

SCHOLARSHIPS FOR THEOLOGY MAJORS

Senate Bill 625 as passed by the Senate
Sponsor: Sen. Nancy Cassis

Senate Bill 626 as passed by the Senate
Sponsor: Sen. Gerald Van Woerkom

Senate Bills 627, 661, and 662 as passed by the Senate
Sponsor: Sen. Jason Allen

Senate Bill 628 as passed by the Senate
Sponsor: Sen. Irma Clark-Coleman
House Committee: Higher Education
Senate Committee: Education

House Bill 5455 as introduced
Sponsor: Rep. Jerry O. Kooiman
House Committee: Education

First Analysis (3-18-04)

BRIEF SUMMARY: The bills would amend various acts to permit the state to award scholarship and grant money to college and university students enrolled in theology, divinity, or religious education programs.

FISCAL IMPACT: The bill would have no state or local fiscal impact but could potentially reduce award amounts for the State Competitive Scholarship, Tuition Grant, Part-Time Independent Student, and Michigan Education Opportunity Grant programs by increasing the number of students eligible for awards. (The remaining programs affected by this package are not currently effective due to the absence of state funding.) Any impact would, however, be minimal. The Department of Treasury estimates that roughly 200 to 250 students in the state would become eligible for scholarships under the bills.

THE APPARENT PROBLEM:

In July 2003, Ave Maria College student Teresa Becker had a \$2,750 state scholarship revoked after she declared a major in theology. During her first two years of study at the Ypsilanti school, Ms. Becker received nearly \$4,000 in state aid without *officially* deciding on a course of study. The state aid was denied because state law provides that an applicant for the state competitive scholarship “shall not be restricted in the choice of the course of study he or she wishes to pursue, except that a scholarship award shall not be made to a student enrolled in a program of study leading to a degree in theology, divinity, or religious education.” Following the revocation of the scholarship, Ms. Becker sued the state in federal district court, which issued a preliminary ruling in favor

of Ms. Becker and ordered the state to place the scholarship in escrow until the case was resolved.

A similar situation in the State of Washington resulted in a recent decision by the U.S. Supreme Court that said a state could deny a scholarship to a theology student. In that case, Northwest College student Joshua Davey had his \$1,125 Promise Scholarship revoked after he declared his major in pastoral ministries and business management/administration, with the intention of becoming a minister. (Incidentally, the *Seattle Post-Intelligencer* recently reported that he is currently a law student at Harvard.) The scholarship was denied by the Higher Education Coordinating Board (HECB) based on a prohibition of public funding for religious study in state statute and the constitution (WRC §28B.10.814 and Article 1, Section 11 of the state constitution).

In 2000, Mr. Davey sued the state in federal district court, which upheld the decision of the state following the provisions of Washington statute, which provides that “[n]o aid shall be awarded to any student who is pursuing a degree in theology”(WRC 28B.10.814), and the Washington constitution, which provides, in part, “[n]o public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment...” Mr. Davey subsequently appealed to the Ninth Circuit Court of Appeals, which ruled in his favor, noting that the Washington statute and the policy of the HECB “discriminate based on religious pursuit.”

The U.S. Supreme Court granted the Washington case certiorari and issued its ruling in February 2004. Writing the opinion for the Court, Chief Justice Rehnquist stated, “there is no doubt that the State could, consistent with the Federal Constitution, permit Promise Scholars to pursue a degree in devotional theology, and the State does not contend otherwise. The question before us, however, is whether Washington, pursuant to its own constitution, which has been authoritatively interpreted as prohibiting even indirectly funding religious instruction that will prepare student for the ministry can deny them such funding without violating the Free Exercise Clause.” [Citations omitted] Stating that “[t]he State has merely chosen not to fund a distinct category of instruction,” the Court held that Washington can deny providing public scholarship money to students studying theology.

Notwithstanding the Court’s recent ruling in *Locke v. Davey*, there is some concern over the appropriateness of Michigan’s laws prohibiting state scholarships to theology majors. Even if denying scholarships to theology majors while providing them to other students does not violate the free exercise clauses of the state and federal constitutions, some people believe it is not good public policy and is harmful to students to discriminate on the basis of religion.

