

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1128

2001 HOUSE EDUCATION

HB 1128

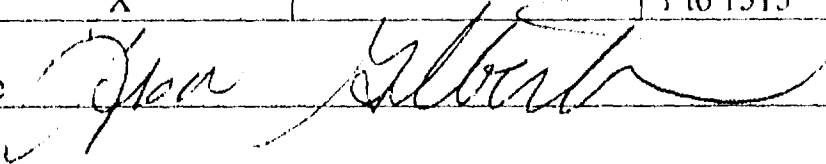
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1128

House Education Committee

☐ Conference Committee

Hearing Date 01/23/01

Tape Number	Side A	Side B	Meter #
#1	X		44 to 3102
#1		X	1 to 3119
#2	X		1 to 1515
Committee Clerk Signature 			

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunsaker, Rep. Johnson, Rep. Meier, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We will now open the hearing on HB1128.

Rep. Droydal: (District 39) *Please refer to written testimony*

Rep. Mueller: Have you had any requests for the 10 commandments?

Rep. Droydal: This is my idea, because I thought it was the right thing to do. I've had a lot of comments from a lot of people across ND who are support of this bill. Some are concerned with the legality of it, and I don't blame them, we don't want to pass bills that we'll just have to go to court to defend.

Rep. Hanson: You said that 12 states passed this; of those schools, how many are displaying the Ten Commandments?

Rep. Drøydal: I did call SD, and it's approx. 12 states. I called the sponsor of the bill, he did not give me an exact number, but he said that they have had no negative input at all, but again, it is at the discretion of the local schools. If it's going to distract from education, I wouldn't post it, because education is #1. Does it do any good to post anything on the wall? Well, we drive down the highway and there are all sorts of postings, and they obviously they think it does some good.

Rep. Nottestad: If that would be the case, wouldn't it be pertinent that the Catholics would be flooding our high ways with the Ten Commandments?

Rep. Drøydal: That's a question you will need to ask them, but my feeling is that they probably feel that their money could be better spent helping people, and they do their billboards in church on Sunday from the podium.

Written testimony submitted by Ed Crawford

Sen. Lyson: (District 1) I placed a bill similar to this in the Senate. I guess I look at these bills as documents to help our students understand what our four father's beliefs were when our nation was established. The Ten Commandments are the basis of the civil and criminal laws in our nation, and most of the civilizations in the world. You cannot speak, or separate the religious history with the government history of our nation, because they are intertwined. I think to cut off the history from our students, we're really cutting off the roots of our nation. I believe, seriously, that these things should be displayed in the schools, along with other historical documents. Give our students an opportunity to choose. We do a great job educating our students, but I wonder sometimes what kind of a job we do to allow them to choose. I've had several e-mails supporting this bill.

Rep. Nelson: We do this in schools, from a historical standpoint, in your career in law enforcement, is it possible to post the Ten Commandments in a courthouse or a jail, for example, using the same premise?

Sen. Lyson: I don't know, I ran a jail for many years, and I did not have them posted, but they were there, so if an inmate asked about them, they would be given to them.

Chairman Kelsch: This would be a historical document that students have exposure to. The other statement that you made was, students should be allowed the decision to choose. Now, with the decision to choose, when we talk about historical document, isn't that something that is taught in churches and taught by your families at home about the Ten Commandments, because even though you have it displayed, there's not going to be any teachings about it. There may be some classes that reference the Ten Commandments or reference certain ones of those commandments, however, all this would be is a document on the wall. It wouldn't be anything that would be truly of value to these students, because they wouldn't be taught those Ten Commandments, and isn't this really what it's all about, is to teach them the Ten Commandments so that they live by those Ten Commandments?

Sen. Lyson: Not at all. I think a display like this for a student to go through there and say, 'thou shall not lie, thou shall not steal' and I've seen in schools where they've taken the Ten Commandments, and they've taken the first commandment out, but I have seen on the walls 'we do not permit you to swear, we do not permit you to steal, we do not permit you to bite'. They put the commandments in other words, and I think that this in there, and be able to see a display, maybe will draw attention to somebody.

Rep. Hawken: Is it not already, by the court definition, can't schools put the Ten Commandments with other historical documents?

Sen. Lyson: I don't know, I honestly believe that the schools have gotten the impression that they cannot.

Rep. Hawken: But the wording of this bill came from the court case, right?

Sen. Lyson: Yes, but I believe the decades that followed that, the school boards have gotten information from the school board associations not to do that.

Rep. Hawken: That's my point. I don't think this bill is necessary. Under current law, we already have the ability to do what we're trying to do here.

Rep. Kempenich: (District 39) One of the reason's I support this bill, we've missed the basic principal of why this country was started, why those pilgrims came over, basically in flee so they could express their beliefs. A lot of people are dancing around the issue of religion, and it is a religious document, but I do think that when you read Genesis there was chaos, they came in, and this is where Moses led his people out of Egypt, it was a document to help prevent chaos, and I think that's one of the things that this document does state. I think that you have to start with the younger people, and if you get a chance for people to display it, people will read it, maybe of interest to start with. An answer to some of the questions I heard earlier, I think it probably is legal to put it up now, but most schools are afraid they're going to get challenged by somebody, and they don't have the resources to get challenged, and I think that if there's something specific in law, they'll feel a little bit more like there's a higher power and that the state's is willing to go on record supporting that. I think one of the reason's, in public buildings, if there's federal funds

involved, I think there's a reluctance to display this type of a document, otherwise, I think it's a move in the right direction.

Rep. Mueller: You bring up an interesting point about legal liabilities, if, in fact, the state goes on record with this particular kind of initiative, do you see the state having any state liabilities for that school district back home, if and when they got challenged?

Rep. Kempenich: That's something that I think this committee has to decide, but I think it's part of our responsibility as a state. If we're going to make a statement, the state should come in. The state's willing to do something but not back up.

Rep. Nottestad: Would you be willing to accept an amendment that the state will assume full responsibility of any legal result of passing this law?

Rep. Kempenich: I think it's the state's responsibility if the state will go on record supporting this. I think the way the bill is written right now, it complies with what most of what courts have stated as far as displaying this type of a document.

Rep. Nottestad: Have you run this by the Atty. General?

Rep. Kempenich: No, we haven't.

Vincent Dooley: *Please refer to written testimony*

Barbara Schulz: *Please refer to written testimony*

Mrs. Gary Zentz: If it were my decision, I would change the 'may be' to 'shall', because I think the Ten Commandments are a code of virtue, a code of ethics that nobody can find anything wrong with. I went to a one room country school, and I was either in first or second grade when the words 'under God' were added to the Pledge of Allegiance. In this one room school, the Ten Commandments were displayed along with the Bill of Rights and the Declaration of

Independence. They are still there, they haven't been taken down. When I was in fourth grade, we had a family, I think they were Jehovah witnesses, but they did not believe saying the Pledge of Allegiance, and they didn't, while the rest of us were allowed to say it. We are now setting aside prayer rooms in the workplaces, in some schools for the Muslims who are coming in who have prayer four times, I believe a day. I think that we are a country where we have assimilated backgrounds and assimilated religions, but all religions have the code of ethics and if they want to put that up, I will agree. I think that Rep. Mueller, you mentioned the state backing it, and I think that our state should be brave enough to back what's the right thing to do.

Marcia Strucker: As I listened to people speaking, most of our laws are based on the Ten Commandments: thou shall not steal, murder is against the law. Where do you get these definitions of right and wrong? We know that in many of the schools around the country, there have been acts of violence, and maybe these children, if they're not getting it in the homes, maybe they can get it at school. I'm also a school nurse in Bismarek, and I also know that they try to integrate all of the cultural diversity. It's not that we're trying to push our religion on them, but then why should they push the non-religion onto us. It's kind of a live and let live type of thinking. People came to this country to be free from religious persecution, and we can mandate ourselves right out of our freedom, so we have to really careful with that. Our divorce laws are based on the Ten Commandments, it's in the ND Century Code. Just little issues like that are important.

Chairman Kelsch: Anyone who wishes to appear neutral?

