

19.0488.02000

FISCAL NOTE STATEMENT

Senate Bill or Resolution No. SB 2136

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness
Senior Fiscal Analyst

2019 SENATE EDUCATION COMMITTEE

SB 2136

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

SB 2136
1/15/2019
30811

- Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer for Lynn Wolf

Explanation or reason for introduction of bill/resolution:

A bill relating to relating to public and nonpublic high schools offering elective instruction on the Bible.

Minutes:

Attachments # 1-10

Chairman Schaible: Called the committee to order and opened the hearing on SB 2136.

Senator Oley Larsen, District 3: Introduction of SB 2136, stating the intention of the bill is to allow the history of the Bible to be taught as an elective in the public schools. Provided Attachment #1, concerning Kentucky Legislation on a similar bill. Provided Attachments #2-3, which are proposed amendments to SB 2136.

Senator Oban: Why the Bible and not the history of religion?

Senator Larsen: Great question! A couple things as I was thinking about this bill. Our country was established because of this Book. The people who settled our continent, they didn't come to start a new factory or business, they were escaping religious persecution. The Bible is a part of history and literature, that Book is what really brought them here. This country was founded on it. I just think that history could be studied. The intent of the bill is if the school board wants to have it, they could put it in as their curriculum. It's not to replace anything, it's not an either/or, it is an elective. They can choose to take this as an extra class.

Senator Elkin: So this would be a totally elective class and something the school board of a particular district could decide whether or not they want to offer this course?

Senator Larsen: That is correct. I'd like to give as much and more control to the school boards.

Senator Rust: I want to refer to page 1 of the bill, line 9 says "Shall make available". Then looking at page 2, line 12 "One unit etc...". Would you explain how that is an option for a school board when it says "Shall make available"?

Senator Larsen: That is a great reason why this piece of legislation comes before the committee. When I first introduced the bill, it has already been massaged by myself personally. The intent of what I'm trying to put forward doesn't seem to be hitting. This is another issue that some school boards or entities think it is forced. It is not. The intent of the bill is to have it as an elective. If that wording needs to be changed, then that can easily be amended. This is a perfect example of why this process works so well, instead of the initiated measure. This process is the best for North Dakota.

Senator Rust: As a former Superintendent, when I read this part of the law with "Shall make available", means that in our curriculum there is a course by that name. This does say "Shall: which to me means, it would have to be part of that curriculum.

Senator Larsen: That might be an interpretation, but if you look through it on page 2, line 21 where it says, "Make available", it can be listed as a choice. Or if the school board says they don't want to offer it, it's an elective, if there aren't students to take the class then they won't offer it. If there is interest, they can elect to offer that class. Now if it was mandated, that would be different.

Representative Aaron McWilliams, District 20: Testified in support of SB 2136 and provided Attachment #4.

(26:07) Dr. Aimee Copas, Executive Director of the North Dakota Council of Educational Leaders: Testified against SB 2136 and provided Attachment #5.

(33:49) Senator Davison: It was the intent of Senator Larsen to have it be an elective. I'm not sure he has it placed in here right. With respect, if schools wanted to teach a class on the history of the Bible, wouldn't they be able to do the same thing in an elective course just like any other elective that has to go through the MISO process. You ask which book you would use; you'd set up standards just like for another class. Educators would determine, just as in Math or English, about what book they would use to teach to those standards. Outside of the criticism that he has it in a place where it is required, is there any reason why a school couldn't offer an elective class on a history of religion class right now?

Dr. Copas: You're absolutely right, they certainly may and they do. There are a number of high schools that offer an ancient religions course as an elective. A school board may choose any type of course that they wish to offer as an elective. They would absolutely have the opportunity to do that. Understanding that they must teach it in an academic nature, not in a devotional nature, a historical based course based on standards. In fact, I believe right across the river, one of the electives that occurs every 2nd or 3rd semester is a world religions course.

(35:57) Amy De Kok, in-house Legal Counsel for the North Dakota School Boards Association (NDSBA): Testified against SB 2136 and provided Attachment #6.

Wanted to respond to some previous questions on elective versus mandated issue. In order to be approved as a public high school, you would have to offer the Old Testament, New Testament, or a combination of the two. It is a mandate under the current bill. You would have to also allow it to be replaced in the high school graduation requirements. As drafted it would be unconstitutional.

(40:43) Senator Davison: If our center of distance education had a class that met the requirement that they are bringing forth, and schools included in their program of studies, so that would meet that requirement of “shall”?

Amy De Kok: I believe so.

