

BILL: Senate Bill 267
TITLE: Public Schools - Voluntary Nonsectarian Prayer at School-Sponsored Student Events
DATE: February 3, 2016
POSITION: OPPOSE
COMMITTEE: Education, Health and Environmental Affairs Committee
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE), representing all of the state's local boards of education, opposes Senate Bill 267.

MABE opposes this legislation in the interest of preserving Maryland's permissible moment of silence but avoiding the unnecessary litigation and potential disruption at school events arising from the practice of nonsectarian prayer by students. Prayer at school-sponsored events may be successfully challenged as violating the Establishment Clause of the U.S. Constitution because it appears to represent the viewpoint of the school, and it is impermissible for schools to advance or favor any religion.

In the case of *Jager v. Douglas County School District*, 862 F.2d 824 (11th Cir. 1989), the 11th Circuit Court let stand a lower ruling which found that pre-game invocations by coaches at high school football games were unconstitutional, and the "coach's prayer" prohibition is probably the most widely occurring Establishment Clause violation to this day. A decision by the Third Circuit Court of Appeals upheld a school district's policy prohibiting faculty participation in even student-initiated prayer over concerns that even silent participation by a teacher would appear to endorse religion (*Borden v. East Brunswick School District*, 523 F.3d 153 (3d Cir. 2008)).

In *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), the Supreme Court issued its most recent decision on the subject of prayer at school sponsored extracurricular events. The Texas case involved a policy which permitted, but did not require, student initiated and student-led prayer at all the home football games, and which authorized two student elections, the first to determine whether "invocations" should be delivered at games, and the second to select the student spokesperson to deliver them. The Supreme Court found that the policy violated the Establishment Clause.

The Supreme Court also cautioned that having a student lead the prayer did not resolve the constitutional dilemma because the event in question was a school-sponsored event. At such events, the sanctioned speech may still appear to some in attendance to be coercing the students, however subtly, to participate in a religious exercise. MABE cautions against opening school systems to the costly and time consuming litigation that would likely ensue from adopting the policy of nonsectarian prayers at school-sponsored events as proposed by this bill.

For these reasons, MABE requests an unfavorable report on Senate Bill 267.