

H. B. 3009

(By Delegates Householder, Sobonya, Overington,
Cadle and Gearheart)

[Introduced March 20, 2013; referred to the
Committee on Education then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6 and §18-33-7, all relating to enacting a Schoolchildren's Religious Liberties Act; prohibiting discrimination based on a religious perspective; requiring a policy establishing a limited public forum for student speakers; prohibiting a penalty or reward on account of the religious content of student work; allowing organization of prayer groups, religious clubs and other religious gatherings before, during and after school; requiring policy regarding limited public forum and voluntary student expression of religious perspectives; and providing a model policy.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-33-1, §18-33-2,

1 §18-33-3, §18-33-4, §18-33-5, §18-33-6 and §18-33-7, all to read as
2 follows:

3 **ARTICLE 33. SCHOOLCHILDREN'S RELIGIOUS LIBERTIES ACT.**

4 **§18-33-1. Short title.**

5 This article may be known and cited as the "Schoolchildren's
6 Religious Liberties Act."

7 **§18-33-2. Nondiscrimination based on a religious perspective.**

8 Each county school district shall treat a student's voluntary
9 expression of a religious perspective on an otherwise permissible
10 subject in the same manner that the district treats a student's
11 voluntary expression of a secular or other perspective on an
12 otherwise permissible subject. A county school district may not
13 discriminate against a student based on a religious perspective
14 expressed by the student on an otherwise permissible subject.

15 **§18-33-3. Policy establishing a limited public forum for student**
16 **speakers required.**

17 (a) To ensure that local school districts do not discriminate
18 against a student's publicly stated voluntary expression of a
19 religious perspective and to eliminate any actual or perceived
20 affirmative school sponsorship or attribution to a school district
21 of a student's expression of a religious perspective, the board of
22 education of each school district shall adopt a policy establishing
23 a limited public forum for student speakers at all school events at

1 which a student is to publicly speak. The policy regarding the
2 limited public forum must require the school district to:

3 (1) Provide the forum in a manner that does not discriminate
4 against a student's voluntary expression of a religious perspective
5 on an otherwise permissible subject;

6 (2) Provide a method, based on neutral criteria, for the
7 selection of student speakers at school events and graduation
8 ceremonies;

9 (3) Ensure that a student speaker does not engage in obscene,
10 vulgar, offensively lewd or indecent speech; and

11 (4) State orally or in writing, or both, that the student's
12 speech does not reflect the endorsement, sponsorship, position or
13 expression of the school district.

14 (b) The school district disclaimer required by subsection (a)
15 of this section must be provided at all graduation ceremonies. The
16 school district shall also provide the disclaimer at any other
17 event in which a student speaks publicly for so long as a need
18 exists to dispel any confusion over the district's nonsponsorship
19 of the student's speech.

20 (c) Student expression on an otherwise permissible subject may
21 not be excluded from a limited public forum because the subject is
22 expressed from a religious perspective.

23 **§18-33-4. No penalty or reward on account of the religious**
24 **content of student work.**

1 Students may express their beliefs about religion in homework,
2 artwork and other written and oral assignments free from
3 discrimination based on the religious content of their submissions.
4 Homework and classroom assignments must be judged by ordinary
5 academic standards of substance and relevance and against other
6 legitimate pedagogical concerns identified by the school district.
7 Students may not be penalized or rewarded on account of the
8 religious content of their work.

9 **§18-33-5. Organization of prayer groups, religious clubs, or**
10 **other religious gatherings before, during and after**
11 **school allowed.**

12 Students may organize prayer groups, religious clubs, "see you
13 at the pole" gatherings or other religious gatherings before,
14 during and after school to the same extent that students are
15 permitted to organize other noncurricular student activities and
16 groups. School districts must provide religious groups the same
17 access to school facilities for assembling that is given to other
18 noncurricular groups without discrimination based on the religious
19 content of the students' expression. If student groups that meet
20 for nonreligious activities are permitted to advertise or announce
21 meetings of the groups, the school district may not discriminate
22 against any group that meets for prayer or other religious speech.
23 A school district may disclaim school sponsorship of noncurricular
24 groups and events in a manner that neither favors nor disfavors

1 groups that meet to engage in prayer or religious speech.

2 **§18-33-6. Policy regarding limited public forum and voluntary**
3 **student expression of religious perspectives**
4 **required.**

5 The board of education of each school district shall adopt and
6 implement a policy regarding a limited public forum and voluntary
7 student expression of religious perspectives. If a school district
8 adopts and follows the model policy governing voluntary religious
9 expression in public schools provided by section seven of this
10 article, the district shall be presumed to be in compliance with
11 those provisions of this chapter which are addressed by the model
12 policy.