Senator Davison: You wouldn't need to hire any teacher, there are other ways to deliver classes then having a teacher in every school. This is about access for those that want to take it.

Amy De Kok: Yes, that would be correct.

(42:12) John Ward, Attorney & ACLU Lobbyist, Bismarck, ND: Testified in opposition to SB 2136 and provided Attachment #7.

Senator Davison: Has the ACLU had a chance to review HB 128 of the Kentucky Legislature brought forward by Senator Oley Larsen, and if so do you have some thoughts on it?

John Ward: I'm not sure if Senator Larsen is talking about a new bill currently being offered in the Kentucky legislature. I know that in 2016, the ACLU of Kentucky opposed a similar bill that had eventually passed.

Senator Davison: Well it appears this bill has passed, and it appears at the bottom of the first page that they had to replace descriptions of the courses similar to what you just said. I was just curious about what their purpose was and where they went with it.

John Ward: I do not, but I have resources I would be happy to email those to you.

(47:08) Carel Two-Eagle: Testified in opposition to SB 2136 and provided Attachment #8.

(50:39) Elizabeth Loos, North Dakota Human Rights Coalition: Testified against SB 2136 and provided Attachment #9.

Karen Dunlap, Bismarck, ND: Testified against SB 2136. Never had a religious class growing up in Missouri, doesn't think ND should require one either. Public schools are chronically defunded. Despite the fact the sponsor said it wouldn't be required, the way it is written it is a requirement and would create a burden for all school districts of ND. President of the Horizon Middle School Parent Advisory Committee, not here on their behalf, but involved in school district activities. I would rather put a requirement on every school district of the state to have a welding program, then to put a requirement on them to develop a Bible study course. My daughter is 13 years old, she desires to be a welding as a career. I would be devastated if the school she goes to wasn't able to offer that to her. Fortunately, we do have that opportunity. Also wanted to reference the person who spoke about God being in the Pledge of Allegiance; I hope everybody in this room knows those words were not in the pledge when it was originally written, they were added in 1954 during the red scar. I don't think we need to rest our choices on Bible studies in 2019 on the words “under God” being added in 1954. I urge a “Do Not Pass”. It is the wrong choice for our public schools.

(55:22) John Lee, retired Pastor of Lutheran Brethren Church & substitute teacher with BPS: Testified in favor of SB 2136 and provided Attachment #10.

Chairman Schaible: Called for other testimony. Seeing none, closed the hearing on SB 2136.

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

SB 2136
1/22/2019
31214

- Subcommittee
 Conference Committee

Committee Clerk Signature Lynn Wolf

Explanation or reason for introduction of bill/resolution:

A bill relating to public and nonpublic high schools offering elective instruction on the Bible.

Minutes:

Chairman Schaible: Committee come to order. We are going to look at SB 2136.

Senator Davison: Motion to Do Not Pass on SB 2136.

Senator Oban: **Second**

Chairman Schaible: Motion and a second. Discussion.

Discussion of the bill.

Chairman Schaible: We have a motion and second.

Yeas: 7; Nays: 0

Senator Davison will carry.

Date: 1-22-19
 Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB2136**

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 Sen. Davison Seconded By Sen. Oban

Senators	Yes	No	Senators	Yes	No
Chairman Schaible:	✓		Senator Marcellais:	✓	
Vice-Chairman Fors:	✓		Senator Oban:	✓	
Senator Davison	✓				
Senator Elkin:	✓				
Senator Rust:	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Davison

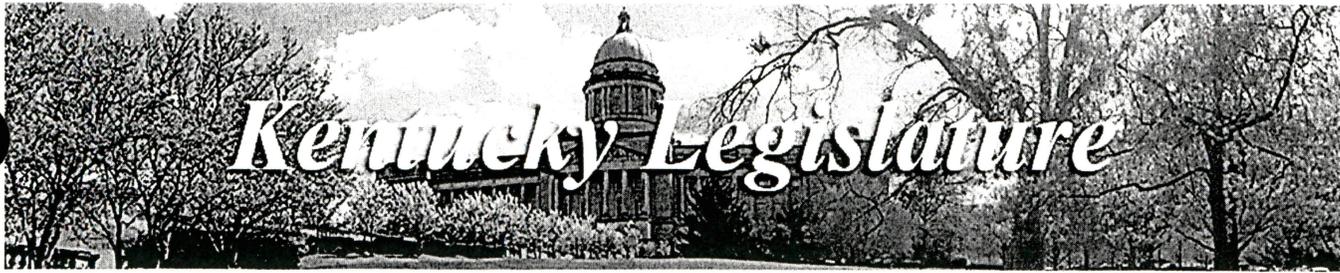
If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2136: Education Committee (Sen. Schaible, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2136 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

SB 2136



HB128

17RS

WWW Version

The hyperlink to a bill draft that precedes a summary contains the most recent version (Introduced/GA/Enacted) of the bill. If the session has ended, the hyperlink contains the latest version of the bill at the time of sine die adjournment. Note that the summary pertains to the bill as introduced, which is often different from the most recent version.

