

SUBJECT: Standards for barring religious apparel during court proceedings

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 8 ayes — Thompson, Hartnett, Clark, Crabb, Garcia, Luna, Shields, Solis
0 nays
1 absent— Zbranek

WITNESSES: For — Jonathan Bernstein, Anti-Defamation League
Against — None

DIGEST: HB 1492 would amend the Government Code to prohibit judges from requesting that a person remove an item of religious apparel, unless a party in the proceeding objected to the item and the judge concluded that allowing it to be worn would interfere with that party's right to a fair hearing or the proper administration of justice and that no reasonable alternative existed to removing the item.

HB 1492 would take immediate effect if finally approved by a two-thirds record vote of the membership of both houses.

SUPPORTERS SAY: HB 1492 is necessary to respond to a new challenge facing Texas judges: courtroom conflicts between the right to religious expression and the right to fair and unprejudiced trial. At least one recent case has shown that state judges need guidance in balancing these two liberty interests, when a judge forced an expert witness to remove his yarmulke prior to testifying because of possible prejudicial effect on the jury.

Under HB 1492, judges could not require that a party to a proceeding remove religious attire without good and reasonable cause. The guidelines of HB 1492 would provide flexibility yet withhold the unfettered discretion to make haphazard decisions. Absent such guidelines, there is the possibility that some judges in the pursuit of ideal justice unimpinged by human prejudices would go to extremes in banning any indication of religious preference.

HB 1492 would provide a means for judges to respond to any conflict between the free exercise of religion and the real possibility that religious symbols can sway juries. The bill would allow a party in the proceeding to object to a person wearing an item of religious attire if the party felt that the item would prejudice the jury, but would require that the judge determine whether this fear was well founded.

Expert witnesses in a proceeding should be allowed to express their individuality like any other citizen and should not be judged on the basis of their religious beliefs. Expert witnesses have been certified by the court as being credible witnesses, and the issue of their religion or religious attire is irrelevant.

**OPPONENTS
SAY:**

HB 1492 would be an unnecessary infringement on judicial authority. Judges have been selected for their jobs precisely because they have the legal background and expertise to determine when justice is being abridged. HB 1492 would inhibit Texas judges from doing their job merely because of an isolated incident in one particular court.

There is sufficient precedent in federal case law to establish that judges may prohibit lawyers and expert witnesses from wearing religious attire before a jury. Judges have this authority because wearing religious attire might prejudice jurors either toward or against parties in criminal or civil proceedings. Judges should be able to retain this discretionary authority for other parties in a proceeding as well; jurors may give witnesses more or less credibility simply because they are wearing an item of religious apparel. First Amendment rights are not absolute and sometimes must yield to the judge's power to regulate conduct and appearance in the courtroom in the interest of justice.

NOTES:

The companion bill, SB 1186 by Ellis, has been referred to the Senate Jurisprudence Committee.