Doug Bar: (Director of the Civil Litigation Division of the Office of Atty. General) I'm here to provide technical assistance. The office of Atty. General is not taking a position either way.

There are a number of questions that were asked that I don't think people felt comfortable responding to. Prior to coming, I reviewed about 20 cases addressing this issue, to the extent including the 1980 case, the Grand Forks Case, Where ND law was struck down by the US Supreme Court. I think it was Rep. Nelson who asked whether the Ten Commandments can be posted in the court house and in similar facilities, for the most cases, the courts have upheld the posting of those if they're in a situation where they are in a group of other historical type documents. It was Rep. Hawken who asked, 'does this do anything?'. I don't find anything in ND law that prohibits the posting of the Ten Commandments. The only restriction would be the First Amendment, and that applies whether this bill passes or not. If this bill violates the First Amendment, then passing it won't accomplish anything, and it does, and it does, it can be done at this point. Another question was asked about the state defending this bill, obviously if any statute of ND is challenged, it is the ND office of attorney general's statutory constitutional responsibility to defend the bill. However, in all likelihood, anyone challenging this would not challenge the statute directly, they would find an individual school district who had it posted, and find the set of postings that they thought they had the best chance of defeating. For example, if there was the Ten Commandments and just one other document, they'd have a much better chance of challenging that than if it was the Ten Commandments, The Bill Of Rights, The Declaration of Independence and three or four other documents, so if they challenged the school district directly, the office of attorney general would not have the duty to defend that. If they challenged the bill, then we'd have the duty to defend that.

Rep. Nottestad: Based on what you said about challenging an individual case, could it be then, theoretically possible, that schools that are posting them now could become that case?

Bard: Yes. Someone could go out and challenge that now, but if there is no one in the local school district that is concerned enough then there will be no challenge.

Rep. Nottestad: Then theoretically make people aware of it, therefore increasing the chance of a challenge.

Bard: I believe that the attention the bill has already gotten will make people more aware, and again, the bill is not granting any additional authority because there's nothing restricting their authority now.

Rep. Thoreson: I think last session, we repealed the Ten Commandments law, which did allow schools to display the Ten Commandments in the classroom, now if this person from Minot continues to display it, does he have any authority if that was in effect when he was doing it, or does he have to take it down because it was repealed and now there's no reference, and basically this bill would replace what reference there was to the law that we repealed in '99?

Bard: There's no state law that prohibits the posting of it, the limitation would be found in the federal constitution and the ND constitution, and of the course the state law is subservient to the federal constitution. Basically, you can post it if it doesn't violate the constitution.

Chairman Kelsch: Could the school district be challenged by an individual or group who doesn't believe in the Ten Commandments, saying its discriminatory because they're displaying one set of religious beliefs and not representative of the people in the state?

Bard: I think the school district could be challenged under that ground or another ground. The constitution prohibits the favoring of one religion, or any religion or religion at all, so it could be someone who feels that it discriminates against people who have no religion. Again, as introduced, the purpose of this bill is not to teach the Ten Commandments, it's to use it as a

historical setting of the basis of civil laws and criminal laws, it's to be in a setting with numerous other documents that also form the basis of those laws. It's not a mandate that the Ten Commandments and its principles be taught.

Rep. Nelson: Would you agree that for school districts that would contemplate posting the Ten Commandments in this fashion, the reassurance with the passage of this bill that that decision would have the backing of the attorney general's office, either through a brief or as a named litigant, would be the major portion of this legislation probably to get the local school boards off the dime as far as whether they want to or not?

Bard: I agree that this bill, I think it tells the schools what this legislative assembly believes, which is if you do it within these limitations, that that meets the first amendments requirements, so it may make the school districts feel more secure in that matter.

Rep. Hawken: There is nothing that prevents the school district from doing this under current law, with historical documents.

Bard: I have learned not to speculate what the US Supreme Court will decide. There is no specific case law saying that a bill such as this would be unconstitutional. The Supreme Court is more strict when it comes to schools, because it involves children, who they believe are more impressionable and don't have the ability to make their own decisions.

Rep. Mueller: Given what I understand: the school district chooses to post the Ten Commandments. The group protests that situation, and the courts then are given the option of say, 'put yours up there', and they don't want to put it up there, and they have that right, it would seem to me. Where then, does that put their protest?

Burd: That assumes that there are different groups of different religions with different codes that they want up, there are some people who don't have any particular belief or code of ethics that they would want up at all, so you could have people who just don't want anything up at all. I don't know if that pertains to the validity of the lawsuit, because if it affects the First Amendment, it affects it either way, and the purpose of the Ten Commandments is because of the historical aspect of our laws, and if it's not being put up because of that, then all of the religious documents don't serve that same purpose, and we have to remember, is it a bill to accommodate all religions or is it to have a historical purpose, and it's under that latter context that the courts have upheld those kinds of documents in court houses and city offices.

Chairman Kelsch: Anyone who wishes to appear in opposition to HB1128?

Richard Ott: (ND Council of Educational Leaders and the School Boards Association) There are six points. We have no conflict with the Ten Commandments, not the effect it may or may not have on young people, that's not what I'm wanting to express. School districts are totally on their own, the attorney general's office is under no obligation and neither is DPI. When we see something like this come up, there are red flags that come up, because we're dealing with a very volatile issue. There are people of good faith who will want this done. If they do, there are people of equally good faith who will want to challenge it, and when they do, again, it is the local school district and administrators who have to carry the bog. I kind of make a tongue and cheek for a recommendation for the amendment: 1. It would agree that the state would defend any litigation that would come of this and secondly, a fiscal note to cover the legal fees. The last thing I wanted to say, if we really want to affect how the young people in this state behave, we have to set the example, I think that's how they learn more than anything else.

Rep. Nelson: Are you aware of any challenges to this law, being that SD is the most recent state in the past?

Ott: This is unscientific, but I think I hear on the radio that SD had the law, a school district had then posted it, there was a threat of litigation and they took them down.

Rep. Nelson: From a national standpoint, are you aware of any challenges on that basis?

Ott: No, I'm not.

Rep. Nelson: If we passed this law, you made the comment that challenges are likely, if there haven't been in other states, why are they going to be more likely in ND than in other states.

Ott: I don't know that any of them have even been posted in other states, I really don't know anything about those.

Rep. Thoreson: If I'm not mistaken, we did repeal a law that allows you to have the Ten Commandments in the classroom, have we had a lot of lawsuits based on that particular law that we did have on the books?

Ott: I'm not aware of any outside of the Grand Forks situation.

Carol Two Eagles: I am a Lakota traditional person, which means I sun dance, which means I carry a pipe, loosely translated as a minister, and I'm also a presiding bishop of the nondenominational, non-secretarian church, and within that church, our bylaws say that we express worship or belief through services in the communities wherever we are, and I'm only the second bishop this church has ever had. My objection to this bill is that it specifies the Ten Commandments. We believe that actions speak louder than words. So, if you wish to try to pass this bill, I think that you might try to change the wording to, 'you may display religious, ethical, an historical documents, provided they are displayed together with no one's religion's documents

having more emphasis than any other, and provided that if one's religion's ethical or behavioral documents having more emphasis than any other, and provided that if one's religion's ethical or behavioral code be displayed, the central guiding principles of other and unrelated religions be displayed in the same place and way at the same time'. Then I wouldn't have a problem with it.

Renee Lambay: I'm speaking from a neutral position. The commandments are filled with two things: allegiance to God, the first four, and then the last six is our relationship to each other. The state has all the right to make laws that pertain to our relationship with each other they can say, thou shall not kill, etc, but the state has no right to make a law dealing with the first four. The first four, 'thou shall not have any God before thee, thou shall not take the name of the Lord thy God in vain, thou shall not have any images, remember the Sabbath day and keep it holy, the seventh day is the Sabbath of the Lord thy God', and those laws the state has no right to promote or to make laws about. If they would, we would get into a bad situation. Congress may make no law promoting or restricting religion. I really appreciate my religious liberty. Actually, people came over here because the state was enforcing a state religion upon them, and we want to stay away from that type of thing.

