3119
#2	X		1 to 1515
Committee Clerk Signature 			

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunskor, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now open the hearing on HB1128.

Rep. Droydal: (District 39) \*Please refer to written testimony\*

Rep. Mueller: Have you had any requests for the 10 commandments?

Rep. Droydal: This is my idea, because I thought it was the right thing to do. I've had a lot of comments from a lot of people across ND who are support of this bill. Some are concerned with the legality of it, and I don't blame them, we don't want to pass bills that we'll just have to go to court to defend.

Rep. Hanson: You said that 12 states passed this; of those schools, how many are displaying the Ten Commandments?

Rep. Droydal: I did call SD, and it's approx. 12 states. I called the sponsor of the bill, he did not give me an exact number, but he said that they have had no negative input at all, but again, it is at the discretion of the local schools. If it's going to distract from education, I wouldn't post it, because education is #1. Does it do any good to post anything on the wall? Well, we drive down the highway and there are all sorts of postings, and they obviously they think it does some good.

Rep. Nottestad: If that would be the case, wouldn't it be pertinent that the Catholics would be flooding our high ways with the Ten Commandments?

Rep. Droydal: That's a question you will need to ask them, but my feeling is that they probably feel that their money could be better spent helping people, and they do their billboards in church on Sunday from the podium.

**Written testimony submitted by Ed Crawford**

Sen. Lyson: (District 1) I placed a bill similar to this in the Senate. I guess I look at these bills as documents to help our students understand what our four father's beliefs were when our nation was established. The Ten Commandments are the basis of the civil and criminal laws in our nation, and most of the civilizations in the world. You cannot speak, or separate the religious history with the government history of our nation, because they are intertwined. I think to cut off the history from our students, we're really cutting off the roots of our nation. I believe, seriously, that these things should be displayed in the schools, along with other historical documents. Give our students an opportunity to choose. We do a great job educating our students, but I wonder sometimes what kind of a job we do to allow them to choose. I've had several e-mails supporting this bill.

Rep. Nelson: We do this in schools, from a historical standpoint, in your career in law enforcement, is it possible to post the Ten Commandments in a courthouse or a jail, for example, using the same premise?

Sen. Lyson: I don't know, I ran a jail for many years, and I did not have them posted, but they were there, so if an inmate asked about them, they would be given to them.

Chairman Kelsch: This would be a historical document that students have exposure to. The other statement that you made was, students should be allowed the decision to choose. Now, with the decision to choose, when we talk about historical document, isn't that something that is taught in churches and taught by your families at home about the Ten Commandments, because even though you have it displayed, there's not going to be any teachings about it. There may be some classes that reference the Ten Commandments or reference certain ones of those commandments, however, all this would be is a document on the wall. It wouldn't be anything that would be truly of value to these students, because they wouldn't be taught those Ten Commandments, and isn't this really what it's all about, is to teach them the Ten Commandments so that they live by those Ten Commandments?

Sen. Lyson: Not at all. I think a display like this for a student to go through there and say, 'thou shall not lie, thou shall not steal' and I've seen in schools where they've taken the Ten Commandments, and they've taken the first commandment out, but I have seen on the walls 'we do not permit you to swear, we do not permit you to steal, we do not permit you to bite'. They put the commandments in other words, and I think that this in there, and be able to see a display, maybe will draw attention to somebody.

Rep. Hawken: Is it not already, by the court definition, can't schools put the Ten Commandments with other historical documents?

Sen. Lyson: I don't know, I honestly believe that the schools have gotten the impression that they cannot.

Rep. Hawken: But the wording of this bill came from the court case, right?

Sen. Lyson: Yes, but I believe the decades that followed that, the school boards have gotten information from the school board associations not to do that.

Rep. Hawken: That's my point. I don't think this bill is necessary. Under current law, we already have the ability to do what we're trying to do here.

