

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 182, As Amended in the Senate

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO EDUCATION; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A
NEW CHAPTER 66, TITLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PRO-
VIDE FOR LEGISLATIVE FINDINGS, AND TO ESTABLISH PROVISIONS REGARDING
PRAYER; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended
by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
ter 66, Title 33, Idaho Code, and to read as follows:

CHAPTER 66

ESTABLISHMENT CLAUSE AND FREE EXERCISE COMPLIANCE

33-6601. SHORT TITLE. This chapter shall be known and may be cited as
"Coach Kennedy's Law."

33-6602. LEGISLATIVE FINDINGS. The legislature finds and declares
that:

(1) Prior to becoming a high school football coach, Joseph Kennedy
trained marines, and in response to his decision to engage in a public prayer
at the end of sporting events that was open to others in a manner that was con-
sistent with his religious beliefs and the belief of many student athletes
and their parents, he was suspended and later fired by the school district,
and similar conflicts have or could arise in the state of Idaho between ath-
letic directors and school districts or public college administrators;

(2) The United States is a constitutional republic that Idaho is a part
of, and the free exercise and establishment clauses of the first amendment to
the United States constitution state that the government "shall make no law
respecting an establishment of religion, or prohibiting the free exercise
thereof," and the first amendment applies to the state of Idaho through the
fourteenth amendment;

(3) Similarly, section 4, article I of the constitution of the state of
Idaho parallels the spirit of the free exercise clause of the first amendment
to the United States constitution and states in part, "The exercise and en-
joyment of religious faith and worship shall forever be guaranteed; and no
person shall be denied any civil or political right, privilege, or capacity
on account of his religious opinions; but the liberty of conscience hereby
secured shall not be construed to dispense with oaths or affirmations ...";
and

(4) The United States supreme court, in Kennedy v. Bremerton School
District, recognized that Lemon v. Kurtzman, 403 U.S. 602 (1971), was over-
turned and is no longer good law and that, therefore, the Lemon test is inap-
plicable and government must instead look to history and tradition to deter-

1 mine what is permissible under the establishment clause. This history and
2 tradition prohibits coercion to participate in religious practices.

3 33-6603. PUBLIC PRAYER. (1) This section applies to public college ad-
4 ministrators, public school districts, and charter schools.

5 (2) Pursuant to the free exercise clause of the first amendment to the
6 United States constitution and section 4, article I of the constitution of
7 the state of Idaho, an employee of a public college, school district, or
8 charter school may pray at any time he is otherwise free to engage in personal
9 conversations or other personal conduct.

10 (3) No public college, public school district, or charter school may
11 punish or otherwise take adverse action or discriminate against any other
12 person for refusing to participate in a prayer described in subsection (2) of
13 this section. A student or the parent of a student who can demonstrate under
14 the preponderance of the evidence standard that the student was punished or
15 discriminated against by an employee for refusing to participate in a prayer
16 as described in subsection (2) of this section has standing under this sec-
17 tion to pursue a civil action in a court of competent jurisdiction and the
18 student may seek attorney's fees, costs, injunctive relief, declaratory re-
19 lief, and other forms of relief deemed appropriate by the court.

20 (4) If a school district or public college administrator prohibits or
21 takes adverse action against an employee for engaging in the activity de-
22 scribed in subsection (2) of this section, the employee may pursue a civil
23 cause of action in a court of competent jurisdiction under this section and
24 may seek attorney's fees, costs, injunctive relief, declaratory relief, and
25 other forms of relief deemed appropriate by the court.

26 (5) If a court finds that a cause of action brought by an employee under
27 subsection (4) of this section or by a student or his parent under subsection
28 (3) of this section was maliciously filed or initiated for ulterior purposes
29 against a defendant, then the court may award costs and attorney's fees to a
30 defendant under this section for abuse of process.

31 (6) A civil action brought in federal district court for a similar vi-
32 olation described in this section under 42 U.S.C. 1983 may find that it has
33 supplemental jurisdiction over a cause of action contemporaneously brought
34 under this section.

35 (7) Nothing in this section shall be construed to in any way limit the
36 free exercise of religion.

37 SECTION 2. An emergency existing therefor, which emergency is hereby
38 declared to exist, this act shall be in full force and effect on and after
39 July 1, 2023.