HB 128 (BR 800) - DJ Johnson, D. Bentley, J. Blanton, L. Brown, C. Fugate, D. Hale, M. Hart, R. Heath, D. Johnson, T. Moore, C. Morgan, S. Santoro

AN ACT relating to Bible literacy courses in the public schools.

Create a new section of KRS Chapter 156 to require the Kentucky Board of Education to promulgate administrative regulations to establish an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible, the New Testament, or a combination of the Hebrew Scriptures and the New Testament of the Bible; require that the course provide to students knowledge of biblical content, characters, poetry, and narratives that are prerequisites to understanding contemporary society and culture, including literature, art, music, mores, oratory, and public policy; permit students to use various translations of the Bible for the course; amend KRS 158.197 to permit a school council to offer an elective social studies course on the Hebrew Scriptures, Old Testament of the Bible, the New Testament, or a combination of the Hebrew Scriptures and the New Testament of the Bible.

AMENDMENTS

HB 128 (As Introduced)

HFA1(R. Meeks) - Replace courses on the Hebrew Scriptures, Old Testament of the Bible, or New Testament of the Bible with courses on the various religious texts of the many religions practiced in the Commonwealth.

HFA2(R. Meeks) - Make title amendment.

Jan 04, 2017 - introduced in House

Feb 07, 2017 - to Education (H)
Feb 17, 2017 - posted in committee
Feb 21, 2017 - reported favorably, 1st reading, to Calendar; floor amendment (1) and (2) filed
Feb 22, 2017 - 2nd reading, to Rules; posted for passage in the Regular Orders of the Day for Thursday, February 23, 2017
Feb 23, 2017 - 3rd reading; floor amendment (1) defeated; 3rd reading, passed 80-14
Feb 24, 2017 - received in Senate
Feb 27, 2017 - to Education (S)
Mar 08, 2017 - taken from Education (S); 1st reading; returned to Education (S)
Mar 14, 2017 - reported favorably, 2nd reading, to Rules
Mar 29, 2017 - posted for passage in the Regular Orders of the Day for Wednesday, March 29, 2017; 3rd reading, passed 34-4
Mar 30, 2017 - received in House; enrolled, signed by Speaker of the House; enrolled, signed by President of the Senate; delivered to Governor
Apr 11, 2017 - signed by Governor (Acts, ch. 187)

Vote History

[Legislature Home Page](#) | [Legislation & Legislative Record](#)

19.0488.02001
Title.

Prepared by the Legislative Council staff for
Senator O. Larsen

January 10, 2019

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Att #2
p1 of 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2136

Page 4, line 2, replace the first "studies" with "history"

Renumber accordingly

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Att. #3
R1051

19.0488.02002
Title.

Prepared by the Legislative Council staff for
Senator O. Larsen

January 10, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2136

Page 4, line 2, replace "Bible studies" with "ancient history"

Renumber accordingly

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Rep. Aaron McWilliams

District 20

SB2136

I pledge allegiance to the flag of the United States of America, one nation under God.....why?
Why an entire nation under a single God? Why not a nation under many gods?

One of the most famous quotes in American history was written in 1776. It reads:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."

Most people know the first part but many don't read the next sentence that says "to secure these rights". The governing philosophy and beliefs of the founding fathers told them that our rights came from a higher authority and could not be granted or taken away by a government. At the end of the declaration of independence it reads:

"And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor."

Who were the men who fought for our freedoms and declared our independence? Why, when at a time they could have taken power for themselves they chose to acknowledge that power from their Creator. Why? They could have Kings, but instead they chose to rely on the protection of Divine Providence.

Our founding fathers acted upon their own experiences and philosophy. In 1802 Thomas Jefferson wrote to the Danberry Baptist Association of Connecticut "that religion is a matter which lies solely between Man & his God" later in this letter he wrote "thus building a wall of separation between Church & State". I'll spare the committee and those present the rest of the history lesson, but isn't that the point. The point that the fundamental fabric of our society is rooted in something bigger than ourselves. I believe that it is our duty to explore the influences and not be afraid as to what resources we use in pursuit of that truth.

