



# AMERICAN ATHEISTS

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June 2, 2020

The Honorable Sen. Peggy Lehner  
Chairperson, Senate Education Committee  
One Capitol Square  
Columbus, Ohio 43215

**Re: OPPOSE HB 164, Testimony from American Atheists in opposition to the so-called “Student Religious Liberties Act”**

Dear Chairperson Lehner and Members of the Senate Education Committee:

American Atheists, on behalf of its more than 2,000 constituents in Ohio, writes in opposition to HB 164, a controversial bill which would provide special privileges to religious students in public schools, allowing them to engage in religious activities and potentially to interfere with the education of other students. Moreover, this bill fails to protect nonreligious students, who are at significantly higher risk for discrimination in education based on their beliefs. HB 164 will foster religious coercion and undermine the education of young people in Ohio, and we strongly urge you to vote against it.

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 subject to religious discrimination or coercion in public school.

HB 164 would give public school students wide latitude to engage in “religious expression,” as broadly defined by the legislation to include 1) prayer, 2) religious gatherings, 3) distribution of religious materials, and 4) “any other activity of a religious nature.” Specially, the bill contends that any student “may engage in religious expression before, during, and after school hours in the same manner and to the same extent that a student is permitted to engage in secular activities or expression before, during, and after schools hours.” Notably, this definition does not appear to include nonreligious students who may wish to gather, distribute materials, or otherwise have discussions about their beliefs.

Even putting aside the constitutionally dubious framing equating “religious expression” with “secular activities and expression,” the bill is completely unworkable on its face. By definition, students engage in “secular” activities all day long in public school.<sup>1</sup> They attend classes, participate in homeroom and study hall, eat lunch, participate in gym class – these are all secular activities. I hope that the proponents of

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<sup>1</sup> “Secular” is defined as “not overtly or specifically religious.” Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/secular>.

this bill do not intend to allow religious students to engage in “religious expression” (as defined) at will merely because they are in class (a secular activity)! But if that is not their intent, then this is a remarkably poorly drafted bill, and it will have untold unintended consequences. If students can choose to pray, distribute religious materials, or leave to go to a religious gathering at any point of the school day, without warning, holding class is effectively impossible.

HB 164 and bills like it are problematic because they emphasize the Free Exercise Clause and ignore the restrictions imposed by the Establishment Clause. For example, while students have the right to include religious expression in their schoolwork, schools must establish limits. The expression must be responsive to the assignment, and the school is required to prohibit any expression that infringes on the rights of other students. For example, a teacher cannot allow a student to use an oral presentation as an opportunity to proselytize to the class.

Unfortunately, this legislation undermines those protections. If HB 164 passes, Ohio schools may very well be forced into impossible situations where they can neither prevent a student from proselytizing to the class, nor allow it because it would infringe on the religious liberty of other students in the classroom. By repealing existing protections and deliberately blurring the line about the constitutional duties of schools with regard to religion, HB 164 will set teachers and administrators up for failure and create needless liability for school districts. For example, HB 164 repeals the clear and completely reasonable provision that “The board of education may limit the exercise or expression of the pupil's religious beliefs as described in this section to lunch periods or other noninstructional time periods when pupils are free to associate.”<sup>2</sup>

Unfortunately, the vagary introduced by this bill would have the most significant negative impact on religious minorities, nonreligious students, and LGBTQ students, who are too frequently the target of religion-based harassment and discrimination. While HB 164 purports to protect religious liberty, it would have the opposite outcome for many students, subjecting them to religious coercion and undermining the separation of religion and government, which is the bedrock of religious liberty.

Currently, about 24% of adults are religiously unaffiliated, and atheists and agnostics make up about 7% of the total population.<sup>3</sup> Studies show that approximately 13% of youth ages 13-18 identify as atheists and more than a third are non-religious.<sup>4</sup> Another 6% of Americans follow various non-Christian faiths.<sup>5</sup> A recent survey of nearly 34,000 nonreligious people conducted by American Atheists found that nearly one third (29.4%) of participants had experienced negative events and discrimination in education because of their nonreligious identity.<sup>6</sup> Participants who faced such discrimination in education were 21.5% more likely to screen positive for depression. Ohio lawmakers should not further marginalize this population by purposefully encouraging unconstitutional and exclusionary religious activities in schools.

<sup>2</sup> O.R.C. Sec. 3313.601.

<sup>3</sup> Cox D & Jones RP. (2017). *America's Changing Religious Identity: Findings from the 2016 American Values Atlas*. Public Religion Research Institution: Washington, DC.

<sup>4</sup> The Barna Group. (2018). *Gen Z: The Culture, Beliefs and Motivations Shaping the Next Generation*. The Barna Group and Impact 360 Institute: Ventura, CA.

<sup>5</sup> Smith G, et al. (2015). *America's Changing Religious Landscape*. Pew Research Center.

<sup>6</sup> Frazer, S., El-Shafei, A., Gill, A.M. (2020). *Reality Check: Being Nonreligious in America*. Cranford, NJ: American Atheists.

We strongly urge you to oppose this unnecessary and harmful bill. The existing laws protecting religious freedom in Ohio schools have worked well for nearly 20 years. Please do not repeal those important protections in favor of this vague and untested legal mishmash. If you should have any questions regarding American Atheists' opposition to HB 164, please contact me at 908.276.7300 x309 or by email at [agill@atheists.org](mailto:agill@atheists.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'AG', with a long horizontal stroke extending to the right.

Alison Gill, Esq.  
Legal & Policy Director  
American Atheists

cc: All Members of the Ohio Senate Education Committee