



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

P.O. Box 7128
Bismarck ND 58507-7128
1-800-932-8791 • (701)255-4127
www.ndsba.org

HB 1356
Testimony of Amy De Kok
Senate Education
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Chairman Schaible and members of the Senate Education Committee, my name is Amy De Kok. I am in-house Legal Counsel for the North Dakota School Boards Association. NDSBA represents all North Dakota public school districts and their boards. I am here today in opposition to HB 1356.

NDSBA has a number of concerns regarding HB 1356, which requires all public schools to allow a youth patriotic society to have access to students during instructional time and on school premises for purposes of recruitment and providing information. A very similar bill was attempted last session—SB 2299. That bill received a unanimous Do Not Pass recommendation from this Committee and failed on the floor of the Senate.

By way of background, there is a federal law, the Boy Scouts of America Equal Access Act (Boy Scouts Act), that applies in this context, but is not nearly as broad or burdensome as the proposed bill. The Boy Scouts Act prohibits any public school that has created a designated open forum or a limited public forum and that receives federal funds from denying equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in Title 36 of the United States Code as a patriotic society, that wishes to meet at the school within that designated open forum or limited public forum. **Title 36 youth group** means a group or organization listed in title 36 of the United States Code (as a patriotic society) that is intended to serve young people under the age of 21.

In short, the Boy Scouts Act gives the Boy Scouts and other covered groups equal access or a fair opportunity to meet if a public school designates a place for any outside youth or community groups to meet on campus for reasons other than to provide the school's educational program. Any access under the Act must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups. In other words, the federal Boy Scouts Act leaves it up to the local school district to choose when and how to allow outside community groups access to the school premises and its students.

The main problem with HB 1356 is that it forces public schools to open their facilities to not only the Boy Scouts and Girl Scouts, but other community groups who wish to access their facilities and their students. This is because of the free speech protections provided by the First Amendment of the U.S. Constitution, which

apply to the states and its political subdivisions through the Fourteenth Amendment. The First Amendment does not guarantee access to property simply because it is owned or controlled by the government. But if government does open non-traditional forums (such as public schools) for expressive activities, it may not discriminate on the basis of content or viewpoint in granting access. Said differently, public schools are not generally *required* to open their facilities to any community group; however, when they do, all groups must be treated the same. Schools may impose reasonable time, place, and manner restrictions on access, but these restrictions must generally be content-neutral.

If HB 1356 were to pass, schools would not be able to deny the same access to students by outside groups as is granted to youth patriotic societies under this bill. HB 1356 essentially requires a public school to create a designated open forum for First Amendment free speech purposes. This in turn would require the school to provide the same access to this designated open forum (during instructional time) to other community groups who wish to have access. HB 1356 removes the individual district's ability to choose whether to create an open forum for free speech purposes. In addition, if a designated open forum exists, schools have very limited ability to control the content of the message of these groups or to pick and choose which groups to provide access, and which not to, based on the content of their message. We believe this ability to choose is essential. While many of the organizations that would be included in this legislation have noble causes, the idea that a district would be unable to control whether outside groups have access to students during instructional time is very troubling.

Finally, HB 1356 is unnecessary as these groups are not currently being denied access to most of our public schools. Rather, these groups are already being granted access by public schools across the state because schools are making the choice to allow such access. The proponents of HB 1356 appear to claim they are being denied access in larger school districts. This is simply not the case. NDSBA surveyed superintendents from our largest districts throughout the state and received responses from Mandan, Jamestown, Williston, McKenzie County, Valley City, Grand Forks, Bismarck and Dickinson. In all of these districts except Grand Forks and Dickinson, the Boy Scouts/Girl Scouts are already being provided access to students and parents for recruitment and informational purposes, usually in multiple ways and on multiple occasions throughout the school year. For example, in Valley City, Boy Scouts, Girl Scouts and similar groups have been allowed to set up a table during school registration, activity events, and other special events such as parent/teacher conferences. In Mandan, these groups have used school facilities to host a meeting for students and parents in the evening and they are also allowed to come into the school during lunch to visit with students who are interested in scouts. In Bismarck, elementary schools have allowed these groups to meet with students in the gymnasium after school and to send home materials with students to discuss with their parents. My children

attend Liberty Elementary in Bismarck and I can attest that the scouts have been allowed to present information to students and parents at parent/teacher conferences. In Grand Forks and Dickinson, there have been no recent requests for access; however, both districts confirmed they would permit access to students and parents during noninstructional time. I have attached to my testimony a summary of the responses we received from these districts. As you can see, even many of the large school districts are granting some form of access.

For all of these reasons, NDSBA stands in opposition to HB 1356, and we urge a DO NOT PASS recommendation. Thank you for your time and I would be happy to stand for any questions.