There have been many court cases relating to the establishment of religion in public school.

370 U.S. 421 (1962) ENGEL ET AL. v. VITALE ET AL. No. 468. Supreme Court of United States

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374 U.S. 203 (1963) SCHOOL DISTRICT OF ABINGTON TOWNSHIP,
PENNSYLVANIA, ET AL.

v. SCHEMPP ET AL. Supreme Court of United States.

449 U.S. 39 (1980) STONE ET AL. v. GRAHAM, SUPERINTENDENT OF PUBLIC
INSTRUCTION OF KENTUCKY.

In all of these cases schools encouraged students to recite in unison the Lord's Prayer or held daily bible readings for the purposes of reflection. And in all of these cases the schools lost, and the courts found that it amounted to school sponsored religion.

So, can you teach the Bible at all? Yes: In 1963, the U.S. Supreme Court heard the case of Abington School District vs. Schemp. At the time, Pennsylvania had a law requiring Bible reading at the beginning of each day. A man named Edward Schempp challenged the law and the Court agreed with him. The court decided in an 8-1 decision that this type of bible reading was unconstitutional. To clarify that it wasn't ruling out all Bible reading, the Court went on to write:

"...the State may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion, thus 'preferring those who believe in no religion over those who do believe.'"

The court continued.

"[I]t might well be said that one's education is not complete without a study of comparative religion or history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities."

Let me read it again....

This is what we are talking about. We are not advocating for Sunday school in public school we're simply advocating for school.

What is the Bible? Is the Bible made up of 24 books like the Jewish/Hebrew Bible, or is it 66, or 72 as in the Catholic Bible. The Bible is a collection of books, it's not just a single document. And the Bible does not establish a Church, people establish a church.

My intention in co-sponsoring this legislation is to give greater access to students in learning about the historical and sociological influences that the Bible had and continues to have on the world around us.

Let me be clear, it is not my intention to mandate the teaching of a religion class in school. Nor is it my intention to mandate a class be taught. Weather the course description says Bible Class, Ancient Bible History, or Biblical Philosophy and the Founding Fathers. Personally, I'm not

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wrapped up in which course description is adopted. I'd like to see that addressed at a local level if a local school district chose offer such a class. I'm interested in the larger principle of giving students access to studies relating directly to the Bible.

Already existing in law, Page2 4C, is the ability for students, who freely choose an elective course, to take that course in a:

*"classroom or individual instruction and
distance learning options, including interactive video, computer instruction,
correspondence courses, and postsecondary enrollment"*

If this bill passes school districts will have 7 different options for providing the class. Many of you know education law much better than I so I trust I will be corrected if I say something incorrect. The way I understand this is that we could have a single teacher for the entire state of North Dakota offer a distance learning course. I bet out of all of the great teachers in our great state we could find one.

Over the last week I've given eight interviews regarding this bill and a popular question is: why? Why does it matter if students study a class specific to the Bible? It matters because in an increasingly secularized world where we publicly debate such things as gay marriage, abortion, health care, LGBTQ rights and more recently a boarder wall some of us have something to say. And the things we say are often rooted in our faith or world view. I can only imagine that if we say and act on the things that are rooted in our religious beliefs, people 200, 500, 1000 years ago probably did as well.

Many opponents or sceptics opine that if you teach from the Bible you must also teach from the Koran or other religious text as a comparative course. While these courses are important and certainly informative they do not provide the time in a single course to investigate critical areas of history where the influence of other religious text were minimal at best.

From 1792-1750BC Hammurabi was King of Babylon, and he proposed "an eye for an eye and a tooth for a tooth". Prior to this if you knocked out somebodies tooth they might kill you. This idea is also mentioned in the Old Testament. Many schoolers will point to this philosophy as a beginning of the idea of retribution which was later explained in the Old Testament and now is a key aspect of our prison system. The idea of forgiveness was established in the New Testament and now serves as a model for mental health and legal practice around the world.

Yes, I support a class on the Koran as it relates to History and society. I'd be interested in taking a class that studied the differences between the Koran and the Bible or perhaps how the Koran helped shape the Middle East.

If we as a legislative body say that we cannot teach a class on the Bible in any shape or form we are in effect saying that we will not teach from not one but more than 60 books that make up the bible. And if we make that statement, we shall give merit to the opponents worst fears. The

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fear that if a teacher so chooses to teach out of any one of the those 60+ books then the words contained within must be so powerful and life altering that even the utterance of a single passage within any context could influence a person in a religious manner.

