

PACIFIC JUSTICE INSTITUTE –
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NORTH DAKOTA HOUSE JUDICIARY COMMITTEE
State Capitol, Room JW327B
600 East Boulevard Avenue
Bismarck, ND 58505

Re: House Bill 1145 - Support

Dear Chairman Klemin and the Honorable Members of the House Judiciary Committee:

Please accept this as the formal statement of support on behalf of the Pacific Justice Institute – Center for Public Policy for House Bill 1145 pertaining to the display of the Ten Commandments in public schools.

The passage of House Bill 1145 will enable students in the state of North Dakota to know the history and heritage of our legal system. Simply put, laws are the guardrails of society. Students need to know the historical foundations of American law, where our law originated, and the moral authority for our American system of justice. They need to know where America started, how the country has moved forward these last 250 years, and where we need to go to remain a free nation. Indeed, the Ten Commandments – which have influenced the creation of our nation and our rule of law – are displayed in the U.S. Supreme Court and other public buildings.

At the founding of our nation, the study of Christianity and the Bible was an integral part of an education in the law. Many colleges and universities, including law schools, were started as Bible colleges. The evidence of the cohesiveness between the Bible and American law is irrefutable.

James Wilson was one of the original Supreme Court Justices, serving for the first nine years of the Court. His thoughts on the law were considered to be so important, that when he gave a lecture on the law at the College of Philadelphia, it was attended by the President of the United States, the First Lady, the Vice President, both houses of Congress, both houses of the Legislature of Pennsylvania, and a large audience of students and the general public.ⁱ Justice Wilson said the following:

All [laws], however, may be arranged in two different classes. 1. Devine 2. Human. ... But it should always be remembered that this law, natural or revealed, made for men or for nations, flows from the same Divine source: it is the law of God. ... Human law must rest its authority ultimately upon the authority of that law which is Divine.

Human law must rest its authority ultimately upon the authority of that law which is divine. ... Far from being rivals or enemies, religion and law are twin sisters, friends, and mutual assistants.ⁱⁱ

Similarly, Joseph Story, a United States Supreme Court Justice from 1811 to 1845, stated:

I verily believe Christianity necessary to the support of civil society. One of the beautiful boasts of our municipal jurisprudence is that Christianity is a part of the Common Law... There never has been a period in which the Common Law did not recognize Christianity as lying its foundations.ⁱⁱⁱ

But you may ask, what about this “wall separation of Church and State” spoken of by Thomas Jefferson? How can the State display the Ten Commandments in public buildings and keep that wall in place?

It is clear by looking at the historical record that Jefferson was talking about protecting the right to protect the exercise of religion from interference by the government, not protecting government, the law, or society at large from the Bible or Christianity.

The issue originates from a letter dated October 7, 1801, in which the Danbury (Connecticut) Baptist Association wrote a letter to President Thomas Jefferson, which stated, in part:

Our sentiments are uniformly on the side of religious liberty: that religion is at all times and places a matter between God and individuals, that no man ought to suffer in name, person, or effects on account of his religious opinions, [and] that the legitimate power of civil government extends no further than to punish the man who works ill to his neighbor. But sir, our constitution of government is not specific. . . . [T]herefore what religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as inalienable rights.^{iv}

On January 1, 1802, Jefferson wrote back and responded as follows:

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature would “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between Church and State.^v

If there is any doubt that Jefferson did not intend to totally remove religion from government, one needs only to look at the fact that Jefferson attended church two days later - **inside the United States Capitol**. On December 4, 1800, Congress had approved the use of the United States Capitol as a church, and on January 3, 1802, Jefferson was present to hear a sermon from his friend Rev. John Leland.^{vi}

There is ample evidence that neither President Jefferson nor our early Supreme Court intended to remove biblical references, including the Ten Commandments, from governance or the public square. There is also evidence to show that the religious freedoms guaranteed in the First Amendment were intended to ensure that government did not impede religion, not to ensure that religion is removed from all aspects of public life.

In 1971, in the case *Lemon v. Kurtzman*, the Supreme Court established a three-pronged *Lemon* test to evaluate whether a law or governmental activity violated the Establishment Clause of the First Amendment. Under the *Lemon* test,

government could assist religion only if (1) the primary purpose of the assistance is secular, (2) the assistance must neither promote nor inhibit religion, and (3) there is no excessive entanglement between church and state.

This rule lasted over 50 years, until recently in 2022 when the United States Supreme Court changed course in the case of *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022). In place of the *Lemon* test, the United States Supreme Court instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings. The line that courts and governments must draw between the permissible and the impermissible must accord with history and faithfully reflect the understanding of the Founding Fathers.

So what are the guardrails of the *Kennedy* decision? As the Court explained:

Government may not, consistent with a historically sensitive understanding of the Establishment Clause of the First Amendment, make a religious observance compulsory. Government may not coerce anyone to attend church, nor may it force citizens to engage in a formal religious exercise. No doubt, too, coercion along these lines was among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment.

The purpose of House Bill 1145 is the education of students, it is not to proselytize. Thus, House Bill 1145 is precisely on target with the Supreme Court's findings in *Kennedy*. It historically and faithfully reflects our Founding Fathers reliance on the Ten Commandments as the foundation of America's justice system, and, therefore, is essential for a proper understanding of our American history and heritage. For the reasons stated above, Pacific Justice Institute – Center for Public Policy strongly supports House Bill 1145.

Respectfully submitted,



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ⁱ The Political and Legal Philosophy of James Wilson, 1742-1798, by Mark David Hall, Ph.D., (Columbia: University of Missouri Press, 1997).

ⁱⁱ "The Works of James Wilson", Bird Wilson, editor (Philadelphia: Bronson and Chauncey, 1804), Vol. I, pp. 103-106, "Of the General Principles of Law and Obligation."

ⁱⁱⁱ Joseph Story, Commentaries on the Constitution of the United States, p. 593.

^{iv} Letter of Oct. 7, 1801 from Danbury (CT) Baptist Assoc. to Thomas Jefferson, Thomas Jefferson Papers, Manuscript Division, Library of Congress, Wash. D.C.

^v Thomas Jefferson, The Writings of Thomas Jefferson, Albert E. Bergh, ed. (Washington, D. C.: The Thomas Jefferson Memorial Association of the United States, 1904), Vol. XVI, pp. 281-282.

^{vi} William C. Allen, History of the United States Capitol: A Chronicle of Design, Construction, and Politics (U.S. Government Printing Office 2001).