
**Proponent Testimony - SB 181: Regards Student Religious Expression in Extracurricular Activity
Ohio House of Representatives| Primary and Secondary Education Committee
Columbus, OH | Oct. 13, 2021**

Chair Manning, Vice Chair Bird, Ranking Member Robinson, 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.

As you may know, we supported this legislation in the previous session as well as this one. Each time, it passed the Senate unanimously; this session it has garnered 28 Senate cosponsors.

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

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

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

ordinances and the rights of convicted prisoners to appropriately certified food and worship opportunities³. The US Department of 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.

Most Recent Case

Just two weeks ago, a situation in Montreal, Quebec, arose. A referee at a municipal soccer match told a Jewish player he could not play while wearing his *kipa*, or skullcap⁷. He would be ejected from the game if he wore it on the field. His coach and his teammates took a knee in protest – and when the opposing coach learned why, so did he and his entire team. After both coaches went together to the referee, he eventually relented.

That's a happy ending for so many reasons. But what if any part of that had been different, imagine what that would have meant for 15 year old Motti Avraham.

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 occurred on Friday night after sundown, which would have required the student athletes 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 the Beren students filed a lawsuit. Only at that point did the organizers relent and accommodate the students with an early afternoon game⁸.

For us, this is a simple, straightforward First Amendment 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

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

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://collive.com/entire-league-protests-referee-demanding-yarmulka-be-removed/>

⁸ https://www.espn.com/story/_/id/7634168/jewish-school-back-texas-tourney-game-rescheduled

TAPPS leader argued that the Beren Academy shouldn't even have been allowed in the association to begin with⁹.

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 Judaism¹⁰. Yavneh actually made history last year, becoming the first Jewish day school to garner a statewide basketball championship in Texas history¹¹.

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 *kipas*, or skullcaps. Some of the female 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 as well as Jewish athletes at any of Ohio's other schools, whether public or private.

Additional Societal Benefit

There is one other issue I'd like to raise with the committee. We have been horrified to watch attacks on and harassment of Jewish people on the streets of Cincinnati, Cleveland, and Columbus, as well as New York, Los Angeles, and Miami, among other locations across North America and Europe. Just last week, a Jewish teenager in Cleveland was attacked getting off a bus. Violence against Jews, bullying, vile – and specific – threats, and harassment, continues to rise, and these attacks are happening to them for no other reason than because they are Jews. Legislation like this can help our young people learn to settle any scores they may have with another student fairly, and, to do it on the court. Let our teenagers – and the adults in their lives – learn about other faiths, ethnicities, and cultures through meeting them in friendly competition on the field.

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.

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⁹ <https://jewishjournal.com/news/united-states/102673/>

¹⁰ <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/>

¹¹ <https://www.ipost.com/international/dallas-jewish-schools-basketball-team-makes-history-with-state-championship-619459>