So I ask the opposition, what are you so afraid of? Are you afraid that if a student selected an elective of Ancient History Bible class that he or she might hear or read a collection of words written thousands of years ago and decide to suddenly turn their back on a deep tradition of atheism and suddenly become.....what? More educated.

Are we afraid that it may be too difficult to teach a class in such a way that the state doesn't get sued, or a student complain. I believe that we need to challenge ourselves and be fearless, to take on the task of granting greater access and destigmatizing the B word in our class rooms.



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SB2136 – Testimony in Opposition – Bible Class in Public Schools

1/15/2019

Good morning Chairman Schaible and members of the Senate Education Committee. My name is Dr. Aimee Copas – I serve as the Executive Director of the North Dakota Council of Educational Leaders representing our school leaders throughout North Dakota. I stand before you as well as a former teacher, principal, superintendent, as well as a current college graduate teacher here in ND. I'm hoping my testimony today can provide for you some good research/history/ and basic knowledge to help you make a good decision when it comes time to vote on this bill about a requirement to offer instruction on the Bible in our public schools. After this research, I believe you may see that this bill is not in the best interest of North Dakota PUBLIC schools for the following rules:

1. Unconstitutional based on the US constitution
2. Unfunded mandate

The Legal Question: Can you teach about the Bible in public – schools? The short answer yes but ...there is more to it than that – it is very easy for this question to slip deeply into the valley of unconstitutional. Please allow me to provide you with some history...starting with the 1963 Supreme Court decision *Abington vs. Shempp*, the Supreme Court has consistently held that you can teach about the Bible in public schools *as long* as it's presented objectively as part of a *secular program* of Education. So - notice the key words here you can teach **about** the Bible as a part of a *secular program* - that's to say teach about it as mythology, as literature; and it must be taught objectively - meaning that the teacher shouldn't disparage religion, they shouldn't encourage religion, and they should not promote a specific religious worldview.

So, where's the confusion coming from? Well I think it's partly because of the failure to distinguish between an academic Bible class and what I'm going to call a devotional Bible class. A devotional or confessional Bible class makes certain theological assumptions about the Bible, and its claims... such as God really exists, the Bible is the inspired Word of God, and it's authoritative for our lives. **Here in the United States, public schools are government institutions and the government should remain neutral when it comes to religion.** So,



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whether the Bible class is mandatory or an elective it can't take these theological assumptions for granted - which would accept one religious perspective as universally true over others.

Keep in mind this was the US Supreme Court decision but there's a bunch of lower court decisions that have delved into the constitutionality of Bible classes and public schools it gets kind of complicated. Like who should teach the courses? A case back in 1979 determined that teachers should be chosen based on their qualifications not because of some profession of faith or their religious affiliation. To this point, it is important to note that these qualifications should require some sort of college education about the academic study of the Bible. The teachers should know a thing or two about ancient Near Eastern culture if they're going to teach the Hebrew Bible... And they should know a thing or two about greco-roman culture of the 1st century AD if they're going to teach the New Testament.

Let's make this more interesting. Which Bible are you going to use? The Protestant Bible with its 66 books? Are you going to include the deuterocanonical books with first Maccabees and Tobit, or are you going to use the Hebrew Bible which doesn't even have the New Testament? Maybe it is the King James version? Oh wait - I forgot to mention what about the Jewish Torah? The Muslim Quran? The Buddhist Tipitaka? The Hindu Veda? The Book of Mormon? Is it about the viewpoint of an eye for an eye, or a viewpoint of the teaching of forgiveness in the first testament? The choices that a teacher makes here might signal to their students which Bible is normative *which one is the right Bible* or the Bible that we should take for granted. It is on the teacher to explain that there are different Bibles - that there are different interpretations of the Bible - and that there are different translations of the Bible.

It's important to say here that I've been talking about US public school teachers and what is allowable to *teach* to this point.

Students, on the other hand have A LOT more leeway because their right to exercise of their religion is protected by the First Amendment of the US Constitution...so despite any rumors you might have heard, students at public schools can pray in school, they can read their sacred scriptures, in this case the Bible, and students are even allowed to hand out religious literature



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and host religious groups on school grounds as long as other groups are allowed the same access. This is because of the Equal Access Act passed in 1984.

