



CITIZENS FOR COMMUNITY VALUES

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June 8, 2020

To: Chair Peggy Lehner
Vice Chair Andrew Brenner
Ranking Member Teresa Fedor
Senate Education Committee

From: Rachel Citak, Legal Counsel
Citizens for Community Values

Re: Support for SB 288

Citizens for Community Values is a Christian public policy organization that works statewide to protect the blessings of family, freedom, and fairness.

When we hear the story behind this bill, it paints a clear case of unfairness and first amendment infringement that was completely preventable. It also brings to mind legal principle in contract law such as “detrimental reliance” and “notice” requirements. Detrimental reliance occurs when someone makes a promise, someone else acts in reliance on that promise, but the promise is subsequently broken, and then the one who relied on the broken promise is harmed by that reliance. A requirement may be waived if a party breaches the agreement, but is never given notice of the breach. If the opposing party continues in the agreement without any notice of the breach of contract, the court might waive that unmet requirement because the opposing party never gave notice.

Here, Ohio student Noor Alexandria Abukaram participated in a track event wearing her hijab, just as she had done previously without issue. Once again, she participated and even beat her personal all-time best score. But this time, she did not see her name on the scoreboard. She was disqualified from the competition without any prior notice.¹ It was only after participating that she found out that the Ohio High School Athletic Association (OSHAA) requires special prior approval for her religious garment as a deviation from uniform.²

OSHAA allowed Noor to participate as if she was permitted to compete, but she was never given notice of the disqualifying violation. Instead, here, she competed to her detriment. She performed her all-time personal best, and yet when she crossed the finish line, her participation was never even recognized because she was wearing a hijab. Noor relied on the implicit promise that she could compete in a track event, and would not have to choose between

¹ <https://abcnews.go.com/US/ohio-cross-country-runner-disqualified-wearing-hijab-waiver/story?id=66498414>

² <https://ohsaaweb.blob.core.windows.net/files/Sports/Track-Field/TFmanual.pdf>



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expressing her faith or competing in athletics. It can be argued that by allowing her to compete previously without issue, the Ohio High School Athletic Association gave no proper notice.

A law that allows state actors to limit religious expression is strictly scrutinized by the courts to make sure the law is 1) narrowly tailored and 2) necessary for a compelling government interest. Unless a free speech restriction is narrowly confined to the purposes of safety and/or preventing disruption in the educational process, Courts are unlikely to approve such restrictions as necessary for a compelling interest. States can and do create laws to further codify, clarify, and protect first amendment rights. Public school officials and administrators are designated *state actors*, meaning they serve as an “arm of the state.” Administrators and school officials often mistakenly believe that the exclusion of religion represents neutrality, when in reality, strict exclusion of religious expression on unreasonable grounds is anything but neutral. True neutrality exists when content neutral, narrowly tailored restrictions are applied across the board to *all* students, without a detrimental impact on students of faith.

If a student competes according to safety rules and without any unfair advantage, his or her performance should be recognized accordingly. When someone’s reliance on a promise results in a negative impact or “detriment,” the court may require the promise-making party to follow through on the promise in order to prevent injustice. SB 288 makes sure that we follow through and prevent injustice. This bill equips school administrators when clear guidance to protect free expression and free speech for students of all beliefs and backgrounds.

There is established precedent that public school students “do not shed their constitutional rights to freedom of speech and expression at the schoolhouse gate.”³ They shouldn’t have to shed their hijab, kippa, or cross at the starting line either. Students have a right to free speech, especially where their expression does not result in any issues of safety, unfair advantage, lewdness or disruption to the academic process and mission. This includes expressions of religious and nonreligious beliefs.

Legislation like SB 288 helps to foster understanding and prevent more students from being detrimentally punished for religious expression. Please pass SB 288 and make Ohio a better place for public school student athletes of all faiths. Thank you for your time and consideration.

Citizens for Community Values (CCV) is a non-profit, non-partisan organization that endeavors to create an Ohio where God’s blessings of life, family, and religious freedom are treasured, respected, and protected.

www.ccv.org -- (513) 733-5775

³ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969).