THE CONTENT OF THE BILL:

The bills would amend various acts to permit the state to award scholarship and grant money to college and university students enrolled in theology, divinity, or religious education programs. Currently, students pursuing these studies are specifically prohibited

from receiving financial aid from the state. In each bill, that prohibition would be deleted.

Senate Bill 625

The bill would amend Public Act 102 of 1986, which provides for grants to part-time, independent students with financial need. In order to be eligible to participate in the grant program, a student must meet 11 criteria, one of which is that he or she may not be enrolled in a program leading to a degree in theology or divinity

Senate Bill 626

The bill would amend Public Act 208 of 1964 (MCL 390.977), which provides for a state competitive scholarship program to award scholarships to students with financial need and academic promise, based on their performance on a competitive exam. The act specifies that an applicant awarded a scholarship is not restricted in the choice of his or her course of study, except that a scholarship award may not be made to a student enrolled in a program of study leading to a degree in theology, divinity, or religious education.

Senate Bill 627

The bill would amend the Legislative Merit Award Program Act (MCL 390.1304), which requires the Michigan Higher Education Assistance Authority annually to award \$1,000 scholarships to students based on their performance on a national examination and without regard to their financial circumstances. To be eligible, a student must enroll in a recognized postsecondary educational institution within four years after graduation from high school, and not be enrolled in a program of study leading to a degree in theology, divinity, or religious education.

Senate Bill 628

The bill would amend Public Act 273 of 1986 (MCL 390.1403), which established the Michigan Educational Opportunity Grant (MEOG) Program to award up to \$1,000 per student per year to postsecondary schools to help eligible students meet educational expenses. A student enrolled in a program of study leading to a degree in theology, divinity, or religious education is prohibited from receiving an MEOG grant.

Senate Bill 629

The bill would amend Public Act 313 of 1966 (MCL 390.994), which provides for tuition grants to resident students enrolled in an independent, nonprofit college or university. The amount of the grant is based on financial need. A student enrolled in a program of study leading to a degree in theology, divinity, or religious education may not receive this tuition grant.

Senate Bill 661

The bill would amend Public Act 105 of 1978 (MCL 390.1274), which provides for tuition differential grants to students enrolled in independent, nonprofit colleges or universities. A student enrolled in a program of study leading to a degree in theology or divinity is not eligible to receive a tuition differential grant.

Senate Bill 662

The bill would amend Public Act 75 of 1974 (MCL 390.1023), which provides for reimbursement to approved independent, nonprofit colleges and universities for a certain amount for each degree they confer on their students. A degree conferred in theology, divinity, or religious education is excluded from this reimbursement.

House Bill 5455

The bill would amend Public Act 313 of 1966, which provides tuition grants for Michigan residents enrolled in independent nonprofit colleges and universities. Under the act, grants are prohibited from being provided to students enrolled in a program of leading to a degree in theology, divinity, or religious education.

HOUSE COMMITTEE ACTION:

The House Committee on Higher Education made no changes to the Senate bills. The bills were reported from committee in the form they passed the Senate.

BACKGROUND INFORMATION:

Article 1, Section 4 of the State Constitution states, “[e]very person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.”

In addition, Article 8, Section 2 states, in part, “[n]o public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the

attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students.” It should be noted, however, that this prohibition on public funding for nonpublic schools, including students at such schools, applies only to elementary and secondary schools, and not colleges and universities.

ARGUMENTS:

For:

While the Supreme Court has said quite clearly that states can rightfully withhold scholarships and grants from theology students, the state’s decision to do so is inconsistent in practice and discriminatory. For example, the Michigan Competitive Scholarship is need- and merit-based scholarship that is available to qualifying students through the completion of their undergraduate degree or for 10 semesters of full-time attendance. Among a host of other eligibility requirements, a student must not be pursuing a degree in theology, divinity, or religious education. In practice, the scholarship is not provided to students with a declared major in theology, divinity, or religious education. Absent a declared major, a school and the state have no record of what degree a student is pursuing. The question then turns to what matters more, a student’s course of study or the *declared* major itself. It appears that the courses a student takes are irrelevant to the state, and that it is the actual major that a student declares that is of importance.

