



**Proponent Testimony - SB 288: Regards Student Religious Expression in Extracurricular Activity
Ohio Senate | Education Committee
Columbus, OH | June 9, 2020**

Chairman Lehner, Vice Chair Brenner, Ranking Member Fedor, and Members of the Committee:

Introduction

Ohio Jewish Communities is the statewide government advocacy, public affairs, and community outreach voice of Ohio's eight Jewish federations and their some 150 member agencies providing cradle-to-grave social services and meeting vital human needs of Ohioans of all faiths – and of none – each day, all across Ohio. We submit this testimony on their behalf.

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.”

Federal and State Caselaw and Legislation

Both federal and state jurisprudence are clear: the rights of individuals to free expression without undue burden are broad. Congress has even enacted laws that extend such free expression into areas such as local zoning ordinances and the rights of convicted prisoners to appropriately certified food and worship opportunities³. The US Department of

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

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

³ See, e.g. the Religious Land Use and Institutionalized Persons Act: <https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>

Justice⁴ and some state Attorneys General maintain bureaus dedicated to prosecuting violations of free expression⁵ including Ohio⁶.

We believe students engaging in interscholastic athletics deserve this right no less than others. (We also believe this is a right that college and university athletes should enjoy as well, and we would welcome an amendment or concurrent legislation on that issue too.)

We understand the initial impetus for this legislation arose because of problems faced by a Muslim teenager competing here in Ohio. This is unconscionable.

A Texas Example

A similar issue arose a few years ago in Texas, where the Beren Academy, a Jewish day school in Houston, was advancing towards the championship. One of their games came out on Friday night after sundown, which would have required the students to violate the Jewish Sabbath. Attempts to negotiate a solution with the statewide sponsoring organization, the Texas Association of Private & Parochial Schools (TAPPS), met with resistance and those students filed a lawsuit. Only at that point did the organizers relent and accommodate the students with an early afternoon game⁷.

For us, this is a simple issue. No student should be forced to litigate it.

Narrowly Tailored Remedy

This legislation is narrowly focused on answering such needs and protecting these rights. It also allows a critical exception for safety requirements while making sure such requirements are balanced in the least restrictive means possible.

A Broader Need and Opportunity

There is one other reason. Such interactions on the field and on the court help disprove stereotypes, educate in a unique way, break down barriers, and build friendships. The Beren case proves the need for this as one TAPPS leader argued that the Beren Academy shouldn't even have been allowed in the association to begin with⁸.

Another Jewish day school in Texas with a basketball team is Yavneh Academy in Dallas. They actually broke from TAPPS years ago over their refusal to accommodate Sabbath needs in game schedules. But they rejoined after the Beren controversy, seeing what they saw, as an opportunity to be one of just three Jewish schools out of 200, and to help educate about Jews and Judaism⁹. Yavneh actually made history just a few months ago, becoming the first Jewish day school to garner a statewide basketball championship in Texas history¹⁰.

⁴ <https://www.justice.gov/crt/combating-religious-discrimination-and-protecting-religious-freedom-12>

⁵ See, e.g. <https://www.nbcnewyork.com/news/local/ny-attorney-general-eric-schneiderman-religious-rights-enforcement-initiative/2091792/>, <https://ag.ny.gov/religious-rights-initiative-additional-resources>, <https://www.state.nj.us/lps/dcr/downloads/fact-Religious.pdf>

⁶ <https://www.ohioattorneygeneral.gov/About-AG/Service-Divisions/Civil-Rights>

⁷ https://www.espn.com/story/_/id/7634168/jewish-school-back-texas-tourney-game-rescheduled

⁸ <https://jewishjournal.com/news/united-states/102673/>

⁹ <https://www.dallasnews.com/high-school-sports/2018/06/15/flashback-in-a-majority-christian-state-one-jewish-school-s-basketball-powerhouse-is-shaping-perceptions/>

¹⁰ <https://www.ipost.com/international/dallas-jewish-schools-basketball-team-makes-history-with-state-championship-619459>

Jewish Day Schools Locally Could Face Similar Issues

But Beren and Yavneh are instructive for another reason. On the court and off, their male players wear kippahs, or skullcaps. Some of the girls who are athletes may wear specific clothing for religious reasons. Any player might be wearing religiously themed jewelry. Such is the case for students at Ohio's Jewish day schools and their student athletes.

Favorable Action Requested and Next Steps

No student and no school should be forced to make these choices. Nor should they face backlash if they do. This legislation codifies these critical constitutional freedoms into law and provides narrow circumstances in which they apply.

We urge the committee to report this bill favorably and support its passage by the General Assembly. We are available to answer any questions you may have. Thank you again for this opportunity.

###

Howie Beigelman
Executive Director