Rep. Kempenich: (District 39) One of the reason's I support this bill, we've missed the basic principal of why this country was started, why those pilgrims came over, basically in flee so they could express their beliefs. A lot of people are dancing around the issue of religion, and it is a religious document, but I do think that when you read Genesis there was chaos, they came in, and this is where Moses led his people out of Egypt, it was a document to help prevent chaos, and I think that's one of the things that this document does state. I think that you have to start with the younger people, and if you get a chance for people to display it, people will read it, maybe of interest to start with. An answer to some of the questions I heard earlier, I think it probably is legal to put it up now, but most schools are afraid they're going to get challenged by somebody, and they don't have the resources to get challenged, and I think that if there's something specific in law, they'll feel a little bit more like there's a higher power and that the state's is willing to go on record supporting that. I think one of the reason's, in public buildings, if there's federal funds

involved, I think there's a reluctance to display this type of a document, otherwise, I think it's a move in the right direction.

Rep. Mueller: You bring up an interesting point about legal liabilities, if, in fact, the state goes on record with this particular kind of initiative, do you see the state having any state liabilities for that school district back home, if and when they got challenged?

Rep. Kempenich: That's something that I think this committee has to decide, but I think it's part of our responsibility as a state. If we're going to make a statement, the state should come in. The state's willing to do something but not back up.

Rep. Nottestad: Would you be willing to accept an amendment that the state will assume full responsibility of any legal result of passing this law?

Rep. Kempenich: I think it's the state's responsibility if the state will go on record supporting this. I think the way the bill is written right now, it complies with what most of what courts have stated as far as displaying this type of a document.

Rep. Nottestad: Have you run this by the Atty. General?

Rep. Kempenich: No, we haven't.

Vincent Dooley: \*Please refer to written testimony\*

Barbara Schulz: \*Please refer to written testimony\*

Mrs. Gary Zentz: If it were my decision, I would change the 'may be' to 'shall', because I think the Ten Commandments are a code of virtue, a code of ethics that nobody can find anything wrong with. I went to a one room country school, and I was either in first or second grade when the words 'under God' were added to the Pledge of Allegiance. In this one room school, the Ten Commandments were displayed along with the Bill of Rights and the Declaration of

Independence. They are still there, they haven't been taken down. When I was in fourth grade, we had a family, I think they were Jehovah witnesses, but they did not believe saying the Pledge of Allegiance, and they didn't, while the rest of us were allowed to say it. We are now setting aside prayer rooms in the workplaces, in some schools for the Muslims who are coming in who have prayer four times, I believe a day. I think that we are a country where we have assimilated backgrounds and assimilated religions, but all religions have the code of ethics and if they want to put that up, I will agree. I think that Rep. Mueller, you mentioned the state backing it, and I think that our state should be brave enough to back what's the right thing to do.

Marcia Strucker: As I listened to people speaking, most of our laws are based on the Ten Commandments: thou shall not steal, murder is against the law. Where do you get these definitions of right and wrong? We know that in many of the schools around the country, there have been acts of violence, and maybe these children, if they're not getting it in the homes, maybe they can get it at school. I'm also a school nurse in Bismarek, and I also know that they try to integrate all of the cultural diversity. It's not that we're trying to push our religion on them, but then why should they push the non-religion onto us. It's kind of a live and let live type of thinking. People came to this country to be free from religious persecution, and we can mandate ourselves right out of our freedom, so we have to really careful with that. Our divorce laws are based on the Ten Commandments, it's in the ND Century Code. Just little issues like that are important.

Chairman Kelsch: Anyone who wishes to appear neutral?

Doug Bar: (Director of the Civil Litigation Division of the Office of Atty. General) I'm here to provide technical assistance. The office of Atty. General is not taking a position either way.

