



Americans United for Separation of Church and State

WINSTON-SALEM CHAPTER

May 7, 2013

Senator Tom Apodaca
Co-Chair, Appropriations on
Education/Higher Education
Committee
16 West Jones Street, Room 2010
Raleigh, NC 27601

Senator Daniel Soucek
Co-Chair, Appropriations on
Education/Higher Education
Committee
300 N. Salisbury Street, Room 310
Raleigh, NC 27603

Re: Oppose SB 370 Establishing Respect for Public School Prayer

Dear Co-Chairs Apodaca and Soucek:

On behalf of its North Carolina members, Americans United for Separation of Church and State urges you to oppose SB 370 as currently written. Americans United strongly supports the right of students to engage in free speech activities, including student-initiated, voluntary prayer, but this bill's emphasis on school employees' respect for school prayer is constitutionally suspect. Accordingly, we urge you to oppose SB 370 and amend the bill to prevent school sponsorship of prayer.

This Bill Is Unnecessary

SB 370 purports to do nothing more than merely clarify what types of behaviors are allowed under the U.S. Constitution and under federal and state law. Indeed, students already have the right to engage in voluntary, student-initiated prayer that is not coercive and does not disrupt the school's educational mission and activities.¹ And, the rights of students to engage in voluntary prayer at public schools are already established in North Carolina's laws governing the local board of education. The law currently states: "No local board of education shall have a policy of denying, or that effectively prevents participation in, prayer in public schools by individuals on a voluntary basis . . . or encourage or require any person to participate in prayer or influence the form or content of any prayer in public schools."² It is not necessary to introduce a new piece of legislation merely to clarify already-existing rights.

This Bill Endangers Religious Freedom

Perhaps even more important, this bill should be rejected because its description of students' rights to gather to pray in public schools does not accurately reflect

¹ See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000); *Wallace v. Jaffree*, 472 U.S. 38, 59 (1985).

² N.C. GEN. STAT. §115C-47(29b)(2012).



constitutional jurisprudence. Instead, it permits teachers and staff—government officials—to participate in student prayer, which violates the Constitution. If North Carolina is going to adopt yet another law clarifying the rights of students to engage in prayer, it should not pass a bill that will likely invite constitutional abuses and costly litigation.

Although this bill alleges to do no more than clarify students’ rights to engage in prayer in public schools, this bill’s effects could be more wide-reaching. SB 370 states that school employees may not only attend student-led prayer activities, but if present, “shall demonstrate appropriate respect and may adopt a respectful posture.” Under the federal Equal Access Act,³ if a student group is meeting for any religious purpose, the role of the faculty present must be a non-participatory role only, in order to prevent the perception of government endorsement of the practice.⁴ Yet, this bill’s language is vague enough to suggest that school employees present during student prayer *must* take on a participatory role in that prayer.

Moreover, the bill’s failure to define the terms “demonstrate appropriate respect” and “adopt a respectful posture” means that employees have little direction as to what type of behavior is permitted. Because the language is so vague, it conceivably allows employees to engage in a broad range of behaviors, solely because they deem them to be appropriate – from simply remaining silent, to bowing their head, to actively engaging in the prayer. The cardinal rule of the Establishment Clause is that governmental entities cannot take any action that “has the purpose or effect of ‘endorsing’ religion.”⁵ Instead these entities must maintain neutrality.⁶ Accordingly, school officials may not “lend the aura of school sponsorship to [a] private religious enterprise.”⁷ Allowing school employees to actively engage in student-led prayer on school campuses would certainly create an aura of school sponsorship.

Additionally, this bill fails to distinguish between policies for prayer in secondary and elementary schools. Elementary school students in particular have difficulty distinguishing “the line between school-endorsed speech and merely allowable speech” because they are so “young” and “impressionable.”⁸ Whereas high school students have a greater understanding of the diversity of religious beliefs, this bill as applied to elementary school children, would be an even more potent message of school-sponsored religion.

Because this bill promotes, and possibly even mandates, active participation, rather than neutral supervision by school faculty, it runs afoul of the Establishment Clause’s prohibition on government-sponsored religion. At a minimum, this bill

³ 20 U.S.C. §4071 (1984).

⁴ *Westside Community Schools v. Mergens*, 496 U.S. 226, 259 (1990)(citing 20 U.S.C. §4071(c)(3)).

⁵ *Cnty. of Allegheny v. ACLU*, 492 U.S. 573, 592 (1989).

⁶ *McCreary Cnty. v. ACLU of Kentucky*, 545 U.S. 844, 860 (2005).

⁷ *Chandler v. James*, 985 F. Supp. 1068, 1087 (M.D. Ala. 1997).

⁸ *Walz v. Egg Harbor Twp. Bd. of Educ.*, 342 F.3d 271, 277 (3d Cir. 2003).

must be amended to remove language calling for school employees to demonstrate respect for student prayer.

This Bill Grants Special Privileges to Religious Speech.

In *Westside Community Schools v. Mergens*,⁹ the U.S. Supreme Court upheld the Equal Access Act as constitutional because it covered “religious, political, philosophical, or other content of speech,” as well as religious speech.¹⁰ Unlike the Equal Access Act, SB 370 pertains only to students who wish to gather and pray, and requires supervisors of student prayer to show appropriate respect while present. The Court in *Mergens* held that the purpose of the Equal Access Act was to prevent discrimination of religious and political groups as compared to other noncurricular student groups.¹¹ Thus, it is logical that the reverse is also true: non-religious student groups should be given the same respect as religious student groups. By providing special treatment, i.e. requiring school employees to demonstrate respect for student prayer only, SB 370 would contravene that principle.

Conclusion

As the Supreme Court noted, “[w]hat to most believers may seem nothing more than a reasonable request that the nonbeliever respect their religious practices, in a school context may appear . . . to be an attempt to employ the machinery of the State to enforce a religious orthodoxy.”¹² Americans United supports students’ rights to engage in student-initiated voluntarily prayer. However, as currently written, SB 370 does more than merely clarify existing law; it promotes school sponsorship of religion. For the reasons enumerated above, we strongly urge to you oppose SB 370 as currently written, and to amend the bill to remove language that would lead to school employees’ participation in student-led prayer.

Thank you for your consideration of this important matter.

Sincerely,

Charles Francis Wilson
President, Winston-Salem Chapter
Americans United for Separation of Church and State

Anne Griffis Wilson
Member, Winston-Salem Chapter
Americans United for Separation of Church and State

⁹ 496 U.S. 226 (1990).

¹⁰ *Id.* at 228.

¹¹ *Id.* at 238.

¹² *Santa Fe*, 530 U.S. 290, 312 (2000) (quoting *Lee*, 505 U.S. 577, 592).