I'm quoting from a pamphlet jointly published by the Religious Freedom Center in the Bible literacy project, "*Student religious groups at public secondary schools have the same right of access to school facilities as is enjoyed by other comparable student groups under the Equal Access Act. A school receiving federal funds that allows one or more student non-curriculum-related clubs to meet in its premises during non-instructional time may not refuse access to student religious groups.*"

So, for example if a school hosts a Chess Club on campus and those students are allowed to hand out flyers to invite people to that club the school cannot legally single out and regulate religious groups. All extracurricular student-led groups should be granted equal access, and this includes prayer groups or Bible study groups.

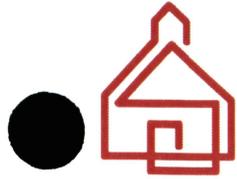
I'll add my own legal disclaimer I am NOT a lawyer so take my legal advice with a grain of salt, but I've been an educator at every level up to the doctoral level including teaching Wednesday night catechism, to HS literature and history, to Education Law at the graduate level, and though I see the value in historically teaching about a text as important as the Bible, one could stumble into a lawsuit if you don't teach it in a constitutional way, and this is a real concern. I'm not going to sugarcoat this issue. One expert in Bible literacy Dr. Mark Chauncey a professor at Southern Methodist University has found that tons of public schools teach unconstitutional Bible classes. In one study he analyzed over 60 Bible courses taught in Texas public schools between 2011 and 2012 and found that most of them crossed the constitutional line by promoting certain religious perspectives over others and religion over non-religion. And though he determined a lot of these courses probably just stemmed from well-intentioned teachers, a lot of them seemed to come from overt religious commitments. Several of these schools have found themselves entrenched in lawsuits.

Members of the committee, to REQUIRE that a bible course is offered is also an unfunded mandate. A teacher in every ND public school would need to be employed to teach at least 1/7 of a contract to offer



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an additional course to public school students...this is a statewide real cost of between 1-2 million dollars.
Because of these reasons offered, we hope this makes you comfortable in recommending a DO NOT
PASS to SB2136.



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TESTIMONY ON SB 2136
SENATE EDUCATION COMMITTEE
January 15, 2019
By Amy L. De Kok, Legal Counsel
North Dakota School Boards Association

Chairman Schaible and Members of the Committee:

My name is Amy De Kok and I am in-house Legal Counsel for the North Dakota School Boards Association. NDSBA represents the governing bodies of all operating school districts within the State of North Dakota. I appear before you today to testify in opposition to SB 2136. The First Amendment of the U.S. Constitution states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." The First Amendment is applicable to the states through the Fourteenth Amendment. Article I of the North Dakota Constitution echoes the rights of citizens to have religious freedom free from government control.

SB 2136 seeks to amend section 15.1-21-02 of the North Dakota Century Code to require each public high school in the state to make available to each student one-half unit of instruction on the Old Testament of the Bible, the New Testament of the Bible, or a combination of the two. SB 2136 further seeks to amend section 15.1-21-02.2, which sets forth high school graduation requirements, to allow one-half unit of the required three units of social studies to be replaced by "Bible studies."

NDSBA opposes SB 2136 because it would likely cause public schools in the State of North Dakota to violate the Establishment Clause of the First Amendment of the U.S. Constitution, as well as the North Dakota Constitution. The U.S. Supreme Court has long held that the Establishment Clause prohibits the government from designating an official religion, supporting a specific denomination or religion, or

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promoting religious activity. The Supreme Court has developed a constitutional test for the Establishment Clause that is commonly known as the *Lemon* test. The three elements of the *Lemon* test are: (1) the statute must have a secular legislative purpose; (2) the statute's principal or primary effect must be one that neither advances nor inhibits religion; and (3) the statute must not foster an excessive government entanglement with religion. If the government action fails just one of the three prongs of the *Lemon* test, then the action will be considered in violation of the Establishment Clause.

NDSBA believes SB 2136 could fail all three prongs of the *Lemon* test, and if challenged, would likely be declared in violation of the First Amendment. But, more importantly, if passed, SB 2136 would place public schools at high risk of litigation, which would result in significant expense associated with defending against such claims.

Thank you for your time and I would be happy to stand for any questions.

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Testimony in Opposition of SB 2136

The ACLU of North Dakota opposes Senate Bill 2136.

Although acceptable ways to teach the Bible in schools exist (for instance a comparative literature class or a class about the Bible's relationship to literature), it is exceedingly difficult to do so in a constitutionally permissible manner.

The First Amendment states that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." This sentence consists of two different clauses with separate, but often overlapping, legal implications: the Establishment Clause and the Free Exercise Clause.

