

**Testimony for the House Ways and Means Committee**

**February 23, 2018**

**HB 1306 - Baltimore County Board of Education – Voluntary Nonsectarian Prayer at 3 School–Sponsored Student Events – Referendum**

**OPPOSE**

The ACLU opposes HB 1306 on the grounds that prayer during a school-sponsored event is unconstitutional. This bill attempts to mask its religiously motivated intent behind the guise of a public forum. By emphasizing the voluntariness of the student-sponsored message or prayer, the bill attempts to circumvent the restrictions set out by the Supreme Court in *Lee v. Weisman*,[[1]](#footnote-1) and continue the practice of prayer in schools.

**The Supreme Court has consistently found that official prayer in public schools is a violation of the Establishment Clause and is therefore, unconstitutional**.

Despite the fact that the U.S. Supreme Court has long made clear that the Constitution prohibits public school-sponsored prayer or religious indoctrination.[[2]](#footnote-2) HB 1306 would permit prayers during certain school-sponsored events*.* The fact that the bill purports that the state does not “promote or establish a religion” or “support, approve, or sanction” prayer does not erase the imprint of the state. The test established in *Lee v. Weisman[[3]](#footnote-3)* is to look to the level of State control over the school sponsored event. Not only does HB 1306 mandate that the Baltimore County Board of Education allow school-initiated prayer, but it also mandates that the prayer be allowed at mandatory school-sponsored events, where students are required to attend. This provision does not pass the test in *Lee*.

**Participation in the message or prayer is not voluntary in the true sense of the word**.

The Supreme Court has found that participation in prayer in school is not voluntary in the true sense of the word.[[4]](#footnote-4) The Supreme Court has stated an interest in protecting freedom of conscience from subtle coercive pressure in elementary and secondary public schools.[[5]](#footnote-5) Allowing prayer at a school-sponsored event creates a coercive environment which eliminates choices and freedoms for students. In school-sponsored events such as graduations, the Court has sought to protect dissenting students from having to decide whether to sit and participate or forgo attendance at one of the most important events of their lives.[[6]](#footnote-6) In *Lee,* the Court found that participation in prayer was not voluntary because there is peer and school pressure to stand with the other students.[[7]](#footnote-7)

Given that HB 1306 is a clear violation of the First Amendment, we request an unfavorable report.

1. 112 S. Ct. 2649 (1992). [↑](#footnote-ref-1)
2. *Everson v. Board of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947); *See also Wallace v. Jaffree*, 472 U.S. 38, 53 (1985) ("the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all"). [↑](#footnote-ref-2)
3. 112 S. Ct. 2649 (1992). [↑](#footnote-ref-3)
4. *See* *School Dist. of Abington Township v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).  [↑](#footnote-ref-4)
5. *Lee*, 112 S.Ct. at 2658.  [↑](#footnote-ref-5)
6. *See Lee*, 112 S.Ct. at 2661 (finding that because attendance at high school graduation ceremonies is in effect not voluntary -- and because the ceremonies themselves are an adjunct to and, in some sense, the culmination of the public school curriculum -- the inclusion of a religious program in graduation ceremonies violates the Establishment Clause).  [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)