

WITNESS INFORMATION FORM

Please complete the Witness Information Form before testifying:

Date: May 28, 2019

Name: Ryan D. Jayne

Are you representing: Yourself _____ Organization

Organization (If Applicable): Freedom From Religion Foundation

Position/Title: Staff Attorney

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City: Madison State: WI Zip: 53701

Best Contact Telephone: (608)256-8900 Email: ryan@ffrf.org

Do you wish to be added to the committee notice email distribution list? Yes _____ No

Business before the committee

Legislation (Bill/Resolution Number): H.B. 164

Specific Issue: Ohio Student Religious Liberties Act of 2019

Are you testifying as a: Proponent _____ Opponent Interested Party _____

Will you have a written statement, visual aids, or other material to distribute? Yes No _____

(If yes, please send an electronic version of the documents, if possible, to the Chair's office prior to committee. You may also submit hard copies to the Chair's staff prior to committee.)

How much time will your testimony require? N/A

Please provide a brief statement on your position:

FFRF opposes H.B. 164 because it accomplishes nothing other than emboldening public school teachers to violate their students' right to a secular public school system.

Please be advised that this form and any materials (written or otherwise) submitted or presented to this committee are records that may be requested by the public and may be published online.

FREEDOM FROM RELIGION *foundation*

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May 28, 2019

The Honorable Louis W. Blessing III
Chair
Ohio House of Representatives
Primary and Secondary Education Comm.

Re: Testimony in opposition to H.B. 164

Dear Chairman Blessing and Committee Members:

I am writing on behalf of the Freedom From Religion Foundation and our Ohio membership in opposition to H.B. 164. FFRF is a national nonprofit organization with 31,000 members across the country, including more than 800 in Ohio and a chapter in Cleveland, the Northern Ohio Freethought Society. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

House Bill 164, the "Ohio Student Religious Liberties Act of 2019," is unnecessary at best and will promote unconstitutional conduct by public schools at worst. We strongly urge the Committee to vote "no" on H.B. 164.

Proponents wrongly claim H.B. 164 would protect student religious expression by prohibiting public schools from censoring student religious speech or punishing students for the religious content of their speech. These protections are already firmly established in both state and federal law. The Establishment Clause and Free Exercise Clause of the First Amendment to the U.S. Constitution, the Equal Access Act (20 U.S.C. § 4071 *et seq.*), and the Ohio Constitution's religious liberty protections (OHIO CONST. Art. I § 6) provide robust religious liberty protections for public school students.

If H.B. 164 were limited to these protections for student religious speech, it would not change the law in any way. There is no reason to pass a purely redundant law. The very premise of the proposed bill is flawed: no one is advocating punishing students for engaging in nondisruptive prayer, discussing religion in homework assignments, or any of the other religious expressions singled out in the bill.

In truth, H.B. 164 is not only unnecessary, but harmful. The bill singles out several specific religious practices that frequently embolden public school employees to use their government position to advance their personal religion. This is unconstitutional and subjects the school district to legal liability. For instance, in

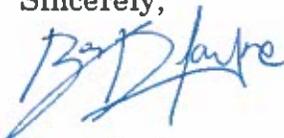
Santa Fe Indep. Sch. Dist. v. Doe the Supreme Court held that a school practice of allowing students to broadcast prayers over the school's loudspeaker prior to football games violated the Establishment Clause because "the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." 530 U.S. 290, 310 (2000) (quoting *Lee v. Weisman*, 505 U.S. 577, 589 (1992)).

Often, teachers and other school employees struggle with their dual requirements to allow student religious expression and to refrain from taking any action that shows school endorsement of a religious message. For example, teachers are prohibited from participating in all of the student religious activities mentioned in H.B. 164. At FFRF, we often receive complaints of teachers who participate in such events under the mistaken assumption that student religious liberty protections allow teachers to engage in on-the-clock religious practices with like-minded students. For instance, in *Kennedy v. Bremerton Sch. Dist.*, a public school teacher wrongly believed that it was permissible for him to make a show of praying on the football field while acting in his capacity as a coach. 869 F.3d 813 (9th Cir. 2017).

H.B. 164 encourages teachers to make mistakes like this by singling out "See You At The Pole," an annual Christian prayer event that is meant to be student-initiated with only student participants but, in practice, teachers often organize these events and join in the religious worship on school grounds during the school day. H.B. 164 promotes unconstitutional conduct like this, potentially subjecting Ohio school districts to liability and costly, avoidable lawsuits.

In fact, encouraging this sort of unconstitutional conduct is the only thing H.B. 164 would do. There is no secular purpose in emboldening teachers to use their government position to promote religion, which alienates the 38% of younger Americans who are nonreligious.¹ Please vote "no" on H.B. 164.

Sincerely,



Ryan D. Jayne
Staff Attorney

cc: Members of the House Primary and Secondary Education Committee

¹ Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at www.prri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.