The Establishment Clause forbids the government from acting in a way that prefers one religion over another. The Free Exercise Clause, on the other hand, stands for the proposition that all individuals have a right to hold any religious belief.

The Supreme Court has determined that it is not unconstitutional to use the Bible as part of a curriculum in public schools. However, the court clarified that the any study of the Bible or religion more generally must be "presented objectively as part of a secular program of education." Therefore, while it is not unconstitutional to teach the Bible in a public school from a scholarly perspective, the course may not suggest in any way that a religious message is being promoted by the school. Senate Bill 2136 provides one half unit of the Old Testament and one half unit of the New Testament and therefore is unlikely to withstand constitutional requirements of being neutral and nondenominational.

In 2007, the ACLU sued over a Texas school board's decision to teach a Bible course with the curriculum created by the National Council on Bible Curriculum in Public Schools ["NCBCPS"], a private organization that had been criticized for creating courses with religious biases. The course required students to give "true" or "false" answers that should be matters of religious faith and to promote religious life lessons by having students memorize biblical passages and then discuss how the verses affected their lives. The school district chose to settle the case and to stop teaching the current class. Additionally, if the school board chose to offer another Bible course in the future, it would not be allowed to use the NCBCPS curriculum and would have to follow strict standards to make sure the subject was being taught objectively.

Senate Bill 2136 would be incredibly difficult to implement in a way that does not violate the First Amendment. Merely attempting to implement a Bible curriculum under SB 2136 is very likely to expose school districts to litigation from parents or the community.

Hanh Chairman Schaible and Members of the Committee!

For the record, my name is Carel Two-Eagle. I speak in opposition to SB 2136 because not only does it have considerable potential to violate the Doctrine of Separation of Church & State, it also could easily promote establishment of a religion of state. Official religions are prohibited by the US Constitution. And, it would violate the First Amendment Rights of anyone who does not follow the Jesus Road. More than that, it endangers all non-Christian Ways because of bias, which already exists.

I am a Pipe Keeper. We say of such as me, "Ch'annunpa yuha wamani ye." - "I Walk with a Ch'annunpa (Pipe)." "Ch'annunpa wakhan ye. K'sto." "The Pipe is holy. This is fact." It is not any kind of "personal perspective" - this is the result of thousands of years of living with Ch'annunpa by my People. It is our Traditional Lakota spiritual Way's center. I am a spiritual guide of The People & so, an authority on these things. My Ch'annunpa, like all Ch'annunpa, is focused by a prayer. That prayer is a prayer to heal the Sacred Hoop. Everything I do is in keeping with that. Being here, speaking to you today, is because of that.

There is nothing in SB 2136 that helps heal the Sacred Hoop. This bill promotes division & one Way over others.

I'm sure none of you have ever had someone bounce into your face, point at you, & shout, "YOU! YOU! WORSHIP! **DEMONS!** YOU EAT BABIES!" But I have.

Since I am not much given to panic, my response has been, "Do eggs count?" Still, you have never seen a bank Vice-President hurdle his desk to get to the crazy person.. as I have. It's pretty impressive.

This has happened to me several times in North Dakota. By people who claim to be Christian. Some have even driven into my Church's yard, where I was putting in Halloween displays, to do it. Bias against non-Christian Ways is endemic. Bias is wrong & stupid, & a mark of major ignorance, but it still is a fact of life.

I have had some incidents here in the Legislative Sessions over this matter of religion. There is a Senator, still in office, who was a freshman here in 1997, when I was a freshman here. He testified, "No other religion than Christianity has any reason to be allowed to continue to exist - especially Native American Traditionalism." He has never recanted it, & has made something of a point of attacking us who are Traditional - me in particular. I don't suffer bullies at all, & he has lost every time we have locked horns, but he refuses to learn.. He has a right to be wrong, but in exercising that right, he does not become right.

I wear this hat because it has Ch'annunpa on it, and I have gotten flack several times because "it isn't Christian". No - It is not! And I am not - I will never be! NOR should I be! I did not make a suggestion or a hobby when I made obaghi.. Obaghi means "sacred commitment". I gave more than 800 pieces of my flesh for my obaghi, to show the Spirits I was absolutely serious. I have, of course, never backed down or apologized for any of this, nor will I ever. In the Lakota Way, the only thing we have that cannot be taken from us because it will kill us is our body; so when we give flesh offerings, we give the most important thing we can.