A student can take numerous theology courses, paid for with the scholarship, as long as his or her major is something other than a religious field. While these religion classes may be a comparative religion class at Michigan State, they can also include classes at Hope College with a decidedly Christian perspective. A student at Hope College can take all of the required courses for a religion major, receiving the scholarship the entire time, and then declare the major afterward. The ability of a student to receive a scholarship is, in all practicality, not based on the actual course of study, but rather on a piece of paper identifying the student’s major in a file with his or her advisor and the academic office of the university. In addition, many of the scholarships are available to students at private, religious schools in the state that are affiliated with a specific religious denomination whose outlook pervades the academic curriculum and life at the school. While the scholarships are not directly supporting the education of formal religious leaders (such as priests or ministers), they nonetheless support the education of informal religious leaders (members of the faith). This, apparently, does not run counter to the constitutional constraints on public support of religion.

Against:

By permitting scholarships for the training and education of religious leaders, these bills unnecessarily and improperly entangle government and religion. Article 1, Section 4 of the state constitution is quite clear when it states, in part, “[n]o person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the

treasury for the benefit of any religious sect or society, theological or religious seminary.” A state scholarship to educate a religious leader certainly is an impermissible appropriation of money for the benefit of a religious sect or society. Chief Justice Rehnquist recognizes this when he states, in *Locke*, “training for religious professions and training for secular professions are not fungible. Training someone to lead a congregation is an essentially religious endeavor. Indeed, majoring in devotional theology is akin to a religious calling as well as an academic pursuit. And the subject of religion is one in which both the United States and state constitutions embody distinct views - in favor of free exercise, but opposed to establishment - that find no counterpart with respect to other callings or professions. That a State would deal differently with religious education for the ministry than with education for other callings is a product of these view, not evidence of hostility toward religion.” He further stated, “[t]hat early state constitutions saw no problem in explicitly excluding *only* the ministry from receiving state dollars reinforces our conclusion that religious instruction is of a different ilk.”

Response:

The scholarships are provided for *students*, not universities or religious organizations. The U.S. Supreme Court, in *Zelman v. Simmons-Harris* (2002) upheld the constitutionality of a school voucher program in Cleveland on the grounds that the program involved “true private choice, in which government aid reaches religious schools only as a result of the genuine and independent choice of private individuals.” Using similar logic, it is possible that state courts would allow scholarships to be provided to theology majors. To this point, Justice Scalia states in his dissent in *Locke*, “[w]hen the State makes a public benefit generally available, that benefit becomes part of the baseline against which burdens on religion are measured; and when the State withholds that benefit from some individuals, it violates the Free Exercise Clause no less than if it had imposed a special tax.”

Moreover, there is no absolute link between a student’s major and his or her future vocation. Not every history major becomes a historian. Similarly, not every theology major will become a priest, minister, or other religious leader. To that end, there is no direct benefit to a religious sect or society.

Finally, as Justice Thomas asserts in his dissenting opinion in *Locke*, the term “theology” is not limited to devotional studies and, thus, does not necessarily imply that the study of theology is inherently religious in nature. The term “theology” is defined as “the study of the nature of God and religious truth”, “the rational inquiry into religious questions” (American Heritage Dictionary, 4th edition), or as “the study of religious faith, practice, and experience” and “the study of God and his relation to the world” (Webster’s Ninth New Collegiate Dictionary). The justice noted that, “These definitions include the study of theology from a secular perspective as well as from a religious one”. Excluding theology majors from state scholarships, then, is not limited to those seeking to become religious leaders and punishes a small minority of students for their academic pursuits.

Rebuttal:

As pointed out earlier, Michigan’s constitution (Article 1, Section 4) is much more restrictive on this issue than federal law.

POSITIONS:

The Michigan Catholic Conference supports the bills. (3-17-04)

The American Civil Liberties Union opposes the bills. (3-11-04)

The Michigan Federation of Teachers and School Related Personnel opposes the bill. (3-11-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.