



HB 164 Interested Party Testimony
Primary and Secondary Education Committee
Ohio House of Representatives | June 26, 2019
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Ohio Jewish Communities is the statewide government advocacy, public affairs, and community relations voice of Ohio's eight Jewish federations and their some 150 nonprofit agencies serving Ohioans of any faith, or none, every day, in areas as diverse as child care, K-12 education, college campus programming, job training, job placement, emergency food and shelter, services to those with disabilities or special needs, including Holocaust survivors, and senior care, skilled nursing, and hospice. We submit this testimony today, as "interested parties" on HB 164, the Ohio Student Religious Liberties Act of 2019, on their behalf as well.

Background and Statement of Interest

As a minority religious faith that has endured unspeakable persecution across continents and over the centuries, there is perhaps no community that has flourished more under the twin protections of the First Amendment¹ to the US Constitution than ours:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;"

The Free Exercise Clause has guaranteed our freedom to worship, and has kept government overreach from infringing on that ability. The converse, the prohibition of creating a state religion or a preference of religion over non-religion embodied in the Establishment Clause has likewise given our community and the denominations under it the ability to prosper even in a general society dominated both by other, much larger faiths and powerful secular movements.

Similarly, the Ohio Constitution provides for the rights of free exercise as well as "non-compel" and "no preference" clauses² similar to the Establishment Clause:

"All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted."

To those ends, our community, across the board, in all its diversity, is in full support. It is why some in our community would wholeheartedly support the goals of this legislation. Yet it is also why some fear the unintended consequences of such a bill becoming law.

¹ <https://www.archives.gov/founding-docs/bill-of-rights-transcript>

² <https://www.legislature.ohio.gov/laws/ohio-constitution/section?const=1.07>

We write today with suggested amendments that would help protect a minority student against even the silent, and possibly unintentional, coercion of their peers, teachers, or administrators. Our concerns extend beyond our own community and we write as well for those in any school community who find themselves a minority denomination or a minority faith.

Acknowledgement of the Problem

Likewise, we recognize there are at times issues for students in public schools – of every faith – seeking to enjoy their free exercise rights.

We share this story from New York City, where a Muslim student at a public school was being denied space to pray during the day, as required by her faith. A Jewish synagogue across the street more than willingly accommodated her³. But we are all too aware that it could have been the case that no one would have stepped forward to help, and that her rights to worship would have been compromised.

Suggested Amendments

We would therefore request that before the bill is voted on, several key changes be made. These would help guarantee the truest intent of the Founding Fathers as they crafted the Bill of Rights and are based, in part, on our discussions with our own constituencies, First Amendment experts in our communities, and on review of the guidelines established by the US Department of Education⁴.

We ask that the legislation clarify and specify that:

1. Students may read their Bibles or other scriptures and religious texts, say grace or blessings before and after meals, and pray before tests as they might other non-disruptive activities.
2. Students may take time during lunch or in between classes, during free time, etc. to pray, in a non-disruptive manner, as required or suggested by their faith.
3. Voluntary prayer or religious discussion must not include the right to a captive audience, or compelling other students to participate.
 - a. Teachers and administrators must ensure no student is in any way coerced to participate in any religious activity.
4. While local school authorities possess substantial discretion to impose rules of order and other pedagogically related restrictions on any student activities, they may not structure or administer rules to discriminate against religious activity or speech.
5. In informal settings, such as cafeterias and hallways, students may pray and discuss religious views with others, on an equal basis with rules and order as they apply to other student activities and speech.
6. Students may also speak with and attempt to persuade peers about religious topics on an equal basis with political topics.
 - a. School officials are required to intercede to stop student speech when it constitutes harassment aimed at a student or a group of students.
7. School officials may neither discourage nor encourage participation in religious events before or after school or during free time.

³ <https://www.nytimes.com/2008/12/07/nyregion/thecity/07musl.html>

⁴ <https://bjconline.org/department-of-education-guidelines-on-religious-expression-in-the-public-schools/>

8. Teachers, staff, and school administrators, when acting in an official capacity, are prohibited from soliciting or encouraging religious activity, and from participating in such activity with students.
 - a. Likewise, they are prohibited from discouraging such activity because of its religious content, and from soliciting or encouraging antireligious activity.
9. Schools may impose reasonable time, place, and manner restrictions on distribution of religious literature as they do on other non-school literature, but may not single out religious literature for special regulation.
10. Students who need or request to be excused from school for a religious holiday or observance should be given the opportunity to do so, and to make up classwork, homework, or exams in an appropriate, timely manner.

Next Steps

We recognize this legislation is set for a vote. It is our hope that if it is too late to make these changes now, that the sponsor and this committee would work to amend the bill in the Senate. We stand ready to work with the sponsors, and Members of the House and the Senate to strengthen this bill.

Conclusion

It is our hope that through these limited modifications, both sides will find a bill they can live with. And, ultimately, it is our hope that the words of President Washington, written to one of the first Jewish congregations in the United States⁵, will come to pass:

“For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support...May the Children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants; while everyone shall sit in safety under his own vine and fig tree, and there shall be none to make him afraid.” (emphasis added)

We are available to answer any questions you may have.

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⁵ <https://founders.archives.gov/documents/Washington/05-06-02-0135>