Aroona Seth: I'm of Hindu faith. I came to this country 26 years ago, I'm a citizen. I would like to say, we should try to keep religion and education separate. It's very important we send our kids to school for an education, not for religious education, that should be taught at home. It's the parent's responsibility to teach their children what their behavior should be. The whole idea of this country, what we believe in, if we look at it, this land belongs to the native people, whoever came here afterward, adopted this country as a home, just like I did. We need to accept

each other, not tolerate each other. There's a big difference. If we try to put one document, we are saying that one is superior and the other are inferior. Let's not put religion into the schools.

Bey Nielson: (School Board's Association) I'm here to testify in opposition to the bill, it's the wording as much as anything. This bill doesn't say that it's permissible for the school's to display religious or historical documents with none having preference over another, and several of the other proponents have said that you can post other things with it, that we're not saying that one has to be higher than the other, but the fact of the matter is, the bill says, 'may post the Ten Commandments', and I think that the state legislature, and I know I would advise my folks that if they were to write a policy for their school district in regards to the display of religious or historical documents, our first line of defense would be, don't name any specific ones. You're just saying, if anything is to be displayed, it's all to be displayed in the same way and in the same place, but if they were to pass a policy that says, 'we may display the Ten Commandments and maybe some other stuff' clearly sends a message that we're putting one above the others, because we're naming it in the law. It's a specific document relating to a specific religion. Currently, school districts may, if they follow the Supreme Court guidelines, display these documents. They know that. Our advice has been that they proceed at their own peril, because if they don't do it properly, they could end up in court. But by passing a bill, the legislature is saying specifically that the ND legislative body wants schools to know that they may display the Ten Commandments.

Written testimony submitted by Gary Thune

Written testimony submitted by Connie Hildebrand

Chairman Kelsch: We will now close the hearing on HB1128.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1128 A

House Education Committee

☐ Conference Committee

Hearing Date 01/30/01

Tape Number	Side A	Side B	Meter #
#2		X	21 to 577
Committee Clerk Signature <i>Lisa Albert</i>			

Minutes:

Chairman R. Kelsch, Vice-Chair T. Brusegaard, Rep. Bellew, Rep. Grumbo, Rep. Haas, Rep. Hanson, Rep. Hawken, Rep. Hunsakor, Rep. Johnson, Rep. Meler, Rep. Mueller, Rep. Nelson, Rep. Nottestad, Rep. Solberg, Rep. Thoreson

Chairman Kelsch: We are going to take up HB1128.

Rep. Haas: I move the amendment.

Rep. Nelson: Second.

Rep. Thoreson: I move a Do Pass As Amended.

Rep. Hawken: Second.

Chairman Kelsch: Committee discussion.

The motion of DO PASS AS AMENDED 13 Yay 2 Nay 0 Absent.

Floor Assignment: Rep. Thoreson

Date: 1/30/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1128

House House Education Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 102-25.0101

Action Taken Do Pass As Amended

Motion Made By Rep. Thoreson Seconded By Rep. Hawken

Representatives	Yes	No	Representatives	Yes	No
Chairman-RaeAnn G. Kelsch	✓		Rep. Howard Grumbo	✓	
V. Chairman-Thomas T. Drusegaard	✓		Rep. Lyle Hanson	✓	
Rep. Larry Bellew		✓	Rep. Bob Hunsakor	✓	
Rep. C.B. Haas	✓		Rep. Phillip Mueller	✓	
Rep. Kathy Hawken	✓		Rep. Dorvan Solberg	✓	
Rep. Dennis E. Johnson	✓				
Rep. Lisa Meler		✓			
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad	✓				
Rep. Laurel Thoreson	✓				

Total (Yes) 13 *Click here to type Yes Vote* No 2 *Click here to type No Vote*

Absent 0

Floor Assignment *Click here to type Floor Assignment* Rep. Thoreson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1128: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1128 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "the Ten Commandments" with "cultural, legal, historical, and religious documents"

Page 1, replace lines 6 through 14 with:

"Documents - Display. The board of a school district may authorize the display of cultural, legal, historical, and religious documents in a classroom or elsewhere in a public school. The display of religious documents, if authorized, may not be in a manner that calls attention to or otherwise promotes any particular document."

Renumber accordingly

2001 SENATE EDUCATION

HB 1128

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1128

Senate Education Committee

☐ Conference Committee

Hearing Date 02-14-01

Tape Number	Side A	Side B	Meter #
1	x		0 - 44.9
1 (2-19-01)	x		45.5 - 49.0
Committee Clerk Signature <i>Sandi Johnson</i>			

Minutes: CHAIRMAN FREBORG called the Senate Education Committee to order with a Happy Valentine's Day.

Roll was taken with all members present.

SENATOR FLAKOLL moved to revisit SCR 43278 (HEART). For the three females within this committee, Senator Christenson, Llaura Ness, Intern, and Sandi Johnson, Clerk, each was presented with a card and box of candy from the committee members.

CHAIRMAN FREBORG called the hearing on HB 1128 which relates to the display of cultural, legal, historical and religious documents.

Testimony in support of HB 1128:

REPRESENTATIVE DROVDAL, District 39, spoke in support of the bill. This will allow schools to place the Ten Commandments in school rooms. He feels this bill is a positive approach for students and gives the students a moral code of ethics. This is an option for local school boards. He would ask that the committee amend the bill back to its original form.

SENATOR COOK asked if Representative Drovda would support SB 2177 which names the "Ten Commandments". He would support it if it does do that.

SENATOR LYSON, District 1, supports the bill and asks the committee to amend it back to the original form. He would expect the bill to go to a conference committee. He feels the Ten Commandments are part of the growth of our nation and they are historical.

MRS. GARY ZENTZ, mother and grandmother, feels that by putting the Ten Commandments wording back into the bill would be good. She feels this is one way to put virtue back into our schools.

Testimony in opposition to HB 1128:

CAROL TWO EAGLES, traditionalist for the Lakota, read prepared testimony from JENNIFER RING, Executive Director ACLU. She feels religion in schools needs to follow guidelines put down by the Supreme Court. Feels all religions need to be treated the same.

RICHARD OTT, NDCEL, has concerns that this is permissive and will force local districts to solve controversies which will cost them money.

DOUG BAHR, Attorney General's Office, stated their office is neutral and he would give technical and legal assistance on the issue to the committee. He gave background on SB 2177 and HB 1437. The Supreme Court, in analyzing a bill like these, applies the "lemon test". This is a 3-part test to determine if a case/law is constitutional. One part is it has to have a secular purpose. Separate posting of the Ten Commandments is against the law. When a collage of documents having historical value were hung, the court decisions were upheld. He feels the amended version of HB 1128 gives less guidance than the original version. There was more discussion by the committee on the fact that values can be taught in school in many different ways.

Page 3
Senate Education Committee
Bill/Resolution Number HB 1128
Hearing Date 02-14-01

No further testimony, the hearing was closed.

02-19-01, Tape 1, Side A, 45.5 - 49.0

SENATOR COOK feels SB 2177 that was passed out of committee with a Do Pass as Amended is a similar vehicle and we don't need two bills the same.

SENATOR COOK moved a DO NOT PASS. Seconded by SENATOR CHRISTENSON.

Roll Call Vote: 7 YES. 0 NO. 0 Absent. Motion Carried.

Carrier: SENATOR FLAKOLL

Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1128

Senate	Education	Committee
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☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DNP

Motion Made By Sen. Cook Seconded By Sen. Christensen

[illegible]

Total (Yes) 2 No 0

Absent ()

Floor Assignment Sen. Takoll

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 19, 2001 12:37 p.m.

Module No: SR-30-3855
Carrier: Flakoll
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1128, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends
DO NOT PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed
HB 1128 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1128

To: CHAIRMAN RAE ANN KELSCH
HOUSE EDUCATION COMMITTEE

Re: HB 1128 - Displaying Ten Commandments Hearing - January 23, 2001 - 9:00 a.m.

