

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 182

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A
2 NEW CHAPTER 66, TITLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PRO-
3 VIDE FOR LEGISLATIVE FINDINGS, AND TO ESTABLISH PROVISIONS REGARDING
4 SILENT PRAYER; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE
5 DATE.
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7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended
9 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
10 ter 66, Title 33, Idaho Code, and to read as follows:

11 CHAPTER 66

12 ESTABLISHMENT CLAUSE AND FREE EXERCISE COMPLIANCE

13 33-6601. SHORT TITLE. This chapter shall be known and may be cited as
14 "Coach Kennedy's Law."

15 33-6602. LEGISLATIVE FINDINGS. The legislature finds and declares
16 that:

17 (1) Prior to becoming a high school football coach, Joseph Kennedy
18 trained marines, and in response to his decision to engage in a public silent
19 prayer at the end of sporting events that was open to others in a manner that
20 was consistent with his religious beliefs and the belief of many student
21 athletes and their parents, he was suspended and later fired by the school
22 district, and similar conflicts have or could arise in the state of Idaho
23 between athletic directors and school districts or public college adminis-
24 trators;

25 (2) The United States is a constitutional republic that Idaho is a part
26 of, and the free exercise and establishment clauses of the first amendment to
27 the United States constitution state that the government "shall make no law
28 respecting an establishment of religion, or prohibiting the free exercise
29 thereof," and the first amendment applies to the state of Idaho through the
30 fourteenth amendment;

31 (3) Similarly, section 4, article I of the constitution of the state of
32 Idaho parallels the spirit of the free exercise clause of the first amendment
33 to the United States constitution and states, "The exercise and enjoyment of
34 religious faith and worship shall forever be guaranteed; and no person shall
35 be denied any civil or political right, privilege, or capacity on account of
36 his religious opinions; but the liberty of conscience hereby secured shall
37 not be construed to dispense with oaths or affirmations, or excuse acts of
38 licentiousness or justify polygamous or other pernicious practices, incon-
39 sistent with morality or the peace or safety of the state; nor to permit any
40 person, organization, or association to directly or indirectly aid or abet,

1 counsel or advise any person to commit the crime of bigamy or polygamy, or any
2 other crime. No person shall be required to attend or support any ministry or
3 place of worship, religious sect or denomination, or pay tithes against his
4 consent; nor shall any preference be given by law to any religious denomina-
5 tion or mode of worship. Bigamy and polygamy are forever prohibited in the
6 state, and the legislature shall provide by law for the punishment of such
7 crimes"; and

8 (4) The United States supreme court, in Kennedy v. Bremerton School
9 District, recognized that Lemon v. Kurtzman, 403 U.S. 602 (1971), was over-
10 turned and is no longer good law and that, therefore, the Lemon test is inap-
11 plicable and government must instead look to history and tradition to deter-
12 mine what is permissible under the establishment clause. This history and
13 tradition prohibits coercion to participate in religious practices.

14 33-6603. PUBLIC SILENT PRAYER. (1) This section applies to public col-
15 lege administrators, public school districts, and charter schools.

16 (2) Pursuant to the free exercise clause of the first amendment to the
17 United States constitution and section 4, article I of the constitution of
18 the state of Idaho, an employee of a public college, school district, or
19 charter school may pray at any time he is otherwise free to engage in personal
20 conversations or other personal conduct.

21 (3) No public college, public school district, or charter school may
22 punish or otherwise take adverse action or discriminate against any other
23 person for refusing to participate in a prayer described in subsection (2) of
24 this section. A student or the parent of a student who can demonstrate under
25 the preponderance of the evidence standard that the student was punished or
26 discriminated against by an employee for refusing to participate in a prayer
27 as described in subsection (2) of this section has standing under this sec-
28 tion to pursue a civil action in a court of competent jurisdiction and the
29 student may seek attorney's fees, costs, injunctive relief, declaratory re-
30 lief, and other forms of relief deemed appropriate by the court.

31 (4) If a school district or public college administrator prohibits or
32 takes adverse action against an employee for engaging in the activity de-
33 scribed in subsection (2) of this section, the employee may pursue a civil
34 cause of action in a court of competent jurisdiction under this section and
35 may seek attorney's fees, costs, injunctive relief, declaratory relief, and
36 other forms of relief deemed appropriate by the court.

37 (5) If a court finds that a cause of action brought by an employee under
38 subsection (4) of this section or by a student or his parent under subsection
39 (3) of this section was maliciously filed or initiated for ulterior purposes
40 against a defendant, then the court may award costs and attorney's fees to a
41 defendant under this section for abuse of process.

42 (6) A civil action brought in federal district court for a similar vi-
43 olation described in this section under 42 U.S.C. 1983 may find that it has
44 supplemental jurisdiction over a cause of action contemporaneously brought
45 under this section.

46 (7) Nothing in this section shall be construed to in any way limit the
47 free exercise of religion.

1 SECTION 2. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after
3 July 1, 2023.