13 **§18-33-7. Model policy.**

14 For purposes of this article, the term "model policy" means a
15 policy adopted by the board of education of a local school district
16 which is substantially identical to the following:

17 **ARTICLE I**

18 **STUDENT EXPRESSION OF RELIGIOUS PERSPECTIVES**

19 The school district shall treat a student's voluntary
20 expression of a religious perspective on an otherwise permissible
21 subject in the same manner that the district treats a student's
22 voluntary expression of a secular or other perspective on an
23 otherwise permissible subject. The school district may not

1 discriminate against the student based on a religious perspective
2 expressed by the student on an otherwise permissible subject.

3 **ARTICLE II**

4 **STUDENT SPEAKERS AT NONGRADUATION EVENTS**

5 A limited public forum for student speakers at all school
6 events at which a student is to publicly speak is created. For each
7 speaker, the school district shall set a maximum time limit
8 reasonable and appropriate to the occasion. Student speakers shall
9 introduce:

- 10 (1) Football games;
11 (2) Any other athletic events designated by the district;
12 (3) Opening announcements and greetings for the school day;
13 and
14 (4) Any additional events designated by the district, which
15 may include, but is not necessarily limited to, assemblies and pep
16 rallies.

17 The forum must be limited in the manner provided by this
18 article.

19 Except as otherwise provided in this article, eligibility to
20 use the limited public forum is limited to students who hold one of
21 the following positions of honor based on neutral criteria:

- 22 (1) Class officers of the highest grade level in the school;
23 and
24 (2) Student council officers, captains of the football team

1 and other students holding positions of honor designated by the
2 county board of education in the highest two grade levels of the
3 school.

4 Each school shall notify all eligible students of their
5 eligibility to use the limited public forum. A student who wishes
6 to participate as an introducing speaker shall submit the student's
7 name to the student council or other designated body during a
8 specified period, which period may not be less than three days. The
9 specified period may be at the beginning of the school year, at the
10 end of the preceding school year so that student speakers are in
11 place for the new year, or, if the selection process will be
12 repeated each semester, at the beginning of each semester or at the
13 end of the preceding semester so speakers are in place for the next
14 semester. The names of the volunteering student speakers shall be
15 randomly drawn until all names have been selected, and the names
16 shall be listed in the order drawn. Each participating student will
17 be matched chronologically to the event for which the student will
18 be giving the introduction. Student speakers may speak for one week
19 at a time for all introductions of events that week, at a single
20 speaking event or in another manner as determined by the school
21 district. The list of student speakers shall be repeated
22 chronologically, as needed, in the same order. The district may
23 repeat the selection process each semester rather than once a year.
24 The subject of the student introductions must be related to

1 the purpose of the event and to the purpose of marking the opening
2 of the event, honoring the occasion, participants and those in
3 attendance, bringing the audience to order and focusing the
4 audience on the purpose of the event. The subject must be
5 designated, a student must stay on the subject and the student may
6 not engage in obscene, vulgar, offensively lewd or indecent speech.
7 The school district shall treat a student's voluntary expression of
8 a religious perspective on an otherwise permissible subject in the
9 same manner that the district treats a student's voluntary
10 expression of a secular or other perspective on an otherwise
11 permissible subject. The school district may not discriminate
12 against the student based on a religious perspective expressed by
13 the student on an otherwise permissible subject.

14 For as long as there is a need to dispel confusion over the
15 nonsponsorship of the student's speech, at each event in which a
16 student will deliver an introduction, a disclaimer shall be stated
17 in written or oral form, or both, such as, "The student giving the
18 introduction for this event is a volunteering student selected on
19 neutral criteria to introduce the event. The content of the
20 introduction is the private expression of the student and does not
21 reflect the endorsement, sponsorship, position or expression of the
22 school district."

23 The school district recognizes that certain students who have
24 attained special positions of honor in a school traditionally have

1 addressed school audiences from time to time as a tangential
2 component of their achieved positions of honor, such as the
3 captains of various sports teams, student council officers, class
4 officers, homecoming kings and queens, prom kings and queens, and
5 the like, based on neutral criteria. Nothing in this policy
6 eliminates the continuation of the practice of having these
7 students, irrespective of grade level, address school audiences in
8 the normal course of their respective positions. The school
9 district shall create a limited public forum for the speakers and
10 shall treat a student's voluntary expression of a religious
11 perspective on an otherwise permissible subject in the same manner
12 that the district treats a student's voluntary expression of a
13 secular or other perspective on an otherwise permissible subject.
14 The school district may not discriminate against the student based
15 on a religious perspective expressed by the student on an otherwise
16 permissible subject.

17 **ARTICLE III**

18 **STUDENT SPEAKERS AT GRADUATION CEREMONIES**

19 A limited public forum consisting of an opportunity for a
20 student to speak to begin graduation ceremonies and another student
21 to speak to end graduation ceremonies is created. For each speaker,
22 the district shall set a maximum time limit reasonable and
23 appropriate to the occasion.