From: Gary R. Thune, NDSBA Legal Counsel
Lobbyist No. 63

Chairman Kelsch and Members of the House Education Committee:

Due to a conflict in hearing schedules, I am unable to appear before your Committee this morning. Thank you for permitting me to submit this written testimony in opposition to House Bill 1128.

In the late 1970's, I served as legal counsel to the Grand Forks School District. When a patron of that district complained that the Ten Commandments were not posted in every classroom, as mandated by Section 15-47-10 of the North Dakota Century Code, it became "front page" news. It also prompted Professor Ben Ring and the ACLU to sue the Grand Forks School District, claiming this statute to be an unconstitutional violation of the Establishment Clause and the Free Exercise Clause of the United States Constitution. In 1980 the United States District Court agreed and no appeal was filed. Subsequently, the United States Supreme Court also struck down a Kentucky statute which sought to avoid constitutional problems with posting the Ten Commandments in public schools, by prohibiting the use of public funds for printing and posting these documents. North Dakota's Ten Commandments statute remained on the books until it was repealed in 1999.

Now the 57th Legislative Assembly is being asked to adopt a new, permissive Ten Commandments statute which would require including other cultural, legal or historical documents of significance to the legal or governmental systems of the United States and North Dakota. There is no requirement to include the basic tenets or principles of any other religions.

In my opinion, this proposed bill creates a false sense of legal security and is likely to result in an opportunity for either a public school district or the State of North Dakota to return to Court as a defendant in an Establishment Clause and Free Exercise Clause lawsuit. The teaching of the basic principles of various religions in a study of comparative religions is permitted. The identification of one religion's basic principles, to the exclusion of all others, is not likely to be upheld.

For these reasons, I appear in opposition to HB 1128.

Gary R. Thune



CONNIE M. HILDEBRAND
421 EAST BRANDON DRIVE
BISMARCK, ND 58503-0410
January 23, 2001

Chairwoman Kelsch, Vice Chairman Brusegaard, and Members of the House Education Committee:

My name is Connie Hildebrand. I am a North Dakota citizen and a resident of Bismarck, North Dakota. I also happen to be Christian, but that's not why I'm here today.

Today I wish to speak to HB1128, and as it is described, "the display of the Ten Commandments as it relates to other documents of cultural, legal or historical significance which have influenced the legal and governmental systems of the United States and this state."

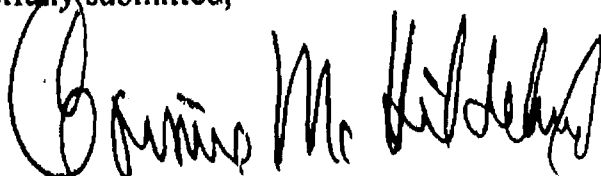
In the 1880's, when North Dakota was being settled, North Dakota had the highest number of ethnic groups of any state in the nation. Hawaii was second. In the 1990's it is reversed. Hawaii has the highest number of ethnic groups of any state in the nation. North Dakota is second. North Dakota has, at last count and growing, some 70 distinct ethnic groups including: German, Norwegian, Irish, English, Swedish, French, American Indian, Greek, East Indian, Puerto Rican, Slovak, Kurdish, Chinese, Korean, Italian, Mexican, Japanese, Hungarian, Bosnian, Pakistani, etc etc., each of which has a rich cultural, legal, and religious history.

Each of these cultures have also produced documents of significance to the United States *and* North Dakota, including the governmental systems of ancient Greece and Rome, the Babylonian Code of Hammurabi, the Hindu deity teachings, the teachings of Muhammad, the teachings of Buddha, the Magna Carta, the teachings of the Dalai Lama, and Confucius, and Baha'u'llah, the governmental formulations of the Iroquois Nation and, the teachings of Christ.

As a young woman, I was a member of the International Club at a North Dakota college and later, a member of an International Club in the city of New York. I have been a member of the International Club of Bismarck-Mandan for nearly ten years and, I assure you, there is richness to be gained from learning about one another and sharing together one's customs and one's beliefs.

But, I assure you, exchange and understanding, communication and respect, growth and human compassion cannot be hung on the walls of our schools and our classrooms, no matter how many cultural, legal, religious, and historical documents North Dakota agrees to hang there. As responsible legislators, I ask you to ask yourselves one very simple question, what are you trying to do by voting for this bill?

Respectfully submitted,



Connie M. Hildebrand

Madam Chairman & Committee

As a life long citizen of N.D.,

I would like to express, why I would like to see the commandments posted again.

When I went to school absolutes of right and wrong were taught, right was right and wrong was wrong.

Today they are gone. Absolutes are not taught. Values clarification, teaches children to decide for themselves what is right and wrong.

Everyone can see that evil has increased since absolutes are gone. I strongly believe that the 10 commandments are not religious as some try to say they are, but are a code of behavior, for what is right and what is wrong.

Example - Thou shalt not steal. Who would like someone to steal from them? Does this mean a child in school can steal, by

Calling it to religious, or can kill
his teacher and get away with it
because this is to religious.

It is simply a code of behavior
that I feel is strongly needed again
in our schools, instead of alot of
money spent on Counseling and other
programs. Till we can get back to
absolutes we're wasting our time
and money on all these substitutes.

Submitted by

Barbara Schulz

325 W. Blvd

Bismarck, ND 58501

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Wise Girl Church of
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1215

THE MAGNA CHARTA

THE GREAT CHARTER OF LIBERTIES, GRANTED AT RUNNYMEDE,
JUNE 15, A.D. 1215, BY KING JOHN, IN THE SEVENTEENTH
YEAR OF HIS REIGN

John, by the grace of God King of England, Lord of Ireland, Duke of Normandy, and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, governors, officers, and to all bailiffs, and his lieges, greeting. Know ye, that we, in the presence of God, and for the salvation of our soul, and the souls of our ancestors and heirs, and unto the honour of God and the advancement of Holy Church, and amendment of our realm, by advice of our venerable fathers, Stephen, Archbishop of Canterbury, primate of all England and Cardinal of the Holy Roman Church, Henry, Archbishop of Dublin, William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, Bishops of Master Pandulph, Sub-Deacon and Familiar of our Lord the Pope, Brother Aymeric, Master of the Knights-Templars in England, and of the noble persons, William Marescall, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William, Earl of Arundel, Alan de Galloway, Constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, and Hubert de Burgh, Seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Bassett, Alan Bassett, Philip of Albiney, Robert de Roppell, John Mareschal, John Fitz Hugh, and others our liegemen have, in the first place, granted to God, and by this our present charter confirmed, for us and our heirs for ever:

1. That the church of England shall be free, and have her whole rights, and her liberties inviolable, and we will have them so observed, that it may appear thence, that the freedom of elections, which is reckoned chief and indispensable to the English church, and which we granted and confirmed by our charter, and obtained the confirmation of the same from our Lord the Pope Innocent III., before the discord between us and our barons, was granted of mere free will, which charter we shall observe, and we do will it to be faithfully observed by our heirs forever.

2. We also have granted to all the freemen of our kingdom, for us and for our heirs forever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs: If any of our earls, or barons, or others, who hold us in chief by military service, shall die, and at the time of his death his heir shall be of full age, and owes a relief, he shall have his inheritance by the ancient relief that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.

3 But if the heir of any such shall be under age, and shall be in ward when he comes of age, he shall have his inheritance without relief and without fine.

4 The keeper of the land of such an heir being under age, shall take of the land of the heir none but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods, and if we commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us, or to him to whom we shall assign them; and if we sell or give to anyone the custody of any such lands, and he therein make destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid.

5 But the keeper, so long as he shall have the custody of the land, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land, and shall deliver to the heir when he comes of full age, his whole land, stocked with ploughs and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

6 Heirs shall be married without disparagement, and so that before matrimony shall be contracted those who are near in blood to the heir shall have notice.

7 A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which term her dower shall be assigned.

8 No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she holds of us; or without the consent of the lord of whom she holds, if she hold of another.