There are a number of questions that were asked that I don't think people felt comfortable responding to. Prior to coming, I reviewed about 20 cases addressing this issue, to the extent including the 1980 case, the Grand Forks Case, Where ND law was struck down by the US Supreme Court. I think it was Rep. Nelson who asked whether the Ten Commandments can be posted in the court house and in similar facilities, for the most cases, the courts have upheld the posting of those if they're in a situation where they are in a group of other historical type documents. It was Rep. Hawken who asked, 'does this do anything?'. I don't find anything in ND law that prohibits the posting of the Ten Commandments. The only restriction would be the First Amendment, and that applies whether this bill passes or not. If this bill violates the First Amendment, then passing it won't accomplish anything, and it does, and it does, it can be done at this point. Another question was asked about the state defending this bill, obviously if any statute of ND is challenged, it is the ND office of attorney general's statutory constitutional responsibility to defend the bill. However, in all likelihood, anyone challenging this would not challenge the statute directly, they would find an individual school district who had it posted, and find the set of postings that they thought they had the best chance of defeating. For example, if there was the Ten Commandments and just one other document, they'd have a much better chance of challenging that than if it was the Ten Commandments, The Bill Of Rights, The Declaration of Independence and three or four other documents, so if they challenged the school district directly, the office of attorney general would not have the duty to defend that. If they challenged the bill, then we'd have the duty to defend that.

Rep. Nottestad: Based on what you said about challenging an individual case, could it be then, theoretically possible, that schools that are posting them now could become that case?

Bard: Yes. Someone could go out and challenge that now, but if there is no one in the local school district that is concerned enough then there will be no challenge.

Rep. Nottestad: Then theoretically make people aware of it, therefore increasing the chance of a challenge.

Bard: I believe that the attention the bill has already gotten will make people more aware, and again, the bill is not granting any additional authority because there's nothing restricting their authority now.

Rep. Thoreson: I think last session, we repealed the Ten Commandments law, which did allow schools to display the Ten Commandments in the classroom, now if this person from Minot continues to display it, does he have any authority if that was in effect when he was doing it, or does he have to take it down because it was repealed and now there's no reference, and basically this bill would replace what reference there was to the law that we repealed in '99?

Bard: There's no state law that prohibits the posting of it, the limitation would be found in the federal constitution and the ND constitution, and of the course the state law is subservient to the federal constitution. Basically, you can post it if it doesn't violate the constitution.

Chairman Kelsch: Could the school district be challenged by an individual or group who doesn't believe in the Ten Commandments, saying its discriminatory because they're displaying one set of religious beliefs and not representative of the people in the state?

Bard: I think the school district could be challenged under that ground or another ground. The constitution prohibits the favoring of one religion, or any religion or religion at all, so it could be someone who feels that it discriminates against people who have no religion. Again, as introduced, the purpose of this bill is not to teach the Ten Commandments, it's to use it as a

historical setting of the basis of civil laws and criminal laws, it's to be in a setting with numerous other documents that also form the basis of those laws. It's not a mandate that the Ten Commandments and its principles be taught.

Rep. Nelson: Would you agree that for school districts that would contemplate posting the Ten Commandments in this fashion, the reassurance with the passage of this bill that that decision would have the backing of the attorney general's office, either through a brief or as a named litigant, would be the major portion of this legislation probably to get the local school boards off the dime as far as whether they want to or not?

Bard: I agree that this bill, I think it tells the schools what this legislative assembly believes, which is if you do it within these limitations, that that meets the first amendments requirements, so it may make the school districts feel more secure in that matter.

Rep. Hawken: There is nothing that prevents the school district from doing this under current law, with historical documents.

Bard: I have learned not to speculate what the US Supreme Court will decide. There is no specific case law saying that a bill such as this would be unconstitutional. The Supreme Court is more strict when it comes to schools, because it involves children, who they believe are more impressionable and don't have the ability to make their own decisions.

Rep. Mueller: Given what I understand: the school district chooses to post the Ten Commandments. The group protests that situation, and the courts then are given the option of say, 'put yours up there', and they don't want to put it up there, and they have that right, it would seem to me. Where then, does that put their protest?

