

TITLE 33
EDUCATION

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."

[33-6601, added 2023, ch. 239, sec. 1, p. 737.]

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 consistent 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 athletic 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 enjoyment 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 overturned and is no longer good law and that, therefore, the Lemon test is inapplicable and government must instead look to history and tradition to determine what is permissible under the establishment clause. This history and tradition prohibits coercion to participate in religious practices.

[33-6602, added 2023, ch. 239, sec. 1, p. 737.]

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

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

(3) No public college, public school district, or charter school may punish or otherwise take adverse action or discriminate against any other person for refusing to participate in a prayer described in subsection (2) of this section. A student or the parent of a student who can demonstrate under

the preponderance of the evidence standard that the student was punished or discriminated against by an employee for refusing to participate in a prayer as described in subsection (2) of this section has standing under this section to pursue a civil action in a court of competent jurisdiction and the student may seek attorney's fees, costs, injunctive relief, declaratory relief, and other forms of relief deemed appropriate by the court.

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

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

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

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

[33-6603, added 2023, ch. 239, sec. 1, p. 738.]