



AMERICAN ATHEISTS

January 29, 2020

The Honorable Rep. Mel Myler
Chairperson, House Education Committee
The New Hampshire General Court
107 North Main Street, Room 207
Concord, New Hampshire 03301

Re: SUPPORT HB 1306, OPPOSE HB 1334, Testimony from American Atheists regarding legislation concerning prayer in public schools

Dear Chairperson Myler and Members of the House Education Committee:

American Atheists, on behalf of its constituents in New Hampshire, writes in support of HB 1306 and in opposition to HB 1334. While it is necessary for New Hampshire to repeal RSA 194:15-a, which authorizes recitation of the Lord's Prayer in public schools, lawmakers should not replace this unconstitutional statute with further inappropriate guidance for school districts. Specifically, HB 1334 authorizes educators to engage in religious activities in ways that are religiously coercive towards students. Instead, we strongly urge you to pass HB 1306, a clean repeal of the underlying unconstitutional statute.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the "wall of separation" between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation's communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. As advocates for religious liberty, American Atheists believes that no young person should be coercively subjected to religious speech by the government.

Taken together, HB 1306 and HB 1334 demonstrate that there is a bipartisan consensus among New Hampshire lawmakers that RSA 194:15-a is inappropriate, antiquated legislation that should be repealed. We urge lawmakers to work toward this mutual goal without passing additional unconstitutional legislation.

In the context of elementary and secondary education, the Establishment Clause demands that school district officials be "particularly vigilant" in ensuring schools do not promote religious views that may

conflict with the religious beliefs of students and their families.¹ This includes laws or policies that permit teachers to direct students in prayers, songs, or recitations which espouse a sectarian point of view.² The Supreme Court has also concluded that organized prayers on school grounds prior to sporting events, whether staff- or student-led, constitute an impermissible government establishment of religion.³ Through these precedents, both the Supreme Court and lower courts have repeatedly made clear that students are free to engage in voluntary, nondisruptive prayer in school, but teachers are not constitutionally permitted to join them.

Despite this clear and unmistakable case law, the Committee is considering HB 1334, a bill that states school employees may, during contract time, “Take part in religious activities where the overall context makes clear that they are not participating in their official capacities.” This vague caveat has no legal precedent, but even if it were somehow legally sufficient, it would be unworkable in practice. First, it is not constitutionally permissible for teachers to engage in religious activities with students even if they are “not participating in their official capacities.” Second, who under this provision would be in a position to determine that an educator has “made clear” that they are not participating in religious activities as part of their official capacities? What one educator thinks may qualify likely differs from other educators, administrators, and certainly students and their parents. This provision would leave schools vulnerable to lawsuits both by students who are religiously coerced and by educators who feel that their new rights to religious expression are infringed. The simple fact is, the only way to avoid religious coercion and ensure religious freedom in schools is for educators and administrators to not participate in religious activities with students.

In another provision, HB 1334 allows that “School employees may, during non-contract time, engage in religious expression and share religious materials to the same extent that other individuals are permitted to do so.” This is also not constitutionally permissible because there are many circumstances where the employee’s actions would imply endorsement of religious activities even if they are not on contract time. For example, the Supreme Court has made clear that school employees may not participate with students in prayer before school sporting events; it is not relevant whether an employee is on contract time.⁴

Finally, we note that HB 1334 provides no protections for students who face religious coercion as a result of these activities. The bill creates no consequences for schools or educators who engage in unconstitutional conduct, nor does it provide remedies for students whose constitutional rights have been violated. The bill is one-sided; it emphasizes the right to religious activity of students and educators but ignores the restrictions imposed by the Establishment Clause. This deliberate blurring of

¹ *Edwards v. Aguillard*, 482 U.S. 578 (1987).

² *Wallace v. Jaffree*, 472 U.S. 38 (1985).

³ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).

⁴ *See id.*

the line between these constitutional requirements encourages employees to flout that line, putting employees and schools at risk of liability and students at risk of religious coercion.

New Hampshire lawmakers should instead pass HB 1306 to repeal unconstitutional RSA 194:15-a without improper endorsement of religious expression by school employees. There is simply no need for the religious expression provisions found in HB 1334 – school employees are and always have been free to engage in religious exercise in private and when not interacting as a teacher with students and parents. There is no evidence of an epidemic of religious oppression in New Hampshire schools that would necessitate these broad new protections.

We strongly urge you to support HB 1306 and oppose HB 1334. Please do not repeal one unconstitutional law just to pass another. New Hampshire's public education funding is better spent on its public school students than on settlements with students facing religious coercion or on defending unconstitutional provisions in the courts. If you should have any questions regarding American Atheists' position on these bills, please contact me at 908.276.7300 x309 or by email at agill@atheists.org.

Sincerely,



Alison Gill, Esq.

Vice President, Legal and Policy

cc: All Members of the House Education Committee.