9 Neither we nor our bailiffs shall seize any land or rent for any debt, so long as the chattels of the debtor are sufficient to pay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor is sufficient for the payment of the debt; and if the principal debtor shall fail in the payment of the debt, not having wherewithal to pay it, then the sureties shall answer the debt, and if they will they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.

10 If anyone have borrowed anything of the Jews, more or less, and die before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is underage, of whomsoever he may hold; and if the debt fall into our hands we will only take the chattel mentioned in the deed.

11 And if anyone shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children underage, they shall have necessaries provided for them, according to the tenement of the deceased, and out of the residue the debt shall be paid, saving however, the service due to the lord; and in like manner shall it be done touching debts to others than the Jews.

12 No scutage or aid shall be imposed in our kingdom, unless by the general council of our kingdom, except for ransoming our person, making our eldest son a knight, and once for marrying our eldest daughter; and for these there shall be paid a reasonable aid. In like manner it shall be concerning the aids of the city of London.

13 And the city of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore we will grant, that all other cities and boroughs, and towns and ports, shall have all their liberties and free customs.

14 And for holding the general council of the kingdom concerning the assessment of aids, except in the three cases aforesaid, and for the assessing of scutages, we will cause to be summoned the archbishops, bishops, abbots, earls, and greater barons of the realm, singly by our letters. And furthermore we shall cause to be summoned generally by our sheriffs and bailiffs, all others who hold of us in chief, for a certain day, that is to say, forty days before their meeting at least, and to a certain place, and in all letters of such summons we will declare the cause of such summons. And summons being thus made, the business of the day shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

15 We will not for the future grant to anyone that he may take aid of his own free tenants, unless to ransom his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall be only paid a reasonable aid.

16 No man shall be distrained to perform more service for a knight's fee, or other free tenement, than is due from thence.

17 Common pleas shall not follow our court, but shall be holden in some place certain.

18 Assizes of novel disseisin, and of mort d'ancestor, and of darrein presentment, shall not be taken but in their proper counties, and after this manner. We, or if we should be out of the realm, our chief justiciary, shall send two justiciaries through every county four times a year, who, with four knights, chosen out of every shire by the people, shall hold the said assizes, in the county, on the day, and at the place appointed.

19 And if any matters cannot be determined on the day appointed for holding the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid, shall stay to decide them, as is necessary, according as there is more or less business.

20 A freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great crime according to the heinousness of it.

saving to him his contentment; and after the same manner a merchant saving to him his merchandise. And a villein shall be amerced after the same manner, saving to him his wainage; if he shall fall under our mercy, and none of the aforesaid amerciaments shall be assessed but by the oath of honest men in the neighborhood.

21. Earls and barons shall not be amerced, but by their peers, and after the degree of the offense.

22. No ecclesiastical person shall be amerced for his lay tenement, nor according to the proportion of the others aforesaid, and not according to the value of his ecclesiastical benefice.

23. Neither a town nor any tenant shall be distrained to make bridges or banks, unless that anciently and of right they are bound to do it.

24. No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of our crown.

25. All counties, hundreds, wapentakes, and tythings, shall stand at the old rents, without any increase, except in our demesne manors.

26. If anyone holding of us a lay-fee die, and the sheriff, or our bailiffs, show our letters patent, of summons for debt which the dead man did owe to us, it shall be lawful for the sheriff or our bailiff to attach and enroll the charters of the dead, found upon his lay-fee, to the value of the debt, by the view of lawful men, so as nothing be removed until our whole clear debt be paid; and the rest shall be left to the executors to fulfill the testament of the dead, and if there be nothing due from him to us, all the charters shall go to the use of the dead, saving to his wife and children their reasonable shares.

27. If any freeman shall die intestate, his charters shall be distributed by the hands of his nearest relations and friends, by view of the church, saving to everyone his debts which the deceased owed to him.

28. No constable or bailiff of ours shall take corn or other charters of any man, unless he presently give him money for it, or hath respite of payment by the good will of the seller.

29. No constable shall distrain any knight to give money for castle guard, if he himself will do it in his person, or by another able man in case he cannot do it through any reasonable cause. And if we lead him, or send him in an army, he shall be free from such guard for the time he shall be in the army by our command.

30. No sheriff or bailiff of ours, or any other, shall take horses or carts of any freeman for carriage, but by the good will of the said freeman.

31. Neither shall we nor our bailiffs take any man's timber for our castles or other uses, unless by the consent of the owner of the timber.

32. We will retain the lands of those convicted of felony only one year and a day, and then they shall be delivered to the lord of the fee.

33. All weirs for the time to come shall be put down in the rivers of Thames and Medway, and throughout all England, except upon the sea-coast.

34. The writ which is called Praecipe, for the future, shall not be made out to anyone, of any tenement, whereby a freeman may lose his court.

35. There shall be one measure of wine, and one of ale through our whole realm, and one measure of corn, that is to say, the London quarter, and one breadth of dyed cloth, and russets, and habergeons, that is to say, two ells between the lists; and it shall be of weights as it is of measures.

36. Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.

37. If any do hold of us by fee-farm, or by socage, or by burgage, and he hold also lands of any other by knight's service, we will not have the custody of the heir or land, which is holden of another man's fee by reason of that fee-farm, socage, or burgage, neither will we have the custody of such fee-farm, socage, or burgage, except knight's service was due to us out of the same fee-farm. We will not have the custody of an heir, nor of any land which he holds of another by knight's service, by reason of any petty serjeanty that holds of us, by the service of paying a knife, an arrow, or the like.

38. No bailiff from henceforth shall put any man to his law upon his own bare saying, without credible witnesses to prove it.

39. No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.

40. To none will we sell, to none will we deny, or delay, right or justice.

41. All merchants shall have safe and secure conduct, to go out of, and to come into England, and to stay there, and to pass as well by land as by water, for buying and selling by the ancient and allowed customs, without any evil tolls, except in time of war, or when they are of any nation at war with us. And if there be found any such in our land, in the beginning of the war, they shall be attached, without damage to their bodies or goods, until it be known unto us or our chief justiciary how our merchants be treated in the nation at war with us, and if ours be safe there, the others shall be safe in our dominions.

42. It shall be lawful, for the time to come, for anyone to go out of our kingdom, and return safely and securely, by land or by water, saving his allegiance to us, unless in time of war, by some short space, for the common benefit of the realm, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be in such condition as is above-mentioned.

43. If any man hold of any escheat, as of the honour of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which be in our hands, and are baronies, and die, his heir shall give no other relief, and perform no other service to us, than he would to the baron, if it were in the baron's hand; we will hold it after the same manner as the baron held it.

44. Those men who dwell without the forest, from henceforth shall not come before our justiciars of the forest, upon common summons, unless such as are impleaded, or are pledges for any that are attached for something concerning the forest.

45. We will not make any justices, constables, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it.

46. All barons who have founded abbeys, and have the kings of England's charters of advowson, or the ancient tenure thereof, shall have the keeping of them, when vacant, as they ought to have.

47. All forests that have been made forests in our time, shall forthwith be disforested, and the same shall be done with the water banks that have been fenced in by us in our time.

48. All civil customs concerning forests, warrens, foresters and warreners, sheriffs and their officers, rivers and their keepers, shall forthwith be inquired into in each county, by twelve sworn knights of the same shire, chosen by creditable persons of the same county, and within forty days after the said inquest, be utterly abolished, so as never to be restored so as we are the first acquainted therewith, or our justiciary, if we should not be in England.

49. We will immediately give up all hostages and writings delivered unto us by our English subjects, as securities for their keeping the peace, and yielding us faithful service.

50. We will entirely remove from our bailiwicks the relations of Gerard de Atheyes, so that for the future they shall have no bailiwick in England; we will also remove Engelard de Cyrony, Andrew, Peter, and Gyon, from the Chancery; Gyon de Cyrony, Geoffrey de Martyn and his brother, Philip Mark, and his brothers, and his nephew, Geoffrey, and their whole retinue.

51. As soon as peace is restored, we will send out of the kingdom all foreign soldiers, crossbowmen, and stipendiaries, who are come with horses and arms to the prejudice of our people.

