Opponent Testimony for Senate Bill 293

Ohio Senate Education Committee

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Douglas Berger - President

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Chair Brenner, Vice Chair O'Brien, Ranking Member Ingram and distinguished members of the Education Committee. My name is Douglas Berger, and I am founder and President of the Secular Humanists of Western Lake Erie based in Toledo. I am writing today, on behalf of my members and myself, to oppose Senate Bill 293 which would remove local district control over released time religious instruction accommodation.

We agree, in general, that parents have the ultimate right to direct the education of their children, but we object to the idea that the state, once again, should be involved in decisions that are personal and private like those involving religion. In fact, past court cases have shown that the government is limited in getting involved in religious matters of its citizens. We believe in the traditional practice of letting local school districts be run by the people in the districts through election of a district school board. We don't agree that this local control needs to be usurped by the state for hyper-partisan reasons disguised as religious concerns.

The current Ohio Revised Code 3313.6022 was adopted ten years ago to provide class credit for high school students for religious classes they attended and for districts to have a policy to allow **INDIVIDUAL** students to leave campus to attend religious classes. It was never meant to be used for the mass removal of children from a public school to attend a bible class in the middle of the school day. The current law is woefully inadequate when it comes to the safety of children involved in RTRI programs and Senate Bill 293 doesn't address these and other serious concerns of having children off campus in the middle of the school day outside of the control of parents and the public-school administration.

You will hear from parents and educators who oppose SB 293 over issues like vetting volunteers and RTRI teachers, the question of liability, and the lack of transparency from the private entity that is lobbying for SB 293. I would like to address some issues I and my members have with SB 293 and RTRI in general that are also serious issues not addressed in the proposed law.

There is a false idea from proponents of this bill and religious people in general that religion should be taught in the public schools as it once was before 1948 when the US Supreme Court decided in McCollum v. Board of Education that religion couldn't be taught in the public-schools because children in public-schools are there because of mandatory attendance laws and the school administration controlling those religious classes violated the 1st and 14th amendment rights not only of the children but the parents of those children.

The Co-sponsor of the similar House Bill 445, Representative Gary Click, in his introduction testimony said: *"This is consistent with language in Ohio's Constitution which can be traced back to the Northwest Ordinance....*

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'Religion and morality being necessary to good government, schools shall be established.'

The correlation between religious instruction, schools, and good government are embedded in our constitution. You will notice that HB 445 does not establish which religion but merely acknowledges the opportunity for religious instruction. This opportunity is open to all faiths. HB 445 strengthens Section 3313.6022(B) which is a reflection of this constitutional principle."

The actual text of the NW Ordinance reads: "*Art. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.* " Those words are also in Article 1 section 7 of the current Ohio Constitution.

Nowhere in the ordinance does it say religion should be taught in public schools. It is obvious, from historians and the historical record, that religious education was meant to be separate from a public-school education to conform to the constitutional principle that the government shouldn't be in the middle of the religious decisions of the people.

Other proponents have said that SB 293 would address a religious freedom conflict because some school districts have either rescinded their RTRI policies or refused to adopt one and this somehow violates the religious freedom of the parents who want to have their children attend religious classes.

I agree that parents have the right to have their children receive a religious education. Those parents can home school their children or send them to a religious based school. Now that Ohio has universal vouchers, it is easier than it has ever been for parents to exercise their right to choose a separate religious education for their children. Why should a small group of parents use the state to dictate what an entire school does. Accommodating RTRI in the middle of the school day will negatively affect the **WHOLE** school.

Were you aware that some districts have had RTRI programs for decades that predate current Ohio law? One group has been providing an RTRI program in my home county, Hancock, since the 1940s. I would argue that a formal RTRI policy is not even needed if a parent wants to pick up their child and take them to a religious class and return them to school afterward in light of the case Zorach v Clauson (1952). Logan-Hocking Local Schools has no formal RTRI policy yet has an operating chapter of Lifewise.

Current Ohio Law (3313.6022) doesn't even require the private entity operating the RTRI program be a church or even a religious entity.

ANY GROUP providing "*religious*" instruction would be allowed to take kids off campus as long as they followed the Ohio Revised code. This would include the Satanic Temple, Klu Klux Klan, and even a private business like say McDonald's. The Zorach decision was clear that the entity had to be a "*duly constituted religious body*". If SB 293 were adopted, it would force school districts to accommodate **ANY** private entity, and we assure you the chaos generated would totally hobble the public-school to a point of paralysis - no education would be accomplished for anyone.

Current Ohio law and previous court cases doesn't allow the government to decide what religion is valid when considering a proposed RTRI program so a school district would not be allowed to say yes or no based merely on the content or the sponsoring entity. The door would be open to any and all groups who followed the vague requirements in ORC 3313.6022 including groups like the Satanic Temple.

Taking time to legislate this personal area, the proposed law and current law doesn't address or protect the rights of parents who choose **NOT** to participate in an RTRI program. Many parents send their kids to public school specifically to avoid religion and the divisiveness that comes from it. Most students who don't attend an RTRI program are shunted to a study hall because districts don't want RTRI kids to miss work. The students who don't attend RTRI then aren't learning anything new and are losing instructional time because their parents

made a different choice. How is that fair and equitable and isn't this the state punishing the children for not attending the RTRI program?

The Zorach court left the decision if a district should adopt an RTRI policy or not up to the local school board. SB 293 would usurp that decision making without providing any of the needed guardrails to prevent abuse by the private entity. If the state is going to force schools to have a policy, if SB 293 is adopted, then why leave the actual text of the policy up to the school district?

Another reason I object to SB 293 is it doesn't address the abuse of current Ohio law I have observed since Lifewise started operating in Ohio.

Zorach v Clauson and the Ohio Revised Code are quite clear - " **No public funds** are expended, and no public-school personnel are involved in providing the religious instruction." Yet the state recently said it would reimburse schools for lunches provided to students who consume them at their Lifewise program held during the lunch period. Lifewise, itself, lobbied the administration to go against established federal rules and the Ohio Revised Code to get the state to provide funds for the lunches consumed at a Lifewise program. How is that not supporting the RTRI program with public funds?

From Zorach again, "**ALL COSTS**, including the application blanks, are **paid by the RELIGIOUS organizations**."

I have also seen reports where some districts include Lifewise in their district computer system or where staff members are tasked to help a local Lifewise program check on students who skipped one or more Lifewise periods. One district let Lifewise use their buses and drivers to transport children to Lifewise. How is that not using public funds to support the RTRI program?

Not to mention, in some cases, when a district has been less than accommodating to Lifewise, the Superintendent and board have been intimidated by threats to fail future levies or are leaned on by state elected officials like our LT. Governor. State officials are not allowed to support or discourage RTRI programs.

Senate Bill 293 would just be another unfunded state mandate for public school districts about a personal and private area that the government is limited in getting involved with and shouldn't be involved in and the bill doesn't address the serious issues around a private entity removing groups of students off-campus and it seriously compromises settled court cases.

Please reject Senate Bill 293

Thank you. Feel free to reach out to me for any further questions.