

# State of South Dakota

## EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

624L0802

### HOUSE CONCURRENT RESOLUTION NO. **1011**

Introduced by: Representatives Howie, Boomgarden, Bradford, Brunner, Buckingham, Davis, Deadrick, Dennert, Dykstra, Elliott, Faehn, Frost, Fryslie, Garnos, Gassman, Gillespie, Glenski, Glover, Hackl, Haley, Halverson, Hanks, Haverly, Heineman, Hennies, Hills, Hunhoff, Hunt, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Lange, McCoy, Michels, Murschel, Nelson, Novstrup, O'Brien, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Rounds, Schafer, Sebert, Sigdestad, Tidemann, Tornow, Turbiville, Valandra, Van Etten, Vehle, Weems, Wick, and Willadsen and Senators Abdallah, Apa, Bartling, Duenwald, Gant, Greenfield, Hundstad, Kelly, Lintz, McNenny, Moore, Napoli, Olson (Ed), and Smidt

1 A CONCURRENT RESOLUTION, In support of free religious expression in public schools.

2 WHEREAS, the United States Supreme Court in *Tinker v. Des Moines Independent School*  
3 District said that students are free to express religious belief or nonbelief in compositions, art  
4 forms, music, speech, and debate. Students may verbally express their ideas and distribute  
5 literature to other students during noninstructional time if their speech or the distribution of  
6 literature is not disruptive to the ordinary operation of the school and does not infringe on the  
7 rights of other students; and

8 WHEREAS, the Fifth Circuit Court of Appeals ruled in *Jones v. Clear Creek Independent*  
9 Schools that school officials may not prevent a graduation speaker, a student, or other person  
10 from voluntarily praying; and

11 WHEREAS, the federal Equal Access Act, upheld by the United States Supreme Court in



1 Board of Education v. Mergens, ensures equal access for student-initiated meetings that are  
2 religious, political, or philosophical in nature; and

3 WHEREAS, the United States Supreme Court decision in *Zorach v. Clauson* ruled that  
4 schools may offer a release time for students to leave the public school facilities for off-site  
5 instruction, including religious instruction conducted by nonschool personnel; and

6 WHEREAS, the Legislature recognizes the free speech rights of students in public school.  
7 Students on public school campuses have the right to express their ideas verbally and through  
8 the distribution of literature if their speech does not disrupt the ordinary operation of the school;  
9 and

10 WHEREAS, the United States Supreme Court decision in *Lamb's Chapel v. Center*  
11 *Moriches Union Free School District* said that the use of school facilities before or after the  
12 official school day must be offered on an equal and nondiscriminatory basis even if the requester  
13 is a religious organization. The *Lamb's Chapel* decision is reinforced by the Eighth Circuit Court  
14 of Appeals decision in *Barbara Wigg v. Sioux Falls School District*; and

15 WHEREAS, the Eighth Circuit Court of Appeals held in *Florey v. Sioux Falls School*  
16 *District* that religious songs and symbols may be used in the public schools if they are presented  
17 in a "prudent and objective manner and only as part of the cultural and religious heritage of the  
18 holiday." The *Florey* decision also recognizes that the several holidays throughout the year that  
19 have a religious basis may be observed in the public schools, and that the historical and  
20 contemporary values and the origin of religious holidays may be explained in an unbiased and  
21 objective manner without sectarian indoctrination; and

22 WHEREAS, the *Florey* Court also stated that the study and performance of religious songs  
23 is constitutional if the purpose is the "advancement of the students' knowledge of society's  
24 cultural and religious heritage, as well as the provision of an opportunity for students to perform

1 a full range of music, poetry, and drama that is likely to be of interest to the students and their  
2 audience"; and

3 WHEREAS, the United States Supreme Court in *School District of Abington Township v.*  
4 *Schempp* said, "It certainly may be said that the Bible is worthy of study for its literary and  
5 historic qualities. Nothing we have said here indicates that such study of the Bible or of religion,  
6 when presented objectively as part of a secular program of education, may not be effected  
7 consistently with the First Amendment."; and

8 WHEREAS, the United States Supreme Court in *Stone v. Graham* said, "The Bible may  
9 constitutionally be used in an appropriate study of history, civilization, ethics, comparative  
10 religion, or the like."; and

11 WHEREAS, the Bible was an important book in the early history of this country. It is  
12 possible to establish a curriculum that evaluates the role of the Bible in this country and in  
13 western civilization that is constitutional. The Bible is also considered to be literature from  
14 antiquity. A school board could establish a policy that allows the Bible to be discussed as part  
15 of a literature program in the school; and

16 WHEREAS, SDCL 13-24-17.1 states that the Ten Commandments may be displayed in any  
17 public school along with other objects and documents of cultural, legal, or historical  
18 significance that have formed and influenced the legal and governmental systems of the United  
19 States and the State of South Dakota; and

20 WHEREAS, Article VI, section 3 of the South Dakota Constitution states, "The right to  
21 worship God according to the dictates of conscience shall never be infringed. No person shall  
22 be denied any civil or political right, privilege, or position on account of his religious  
23 opinions....":

24 NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Eightieth

1 Legislature of the State of South Dakota, the Senate concurring therein, that the South Dakota  
2 Legislature urges public schools to exercise due diligence to ensure that the freedom of religious  
3 expression afforded in state and federal law and supported in numerous judicial decisions is not  
4 inhibited.