52. If anyone has been dispossessed or deprived by us, without the legal judgment of his peers, or his lands, castles, liberties, or right, we will forthwith restore them to him, and if any dispute arise upon this head, let the matter be decided by the five-and-twenty barons hereafter mentioned, for the preservation of the peace. As for all those things of which any person has, without the legal judgment of his peers, been dispossessed or deprived, either by King Henry our father, or our brother King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders, excepting those things about which there is a plea depending, or whereof an inquest hath been made, by our orders, before we undertook the crusade, but when we return from our pilgrimage, or if perchance we tarry at home and do not make our pilgrimage, we will immediately cause full justice to be administered therein.

53. The same respite we shall have (and in the same manner about administering justice, disforesting the forests, or letting them continue) for disforesting the forests, which Henry our father, and our brother Richard have afforested, and for the keeping of the lands which are in another's fee, in the same manner as we have hitherto enjoyed those wardships, by reason of a fee held of us by knight's service, and for the abbeys founded in any other fee than our own, in which the lord of the fee says he has a right, and when we return from our pilgrimage, or if we tarry

*Richard the Lion
Hearted*

at home, and do not make our pilgrimage, we will immediately do full justice to all the complainants in this behalf.

54. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than her husband.

55. All unjust and illegal fines made by us, and all amercedments imposed unjustly and contrary to the law of the land, shall be entirely given up, or else be left to the decision of the five-and-twenty barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, Archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall notwithstanding go on without him; but so that if one or more of the aforesaid five-and-twenty barons be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room, out of the said five-and-twenty, and sworn by the rest to decide the matter.

56. If we have disseised or dispossessed the Welsh of any lands, liberties, or other things, without the legal judgment of their peers, either in England or in Wales, they shall be immediately restored to them; and if any dispute arise upon this head, the matter shall be determined in the marche by the judgment of their peers; for tenements in England according to the law of England, for tenements in Wales according to the law of Wales, for tenements of the marche according to the law of the marche; the same shall the Welsh do to us and our subjects.

57. As for all those things of which a Welshman hath, without the legal judgment of his peers, been disseised or deprived of by King Henry our father, or our brother King Richard, and which we either have in our hands, or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the crusaders, excepting those things about which a suit is depending, or whereof an inquest has been made by our order, before we undertook the crusade; but when we return, or if we stay at home without performing our pilgrimage, we will immediately do them full justice, according to the laws of the Welsh and of the parts before mentioned.

58. We will without delay dismiss the son of Llewellyn, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of the peace.

59. We will treat with Alexander, King of Scots, concerning the restoring his sisters and hostages, and his right and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the charters which we have from his father, William, late King of Scots, it ought to be otherwise; but this shall be left to the determination of his peers in our court.

60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us, towards our people of our kingdom, as well clergy as laity shall observe, as far as they are concerned, towards their tenants.

61. And whereas, for the honour of God and the amendment of our kingdom, and for the better quieting the discord that has arisen between us and our barons, we have granted all these things aforesaid, willing to render them firm and lasting, we do give and grant our subjects the underwritten security, namely that the barons may choose five-and-twenty barons of the kingdom, whom they think convenient, who shall take care, with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present charter confirmed: so that if we, our justiciary, our bailiffs, or any of our officers, shall in any circumstance fail in the performance of them, towards any person, or shall break through any of these articles of peace and security, and the offence be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and, laying open the grievance, shall petition to have it redressed without delay; and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our justiciary, within forty days, reckoning from the time it has been notified to us, or to our justiciary, (if we should be out of the realm), the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons, and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all possible ways, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure, saving harmless our own person, and the persons of our queen and children; and when it is redressed, they shall obey us as before. And any person whatsoever in the kingdom, may swear that he will obey the orders of the five-and-twenty barons aforesaid, in the execution of the premises, and will distress us, jointly with them, to the utmost of his power, and we give public and free liberty to any one that shall please to swear to this, and never will hinder any person from taking the same oath.

62. As for all those of our subjects who will not, of their own accord, swear to join the five-and-twenty barons in distraining and distressing us, we will issue orders to make them take the same oath as aforesaid. And if any one of the five-and-twenty barons dies, or goes out of the kingdom, or is hindered any other way from carrying the things aforesaid into execution, the rest of the said five-and-twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest. In all things that are committed to the execution of these five-and-twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, and some of them, when summoned, will not, or cannot come, whatever is agreed upon, or enjoined, by the major part of those that are present, shall be reputed as firm and valid as if all the five-and-twenty had given their consent; and the aforesaid five-and-twenty shall swear, that all the premises they shall faithfully observe, and cause with all their power to be observed. And we will not, by ourselves, or by any other, procure anything whereby any of these concessions and liberties may be revoked or

lessened, and if any such thing be obtained, let it be null and void, neither shall we ever make use of it, either by ourselves or any other. And all the ill will, indignations, and rancours that have arisen between us and our subject, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive; moreover all trespasses occasioned by the said dissensions, from Easter in the fifteenth year of our reign, till the restoration of peace and tranquillity, we hereby entirely remit to all, both clergy and laity, and as far as in us lies do fully forgive. We have, moreover, caused to be made for them the letters patent testimonial of Stephen, Lord Archbishop of Canterbury, Henry, Lord Archbishop of Dublin, and the bishops aforesaid, as also of master Pandulph, for the security and concessions aforesaid.

63. Wherefore we will and firmly enjoin, that the Church of England be free, and that all men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, for ever, as is aforesaid. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall be observed bona fide and without evil subtilty. Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Runnymede, between Windsor and Staines, the fifteenth day of June, in the seventeenth year of our reign.

Mr. Chairman
Members of the Committee

My name is Ed Crawford, I'm from Williston, North Dakota and I have been the Executive Director of the Eckert Youth Homes for the past twenty years. I am in favor of HB1128 because I see the potential in it to help empower our youth to make more healthy and responsible choices.

A fundamental assumption in my work with youth is that young people equipped with a healthy conscience are best prepared to deal with the pressures and temptations of adolescence. The key word is *conscience*. The skyrocketing occurrence of teen-related crime and promiscuity strongly supports the notion that a compelling sense of right and wrong is missing in many of our youth.

There are three major channels through which conscience comes to our kids. They are the family, the church and the school. When these three basic support systems of American society are healthy and harmoniously working together, they will influence and facilitate the development of conscience more than all other influences in a child's life.

Of the three channels, first and foremost in importance is the family. Parents are the single most important source for conscience-equipping during their children's developmental years. The second channel is the church, which has traditionally defined the standard against which conscience can be measured. The third channel is the school. No other institution has such access to the minds of our children as the public school. Because of the time spent there, the values of teachers and the moral climate of the school are certain to have impact.

HB1128 provides a practical way for the schools to contribute to the strengthening of conscience, thus helping to empower our youth to make better choices. Here's how.

A conscience can be no stronger than the absoluteness of the right and wrong on which it is based. Therefore, the conscience that will provide maximum protection in the face of temptation is the conscience that has developed from unchangeable absolutes, absolutes that can be passed from one person to another, generation to generation. The Ten Commandments meet the criteria not only as unchangeable absolutes, but they also represent common ground in most American communities today.

Should HB1128 be passed, I am developing a patriotic display, containing the words of the Ten Commandments, that I believe could be posted on the walls of public schools that would satisfy the concerns of Church and State while facilitating the strengthening of conscience at the same time. Copies are attached (rough draft) for your review.

It was Hoding Carter who said, "there are two lasting gifts we can give to our children, one is roots, the other is wings." In no country on earth is the opportunity to do both more accessible than in this great land of ours and of our children. By utilizing the provisions of HB1128, the schools can be instrumental in reminding our kids that our roots are in harmony with the Ten Commandments and that freedom can only come on the wings of responsible choices made possible by a healthy conscience.