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TESTIMONY OF CAREL TWO-EAGLE ON SB 2136 Pg. 2

We Indians are the only group in the world whose spiritual Way was made illegal by federal law for nearly 100 years. And we still do not have all of our First Amendment Rights. None of you has to prove your “right” to have all the things necessary for practicing your religion – but we do. Eagle feathers, for example. Tobacco, which Creator made specifically to carry all thoughts, wishes & emotions to the Spirits “as Prayers”, is holy. But your people offended It & made a product of It as if our views were irrelevant. Even, groundless. While you claim to walk the Jesus Road. The Rabbi said “carry the word”. He didn’t say, “Stuff it down people’s throats.” Hundreds of Sacred Bundles were destroyed by missionaries. The Boarding Schools focused on depriving us of access to our Traditional spiritual Ways. The damage they did is indescribable.

Indigenous People died to keep our Ways alive. We suffered imprisonment & incarceration in mental institutions. None of you have done that. I was put in the SD mental facility in 1994 “for observation”. I was told, “If you just drop this Traditionalism stuff, you can go. Otherwise, we mean to put you in here for life.” I insisted on a full Board hearing, & got it. During that hearing, the prosecutor snarled, “She prays to god & thinks he answers!” I replied, “Of course I do. Do you think there’s some kind of spiritual bulletin board ‘out there’ & we put Post-It notes on it & hope someone comes by & reads them? What do you think a prayer & the answer to it are?!”

Not to mention, the word “god”, whether capitalized or not, is not unique to Christianity. It’s a catch-all word. We Lakota believed in a tripartite godhead long before Christianity came to be. It is equally female, male, & intelligent creative spirit.

I ask you to vote Do NOT Pass on this divisive bill, which has nothing in it that will help heal the Sacred Hoop. If you have any questions, I will answer them..

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Testimony to the Senate Education Committee on SB 2136
15 January 2019

Mr. Chairman and members of the committee:

My name is Elizabeth Loos and I am here representing the North Dakota Human Rights Coalition. We believe that religious freedom is a basic human right and we affirm the diversity of belief in our state. Though the people of our state are primarily Christian, we have people that practice many other traditions, and their beliefs must be respected, particularly in schools.

Furthermore, I would direct your attention to Section 15.1-19-04 of North Dakota Century Code, which allows a student to be excused for up to one hour each week in order to obtain religious instruction.

15.1-19-04. Religious instruction - Excuse of student.

At the request of a student's parent or guardian, the student's school principal shall permit a student to be excused for up to one hour each week in order to obtain religious instruction.

Mr. Chairman, Senators, I recommend a Do Not Pass on SB 2136. I would stand for any questions.

Elizabeth Loos
Legislative Coordinator, North Dakota Human Rights Coalition

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Senate Bill # 2136

Bible as Curriculum Elective – PROPOSAL, January 15, 2019

1. **I speak in favor of the bill**, with one reservation, to be explained after I give my testimony.
2. As a child I was raised in a family of four boys. **My Dad read the Bible aloud to us** after each evening meal.
3. **The Bible**, (Hebrew and Greek Scriptures) **is basically a historical narrative**: Creation, Fall, Promise of Deliverance, and finally Fulfillment of that Promise in Jesus of Nazareth. The promise and fulfillment is often called the Good News, the *Evangel*. *Though containing many literary styles, personalities, and situations, the Bible nevertheless is coherent about these great events: God created the cosmos; Man rebelled and fell from grace; God promised a Deliverer, fulfilled his promise, and calls us to be reconciled through Christ's atonement.*
4. **All of us need mentors**. After my parents, **I had two special mentors as a young man**. **Don Fladland** from Grand Forks was one of them. **Don** excelled in sending and encouraging young people on gospel outreaches. He recruited me to go to Japan for six weeks with a music team, and later this same team recruited the young lady who would become my wife. My other mentor, **Buzz Kahn**, was a Jewish man from Los Angeles, was raised with a secular outlook, and and came to know Christ when he and his Danish Lutheran wife brought their child for baptism. Buzz directed the Bible Camping ministry I spent four summers with. He says he prays for us daily.
5. **Many people however, miss the historical nature of the Bible**. (This confusion is partly the fault of us Christians. We often fail to be clear, and degenerate into lists of rules, arguments, and cliques, all of which the Bible warns against. Additionally, there is pressure to avoid the **history**, because that brings up **polemics** - - - - -)
6. **Now we are parenting children in a strange new environment**. Avoiding **offense** is now a cardinal tenet, yet kids observe a world of adults that is offensive to them. Some say they are in the first generation that thinks it knows more than the adults raising them. The family unit is so basic, yet