24 The forum shall be limited in the manner provided by this

1 article.

2 Only students who are graduating and who hold one of the
3 following neutral criteria positions of honor are eligible to use
4 the limited public forum:

5 (1) Student council officers;

6 (2) Class officers of the graduating class;

7 (3) The top three academically ranked graduates; or

8 (4) A shorter or longer list of student leaders as the school
9 district may designate.

10 A student who has a speaking role in the graduation ceremonies
11 is ineligible to give the opening and closing remarks. The names of
12 the eligible volunteering students will be drawn randomly. The
13 student whose name is drawn first will give the opening remarks,
14 and the student whose name is drawn second will give the closing
15 remarks.

16 The topic of the opening and closing remarks must be related
17 to the purpose of the graduation ceremony and to the purpose of
18 marking the opening and closing of the event, honoring the
19 occasion, the participants, and those in attendance, bringing the
20 audience to order, and focusing the audience on the purpose of the
21 event.

22 In addition to the students giving the opening and closing
23 remarks, certain other students who have attained special positions
24 of honor based on neutral criteria, including, but not necessarily

1 limited to, the valedictorian, will have speaking roles at
2 graduation ceremonies. For each speaker, the school district shall
3 set a maximum time limit reasonable and appropriate to the occasion
4 and to the position held by the speaker. For this purpose, the
5 district creates a limited public forum for these students to
6 deliver the addresses. The subject of the addresses must be related
7 to the purpose of the graduation ceremony, marking and honoring the
8 occasion, honoring the participants and those in attendance, and
9 the student's perspective on purpose, achievement, life, school,
10 graduation and looking forward to the future.

11 The subject must be designated for each student speaker, the
12 student must stay on the subject and the student may not engage in
13 obscene, vulgar, offensively lewd or indecent speech. The school
14 district shall treat a student's voluntary expression of a
15 religious perspective on an otherwise permissible subject in the
16 same manner that the district treats a student's voluntary
17 expression of a secular or other perspective on an otherwise
18 permissible subject. The school district may not discriminate
19 against the student based on a religious perspective expressed by
20 the student on an otherwise permissible subject.

21 A written disclaimer shall be printed in the graduation
22 program that states, "The students speaking at the graduation
23 ceremony were selected based on neutral criteria to deliver
24 messages of each student's own choice. The content of each student

1 speaker's message is the private expression of the individual
2 student and does not reflect any position or expression of the
3 school district, the school board, the district's administration or
4 employees of the district or the views of any other graduate. The
5 contents of these messages were prepared by the student volunteers,
6 and the district refrained from any interaction with student
7 speakers regarding the student speakers' perspectives on
8 permissible subjects."

9 **ARTICLE IV**

10 **RELIGIOUS EXPRESSION IN CLASS ASSIGNMENTS**

11 A student may express the student's beliefs about religion in
12 homework, artwork and other written and oral assignments free from
13 discrimination based on the religious content of the student's
14 submission. Homework and classroom work must be judged by ordinary
15 academic standards of substance and relevance and against other
16 legitimate pedagogical concerns identified by the school district.
17 Students may not be penalized or rewarded on account of religious
18 content. If a teacher's assignment involves writing a poem, the
19 work of a student who submits a poem in the form of a prayer (for
20 example, a psalm) must be judged on the basis of academic
21 standards, including literary quality, and the student may not be
22 penalized or rewarded on account of the poem's religious content.

23 **ARTICLE V**

1 **FREEDOM TO ORGANIZE RELIGIOUS GROUPS AND ACTIVITIES**

2 Students may organize prayer groups, religious clubs, "see you
3 at the pole" gatherings and other religious gatherings before,
4 during and after school to the same extent that students are
5 permitted to organize other noncurricular student activities and
6 groups. Religious groups must be given the same access to school
7 facilities for assembling as other noncurricular groups, without
8 discrimination based on the religious content of the group's
9 expression. If student groups that meet for nonreligious activities
10 are permitted to advertise or announce the groups' meetings by
11 advertising in a student newspaper, putting up posters, making
12 announcements on a student activities bulletin board or public
13 address system, or handing out leaflets, the school district may
14 not prohibit any group that meets for prayer or other religious
15 speech from announcing or advertising its meetings in similar
16 manners. The school district may disclaim sponsorship of
17 noncurricular groups and events if the disclaimer is administered
18 in a manner that does not favor or disfavor groups that meet to
19 engage in prayer or other religious speech.

NOTE: The purpose of this bill is to enact a Schoolchildren's Religious Liberties Act. The bill includes provisions requiring county boards of education to implement policies to protect students from discrimination based on a religious perspective.

This article is new; therefore, it has been completely underscored.

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