Ed Crawford
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TESTIMONY
HOUSE BILL 1128 (1-22-01)
REPRESENTATIVE DAVID SKIP DROVDAL

CHAIRPERSON KELSCH AND MEMBERS OF THE HOUSE EDUCATION COMMITTEE, FOR THE RECORD MY NAME IS DAVID SKIP DROVDAL, AND I REPRESENT DISTRICT 39 IN WESTERN NORTH DAKOTA. HOUSE BILL 1128 STATES THAT THE TEN COMMANDMENTS MAY BE DISPLAYED IN PUBLIC SCHOOLS, AT THE DISCRETION OF THE LOCAL SCHOOL DISTRICT, IF DONE SO IN A HISTORICAL DISPLAY. THE TEN COMMANDMENTS MUST BE DONE IN THE SAME MANNER AND APPEARANCE AS OTHER OBJECTS AND DOCUMENTS DISPLAYED, AND MAY NOT BE PRESENTED OR DISPLAYED IN ANY FASHION THAT RESULTS IN CALLING ATTENTION TO IT APART FROM THE OTHER DISPLAYED OBJECTS AND DOCUMENTS.

THE SUPREME COURT HAS RULED FOR A SEPARATION OF CHURCH AND STATE, BUT THEY ALSO SAID IT (RELIGIOUS DOCUMENTS) COULD BE INTEGRATED INTO THE SCHOOL CURRICULUM AND COULD BE PART OF A STUDY OF HISTORY, CIVILIZATION, ETHICS, COMPARATIVE RELIGION OR THE LIKE.

A PERSON COULDN'T ARGUE THAT THE TEN COMMANDMENTS COME FROM A RELIGIOUS SOURCE. THEY WERE RECEIVED BY MOSES ABOUT 1200 BC, BUT THERE IS ALSO LITTLE ARGUMENT THAT THEY HAVE CONTRIBUTED IMPORTANTLY TO THE AMERICAN HISTORY AND ONE MAY SAY THEY ARE THE BASIS OF MANY OF OUR CURRENT LAWS.

WE KNOW THAT MANY CHALLENGES FACE OUR YOUNG STUDENTS, SUCH AS ALCOHOL, DRUGS, SEX AND VIOLENCE, IN THE

TESTIMONY
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SCHOOLS. THE TEN COMMANDMENTS, IN MY OPINION, IS AN EXCELLENT MORAL CODE OF BEHAVIOR TO HELP GUIDE THOSE STUDENTS IN DEALING WITH OTHER PEOPLE AND LIFE. THIS IS NOT TO SAY THAT THESE CHALLENGES DIDN'T EXIST WHEN WE GREW UP, BUT THE INFLUENCE OF RADIO, TV, THE INTERNET, AND MAGAZINES, WITH THEIR GRAPHIC DESCRIPTIONS, HAVE SOMETIMES ENHANCED THE TIMES, AND IN THE LEAST HAS RAISED AWARENESS. TODAY THE RISK OF SUCH BEHAVIOR IS INDEED MUCH GREATER THAN BEFORE, WITH STRONGER DRUGS AND NEW DISEASES, SUCH AS AIDS.

TO SAY THAT HANGING THE TEN COMMANDMENTS IN A PUBLIC SCHOOL IS GOING TO SOLVE ALL THESE PROBLEMS IS PREPOSTEROUS. THEY ARE ONLY THERE TO SUGGEST A MORAL CODE OF BEHAVIOR THAT HAS SERVED AS AN EXAMPLE FOR WORLD LEADERS FOR CENTURIES.

WILL JUST POSTING THE COMMANDMENTS HAVE ANY EFFECT? WE MUST BELIEVE THEY WOULD, OR WHY WOULD COMPANIES POST BILLBOARDS ON HIGHWAYS OR ADVERTISE IN NEWSPAPERS? WHY IS TOBACCO ADVERTISING PROHIBITED AT BALL PARKS IF JUST POSTING SIGNS DIDN'T HAVE AN EFFECT?

I ASK FOR FAVORABLE CONSIDERATION ON HOUSE BILL 1128 BECAUSE IT IS THE RIGHT THING TO DO.

I WILL BE HAPPY TO ANSWER ANY QUESTIONS THAT YOU MIGHT HAVE.

Section 4 The legislative assembly shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services, and any other governmental services or functions as may be provided by law. Any elective county office shall be for a term of four years.

Section 8. Each county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services, and any other governmental services or functions as may be provided by law. Any elective county office shall be for a term of four years.

Source: Const. 1889, Art. X, § 173, as amended by art. and 41, approved Mar. 18, 1924 (S.L. 1923, ch. 177); art. and 48, approved Sept. 22, 1933 (S.L. 1933, p. 494); art. and 55, approved June 25, 1940 (S.L. 1941, p. 588); art. and 62, approved June 24, 1952 (S.L. 1953, p. 589); art. and 67, approved June 26, 1956 (S.L. 1957, ch. 388); art. and 77, LM, approved Nov. 6, 1962 (S.L. 1963, ch. 447); amendment approved Sept. 2, 1980 (S.L. 1979, ch. 706, § 1; 1981, ch. 655); Adoption approved June 8, 1982 (S.L. 1981, ch. 665, § 1; 1983, ch. 718).

Collateral Reference.

Schools and School Districts c. 48.

68 Am. Jur. 2d Schools, § 52.

78 C.J.S. Schools and School Districts, § 93-104.

Section 9. Questions of the form of government to be adopted by any county or on the elimination or reinstatement of elective county offices may be placed upon the ballot by petition of electors of the county equal in number to twenty-five percent of the votes cast in the county for the office of governor at the preceding gubernatorial election.

Source: Const. 1889, Art. VIII, § 150, as amended by art. and 80, LM, approved June 30, 1964 (S.L. 1965, ch. 475); art. and 83, approved Sept. 6, 1966 (S.L. 1965, ch. 485); amended by art. and 80, LM, approved June 30, 1964 (S.L. 1965, ch. 475); art. and 83, approved Sept. 6, 1966 (S.L. 1965, ch. 485); 1967, ch. 509, § 1; Adoption approved June 8, 1982 (S.L. 1981, ch. 665, § 1; 1983, ch. 718).

Section 10. Agreements, including those for cooperative or joint administration of any powers or functions, may be made by any political subdivision with any other political subdivision, with the state, or with the United States, unless otherwise provided by law or home rule charter. A political subdivision may by mutual agreement transfer to the county in which it is located any of its powers or functions as provided by law or home rule charter, and may in like manner revoke the transfer.

Source: Adoption approved June 8, 1982 (S.L. 1981, ch. 665, § 1; 1983, ch. 718).

Section 11. The power of the governing board of a city to franchise the construction and operation of any public utility or similar service within the city shall not be abridged by the legislative assembly.

Source: Adoption approved June 8, 1982 (S.L. 1981, ch. 665, § 1; 1983, ch. 718).

ARTICLE VIII
EDUCATION

Section 1. A high degree of intelligence, patriotism, integrity and morality, on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make

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provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Sources: Const. 1900 Art. VIII, § 1st

Cross-Reference.
Religious faith, wearing by teachers, see §§ 15-47-29, 15-47-30

Constitution and Interpretation.

The North Dakota constitutional provisions relating to education have at least equal standing with Article I, §§ 3 and 4 of the state constitution guaranteeing freedom of religion and freedom of speech and press. *State v. Brennan*, 328 N.W.2d 220 (N.D. 1982), cert. denied, 460 U.S. 1070, 103 S.Ct. 1525, 75 L.Ed. 2d 946 (1980).

Commerce of State.

The constitutional power to prescribe and prepare course of study is in the legislature and not in the superintendent of public instruction. *State ex rel. Langer v. Tutten*, 44 N.D. 557, 175 N.W. 563 (1920).

Disparate Funding.

Level of Scrutiny.
An equal protection challenge to the statutory method of distributing funding for the fundamental right to education involves important substantive matters which warrant an intermediate level of scrutiny; therefore, the distribution of funding for education must bear a close correspondence to legislative goals. *Bismarck Pub. Sch. Dist. No. 1 v. State*, 511 N.W.2d 247 (N.D. 1994).

Equal Educational Opportunity.

In General.

