



**NDSBA**  
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BOARDS ASSOCIATION

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**HB 1222**

**Testimony of KrisAn Norby-Jahner  
House Education  
February 4, 2025**

Chair Heinert and members of the House Education Committee, for the record my name is KrisAnn Norby-Jahner. I am in-house legal counsel for the North Dakota School Boards Association. The NDSBA represents all 168 North Dakota public school districts and their boards. I am here today in opposition of HB 1222.

The NDSBA is supportive of civic engagement and any voluntary opportunities that are provided for students to recite the pledge of allegiance. In our experience, the recitation of the pledge of allegiance remains a regular practice in our ND school districts, where staff and students recite the pledge together particularly at the elementary level at the beginning of the school day. To this extent, we are supportive of the current law under N.D.C.C. § 15.1-19-03.1 (5), whereby “A school board may authorize the voluntary recitation of the pledge of allegiance by a teacher or one or more students at the beginning of each school day.” Current state law is constitutional because it allows for both teachers and students to each exercise their First Amendment rights, without coercion or force.

While the intention of HB 1222 may be to further bolster civic engagement, the amendments would make our state law unconstitutional and would open up school districts to litigation under [42 U.S.C. § 1983](#) (which overrides a public entity’s claim of qualified immunity when the entity’s actions violate a federal statutory or constitutional right that is clearly established at the time of their conduct). The right of an individual to choose whether to salute or pledge allegiance to the American flag has been a clearly-established constitutional right under the First Amendment since the U.S. Supreme Court’s landmark decision in [West Virginia St. Bd. of Educ. v. Barnette, 319 U.S. 624 \(1943\)](#). Therefore, plainly stated, state law cannot promise to provide “immunity from any liability for damages” to school districts and their personnel when those districts and personnel take action that is in violation of a known U.S. Constitutional right. Requiring students to recite the pledge of allegiance at the beginning of each school day (without the students having a choice) places school districts and personnel in a position of legal liability, from which they will not have qualified immunity.

Should HB 1222 become law, school districts may be subjected to lawsuits and would be ineligible for qualified immunity defenses based on the following:

1. **Violates Students' First Amendment Rights.** It has been long-established under [\*Tinker v. Des Moines\*, 393 U.S. 503 \(1969\)](#) that *students* do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” HB 1222 not only singles out students as being the only individuals in school buildings *required* to recite the pledge of allegiance in a very particular stance and manner, but it also only allows for an “excuse” from recitation “upon written request by the student’s parent or legal guardian.” **A student’s First Amendment rights belong to the student, not the student’s parent or legal guardian.** Allowing a parent or legal guardian to control a student’s speech is equally as unconstitutional as requiring a school to control a student’s speech. In addition, the exercise of free speech cannot be delegated to advanced “*written* request.” The very essence of free speech is that it may be freely given in any form, with limited restrictions in the school environment.

Under the Constitution, schools may only restrict a student’s private, personal expression to the extent it would “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school or impinge upon the rights of other students.” *Tinker*, 393 U.S. at 509. The U.S. Supreme Court has been clear that a student exercising their First Amendment right to abstain from the pledge of allegiance is not the type of speech that interferes with school operations or other students’ rights. The Supreme Court has established that any action a school takes to compel students to salute or pledge allegiance to the American flag is a violation of the students’ First Amendment rights and would cause injury by “chilling” students’ constitutionally-protected speech. *West Virginia St. Bd. of Educ.*, 319 U.S. 624.

2. **Violates Disability and Special Education Laws.** HB 1222 fails to recognize or accommodate students with disabilities and individualized learning needs, as protected under federal laws, including the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitations Act, and the Individuals with Disabilities Education Act (IDEA). This bill requires students at the beginning of each school day to “show full respect to the flag by standing at attention with the right hand over the heart.” However, no exception is provided for students who cannot physically stand or physically place their right hand over their heart.” No exception is provided for students who have pre-planned medical needs or emergency medical needs that might arise during the scheduled recitation. No exception is provided for students with Individual Education Programs (IEPs), 504 Plans, or Behavioral Intervention Plans (BIPs) that are legally-required to be followed and accommodated by educators should the student be unable to follow the mandates of this proposed law on a given school morning.

3. **Violates Title IX.** Title IX of the Education Amendments of 1972 applies to all school districts that receive federal funding and explicitly prohibits discrimination based on sex in education programs and activities. Singling out male students and requiring only males to remove “any headdress” during the recitation of the pledge may be a violation of Title IX. Many schools have policies against hats and headdresses during school hours (outside of religious or other legally-required accommodation). However, even those schools that do not have prohibitive policies (or those that do allow hats on certain occasions) treat male and female students equally in compliance with Title IX.

Overall, HB 1222 is unnecessary, opens school districts to legal liability, and places an undue burden on teachers who would, without a doubt, become the primary enforcers of this law. It is the teachers, at nearly all grade levels, who spend “the beginning of each school day” with the students. There is no qualified immunity allowable for educators when the speech in question is clearly protected under the U.S. Constitution. The burden and liability this proposed law places on teachers is too great.

Based on the foregoing reasons, NDSBA asks this Committee to issue a **do not pass** recommendation on HB 1222. Thank you for your time.