The widely disparate effect of the state's method of accomplishing the fundamental constitutional right to the funding of education fails to bear a close correspondence to the achievement of the constitutionally mandated goal of an equal educational opportunity. *Bismarck Pub. Sch. Dist. No. 1 v. State*, 511 N.W.2d 247 (N.D. 1994).

Funding.

The funding of the fundamental constitutional right to education is an important substantive right. *Bismarck Pub. Sch. Dist. No. 1 v. State*, 511 N.W.2d 247 (N.D. 1994).

Exclusions for Nonresidents.

Children are not to be excluded from schools on the sole ground of nonresidence. *Rosen v. Board of Educ.*, 41 N.D. 449, 171 N.W. 103 (1919).

Fire and Tornado Fund.

The establishment by the state of a state fire and tornado fund insuring against loss or damage to school property did not violate this section. *Minot Special Sch. Dist. No. 1 v. Olsen*, 53 N.D. 683, 208 N.W. 968, 45 A.L.R. 1337 (1926).

Handicapped Children's Education.

Handicapped children who can benefit from an education have a constitutional right to that education under this section and section art. VIII, § 2 as well as under the equal protection clauses of the federal and state constitutions, and the due process and privacy and immunities clauses of the state Constitution. *In re G.H.*, 218 N.W.2d 441 (N.D. 1974).

Legislative Control in General.

The legislature has the power to enact any legislation in regard to the conduct, control, and regulation of the public schools, which does not deny the citizen the right to life, liberty, and the pursuit of happiness. *Stromberg v. French*, 60 N.D. 750, 236 N.W. 477 (1931).

School District Election.

Indians living on former reservation land are entitled to vote in a school district election to select site for schoolhouse. *La Duke v. Melin*, 45 N.D. 349, 177 N.W. 673 (1920).

The state legislature may constitutionally require an election under the school reorganization procedure, yet not require one under the annexation procedure, as the formation or alteration of school districts is entirely within the power of the legislature. *In re Tp. 143 N.*, 183 N.W.2d 520 (N.D. 1971).

School Regulation.

The legislature is authorized to regulate both public and private schools. *State v. Anderson*, 427 N.W.2d 316 (N.D.), cert. denied, 488 U.S. 965, 109 S.Ct. 491, 102 L.Ed. 2d 528 (1988).

Sectarian Control.

A "sectarian school" is a school affiliated with a particular religious sect or denomination or "under the control or governing influence of such sect or denomination." *Griffith v. Reid*, 66 N.D. 444, 267 N.W. 127 (1936).

The conduct of sectarian religious exercises and the giving of sectarian instruction in any of the state public schools is prohibited.

Gerhardt v. Reid, 66 N.D. 444, 267 N.W. 127 (1936).

The employment as teachers in public schools of nuns, members of a religious society of the Roman Catholic Church, duly qualified as teachers under the state law, does not violate the provision forbidding the use of money raised for the support of public schools to support sectarian schools. *Gerhardt v. Reid*, 66 N.D. 444, 267 N.W. 127 (1936).

State Interest in Education.

The state constitutional mandate for the provision of schools and education establishes a compelling interest by the state in the education of its people. *State v. Rovinius*, 328 N.W.2d 220 (N.D. 1982), cert. denied, 460 U.S. 1070, 103 S.Ct. 1525, 75 L.Ed. 2d 946 (1983).

State Funding Scheme.

Although no one of the various statutes for distributing funding for primary or secondary education, by itself, is unconstitutional, nor does the constitution require equal dollar funding per pupil throughout the state, the impact of the distribution of funding does not bear a close correspondence to the goals of providing an equal educational opportunity and of supporting elementary and secondary education from state funds based on educational costs per pupil; therefore, the overall impact of the entire statutory method for distributing funding for education in North Dakota is unconstitutional. *Bismarck Pub. Sch. Dist. No. 1 v. State*, 511 N.W.2d 247 (N.D. 1994).

Teachers' Insurance Fund.

Chapter 140, S.L. 1915, providing for a permanent teachers insurance fund was a "provision for the establishment and maintenance of public schools." *State ex rel. Haug v. Haug*, 37 N.D. 583, 164 N.W. 289, 19184 L.R.A. 522 (1917).

Transportation of Pupils.

Chapter 113, S.L. 1921, which provided for transportation of school children by public conveyance or for compensation in lieu thereof, at option of parents, did not violate this section. *Selzer v. Gehart*, 54 N.D. 245, 209 N.W. 376 (1926).

Tuition for Additional Schooling.

High schools may not charge a pupil tuition for continued attendance after four years' attendance therein, notwithstanding the pupil's failure to complete requirements for

graduation within that period. *Batty v. Board of Educ.*, 67 N.D. 6, 269 N.W. 49 (1936).

Tuition for Nonresidents.

This section does not contemplate that school facilities provided in any district by means of taxes imposed therein shall be available to pupils from other districts without charge. *Tind v. Board of Educ.*, 54 N.D. 235, 209 N.W. 369 (1926).

A school district is not required to pay tuition for pupils resident in the district who attend a high school which is not standardized and which is located outside the school district sought to be charged. *State ex rel. Mannes v. Alquist*, 59 N.D. 762, 231 N.W. 952, 72 A.L.R. 494 (1930).

A child of nonresident parents, who lives with her aunt, a resident of the state and school district, is entitled to the free privileges of the schools maintained in that district. *Anderson v. Breithardt*, 62 N.D. 709, 245 N.W. 483 (1932).

Collateral References.

Schools and School Districts c. 9-11, 68 Am. Jur. 2d, Schools, §§ 336-348.

78 C.J.S. Schools and School Districts, §§ 3-13.

Right of school authorities to release pupils during school hours for purposes of attending religious educational classes. 2 A.L.R.2d 1371.

Validity of local or state denial of public school courses or activities to private or parochial school students. 43 A.L.R.4th 776.

Constitutionality of regulation or policy governing prayer, meditation, or "moments of silence" in public schools. 110 A.L.R. Fed. 211.

Bible distribution or use in public schools—modern cases. 111 A.L.R. Fed. 121.

Law Reviews.

Schools—Nature of the Right to Instruction.—The Substantive Requirements of "Free Appropriate Public Education" Under the Education of All Handicapped Children Act of 1975. 59 N.D. L. Rev. 629 (1983).

An Introduction to North Dakota Constitutional Law: Content and Methods of Interpretation. 63 N.D. L. Rev. 157 (1987).

Summary of significant decisions rendered by North Dakota Supreme Court in 1988 relating to schools. 64 N.D. L. Rev. 268 (1988).

Summary of significant decisions rendered by the North Dakota Supreme Court in 1989 relating to education. 65 N.D. L. Rev. 569 (1989).

Submitted testimony on HB 1120 of Jennifer Ring, Executive Director of the ACLU of the Dakotas.

Chairman Freborg, members of the committee,

Thank you for this opportunity to submit written testimony.

HB 1120 is an unnecessary bill and worse it is a bill that risks misleading public school boards in a way that may result in them committing illegal acts.

Public school boards do not need any language authorizing them to display cultural, legal, or historical documents. Nor do we have cases in this state suggesting that they need legislative guidance in how to do it.

It is only in the area of religious documents where North Dakota school boards have in the past run afoul of the Establishment Clause of the First Amendment to the Constitution.

Public school teachers who are teaching a lesson on world religions can now display various writings that are illustrative of the teachings of various faiths.

However, to the extent that this bill leads school boards or teachers to believe that they can display various religious documents for any non educational purpose it puts them in danger of lawsuits which they can not win and which will drain already short financial resources.

My fear is that some school board might think that by displaying say the Ten Commandments and the Sermon on the Mount they could prevent a Columbine type incident. While all of us are concerned about school violence it is not constitutionally permissible to require students, whose attendance at school is compulsory by law, to view documents promoting any religious faith or even religion in general. The US Supreme Court has not changed the law in this area in 20 years and on the issue of school prayer ruled against establishment of religion as recently as last year. If this committee feels the need to act in this area I would suggest a bill requiring the Attorney General's office to prepare literature instructing school boards and teachers on the application of both the Establishment Clause and the Free Exercise Clause to the public school setting.